

**BENCOR**

**DEFERRED PAY 457 PLAN™**

**FOR GOVERNMENTAL EMPLOYEES**

**Effective for Taxable Years Beginning after  
December 31, 2016**

*Prepared for Bencor by:*  
Rosenberger Law Group PLLC  
33 Bloomfield Hills Parkway, Suite 230  
Bloomfield Hills, Michigan 48304

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## **ARTICLE 1 - PREAMBLES**

This basic plan document, as set forth on this and the following pages, is sponsored and distributed to government unit employers by Bencor, Inc. ("Bencor") and is known as the Bencor, Inc. Deferred Pay 457 Plan™ for Governmental Employees ("Bencor Plan"). The Bencor Plan, together with the specific adoption agreement ("Adoption Agreement") completed and executed by a governmental employer ("Employer"), shall constitute that Employer's deferred pay plan for its eligible employees, shall be known by the name set forth in Part 1(e) of the Adoption Agreement, and shall be referred to herein as the "Plan."

**1.01 Establishment of Plan.** Effective as of the original effective date provided in Part 1(g) of the Adoption Agreement, the Employer has adopted the Plan for the purpose of providing retirement benefits for its eligible employees.

**1.02 Effective Dates.** The Plan is generally effective as of the original effective date provided in Part 1(g) of the Employer's Adoption Agreement. However, if the Employer is adopting the Plan as a means of amending and restating its existing deferred pay plan, the amendment and restatement is effective as of the date provided in Part 1(h) of the Adoption Agreement.

**1.03 Applicable Law.** The Plan is intended to be an eligible deferred compensation plan within the meaning of Section 457(b) of the Internal Revenue Code of 1986, as amended ("Code"), and shall be interpreted and governed in accordance with all applicable rules of that section, including Treasury Regulations that are issued under Code Section 457(b) and related sections of the Code. The rules set forth herein are effective for taxable years beginning after December 31, 2001, except that for taxable years beginning after that date but before January 1, 2004, the Plan will not fail to be an eligible deferred compensation plan if operated in accordance with a good faith interpretation of Code Section 457(b). It also is intended that the Plan shall be a "governmental plan" within the meaning of Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and, therefore, exempt from Title I of ERISA. Finally, if Part 4 of the Adoption Agreement requires total annual contributions of 7.5% or more of each Participant's compensation, the Plan is intended to constitute a "retirement system" within the meaning of Code Section 3121(b)(7)(F). Where not governed by such federal law, the Plan shall be administered and construed in accordance with Florida law.

**1.04 Defined Terms.** Throughout the Plan and in the Adoption Agreement, various terms are used repeatedly, which terms have very specific and definite meanings when capitalized in the text. For convenience, such terms are collected and defined in Article 9. Wherever such capitalized terms appear in the Plan or the Adoption Agreement, they shall have the meanings specified in that article.

## **ARTICLE 2 - ELIGIBILITY, APPLICATION AND PARTICIPATION**

**2.01 Eligibility.** In order to be eligible to participate in the Plan, an individual must be an Employee and must be within the eligible class of Employees described in Part 3 of the Adoption Agreement. It shall be the responsibility of the Employer to certify to the Administrator the names of Employees eligible for the Plan, and no party with respect to the Plan other than the Employer shall have any responsibility with respect to such determination.

**2.02 Application.** An individual who is eligible to participate in the Plan, as provided by Section 2.01, may apply for participation by submitting to the Employer a written application in a form specified by the Administrator, which form shall:

- (a) if Part 4 of the Adoption Agreement permits voluntary salary deferrals, designate the amount or percentage of the Employee's Compensation to be deferred;
- (b) name one or more Beneficiaries to receive the balance of the Employee's Account in the event of the Employee's death;
- (c) provide relevant information about the Employee (such as date of birth, address, Social Security number and telephone number);
- (d) include the Employee's consent to be bound by the terms of the Plan; and
- (e) be signed by the Employee in the presence of a witness who is unrelated to the Employee and who is not named as a Beneficiary of the Employee.

**2.03 Participation.** Once having applied for participation in the Plan, an individual will begin participation in the first calendar month following the calendar month in which his or her written application to participate is delivered to the Employer and received by the Administrator, provided that he or she remains employed by the Employer in that month. Notwithstanding the foregoing, an individual who is a new Employee will begin participation in the Plan in the first calendar month of his or her employment if the application to participate is delivered to the Employer and received by the Administrator on or before the Employee's first day of employment. Once an Employee has commenced participation in the Plan, he or she will be referred to as a "Participant" and will remain a Participant in the Plan as long as he or she has an Account balance under the Plan, even though the individual's deferral election subsequently may change in accordance with Article 3. Although no further contributions will be made after an Employee has incurred a Severance from Employment and has ceased receiving Compensation from the Employer, the former Employee's participation in the Plan otherwise will continue for purposes of allowing the former Employee to direct investments of his or her Account until his or her Account is fully distributed as provided by Article 5.

### **ARTICLE 3 - CONTRIBUTIONS**

**3.01 Sources of Contributions.** Subject to Part 4 of the Adoption Agreement, both the Employer and Participants may make contributions under the Plan as described in Section 3.02. All contributions under the Plan made by Participants shall be through payroll withholding. Employer contributions may be matching, discretionary or mandatory contributions, or any combination thereof, as provided in Part 4 of the Adoption Agreement. The Plan also may accept an eligible rollover contribution from an eligible retirement plan as described in Section 3.04 or a transfer contribution in accordance with Section 3.05 on behalf of a Participant from another eligible retirement plan in which the Participant previously had an interest.

#### **3.02 Contribution Amounts and Timing.**

(a) **Determination and Timing of Contributions.** Subject to the remaining paragraphs of this section, Annual Deferrals on behalf of any Participant in the Plan shall be made for each regular payroll period in the amount or percentage specified in the Participant's application to participate that is filed with the Administrator pursuant to Section 2.02 and that is based on the Participant's Compensation as defined in Part 2(a) of the Adoption Agreement, plus any mandatory deferrals contributions specified in Part 4 of the Adoption Agreement. Such Annual Deferrals shall be deposited in the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account; for this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is deposited to the Trust Fund within 15 business days following the end of the month in which the amount otherwise would have been paid to the Participant. Any Employer matching contributions specified in Part 4 of the Adoption Agreement may be made at the same time as Participant deferrals or periodically throughout the year, as determined by the Employer. Any discretionary or mandatory Employer contribution provided by Part 4 of the Adoption Agreement shall be determined prior to year-end by the Employer and deposited for allocation to each Participant's Account in proportion to his or her Compensation as defined in Part 2(a) of the Adoption Agreement.

(b) **Changes in Deferral Election.** A Participant may change his or her deferral election for voluntary contributions by filing with the Employer a written amendment to his or her application to participate. The change will be effective with the first regular payroll in the calendar month immediately following the month in which the Employer approves the Participant's amended election and communicates it to the Administrator. A Participant may not change his or her deferral election more frequently than once in any calendar quarter, although the Employer will accept an amendment to cease all future deferrals even though a Participant previously has increased or decreased a deferral election within the same quarter. All changes in deferral elections for voluntary contributions shall be made by Participants on such form and in accordance

with such administrative procedures as may be established from time to time by the Employer and the Administrator.

(c) Annual Limitation on Contributions. Regardless of any Participant's deferral election or any amendment to that election, and without regard to the Employer's elections in Part 4 of the Adoption Agreement, but subject to paragraph (d) below, no contributions shall be accepted by the Plan on behalf of any Participant which exceed, for any calendar year, the lesser of:

- (1) the applicable dollar amount specified in Code Section 457(b)(2)(A), which is \$11,000 for 2002, \$12,000 for 2003, \$13,000 for 2004, \$14,000 for 2005, \$15,000 for 2006 and years thereafter, or such cost-of-living adjusted amount as is in effect for years after 2006 pursuant to Code Section 457(e)(15); or
- (2) 100% of the Participant's Includible Compensation for the year.

(d) Special Catch-Up Limitations. For any one or more of the three calendar years ending prior to a Participant's Normal Retirement Age, contributions in excess of the limitations of paragraph (c) above may be accepted by the Plan, but not exceeding for any such year the lesser of:

- (1) two times the deferral limit specified by paragraph (c)(1) above; or
- (2) the sum of the applicable limitation from paragraph (c) above for the calendar year and so much of the limitation established by paragraph (c) for all prior calendar years of the Participant's participation in the Plan that was unused in such prior calendar years.

For any year in which he or she is age 50 or older (excluding any of the three years specified in the first sentence of this paragraph for which a greater combined regular and catch-up contribution limit applies), a Participant may contribute (i) the amount provided by paragraph (c) above, plus (ii) an additional amount not exceeding \$1,000 for 2002, \$2,000 for 2003, \$3,000 for 2004, \$4,000 for 2005, \$5,000 for 2006 and years thereafter, subject to any adjustment after 2006 as provided by Code Section 415(d), or, if less, the excess of the Participant's compensation for the year (as defined by Code Section 415(c)(3)) over any other elective deferrals for the year.

(e) Correction of Excess Contributions. If the sum of Annual Deferrals and Employer contributions on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferrals on behalf of a Participant for any calendar year exceed the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the amount in excess of the applicable limitation (adjusted for any allocable income or loss in value) shall be distributed to the

Participant no later than the first April 15 following the close of the taxable year with respect to which the excess amounts were made.

(f) Post-Severance Annual Deferrals. Annual Deferrals are permitted from an amount received following a Participant's Severance from Employment, but only if the amount is "Post-Severance Compensation." For this purpose, "Post-Severance Compensation" includes the amounts described in (1) and (2) below, paid after a Participant's Severance from Employment with the Employer, but only to the extent such amounts are paid by the later of 2½ months after the Participant's Severance from Employment or the end of the calendar year that includes the date of such Severance from Employment. Amounts described in (3) and (4) below are not included as "Post-Severance Compensation."

(1) Regular Pay. Post-Severance Compensation *includes* regular pay after Severance of Employment if the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and the payment would have been paid to the Participant prior to a Severance from Employment if the Participant had continued in employment with the Employer.

(2) Leave Cash-Outs and Deferred Compensation. Post-Severance Compensation *includes* leave cash-outs if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's Severance from Employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. In addition, Post-Severance Compensation includes payments of deferred compensation if the compensation would have been included in the definition of Compensation if it had been paid prior to the Participant's Severance from Employment, and the compensation is received pursuant to a non-qualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

(3) Salary Continuation Payments for Military Service Participants. Post-Severance Compensation does *not* include payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service (as described in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service.

(4) Salary Continuation Payments for Disabled Participants. Post-Severance does *not* include Compensation paid to a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)).



Any payment of Compensation paid after Severance of Employment that is not described in (1) or (2) above is not Post-Severance Compensation, even if payment is made by the later of 2½ months after Severance from Employment or by the end of the calendar year that includes the date of such Severance of Employment.

**3.03 Contributions Outside the Plan.** If the Plan is intended to be a “retirement system” within the meaning of Code Section 3121(b)(7)(F), but the limitation of Section 3.02(c)(1) above prevents any Participant from receiving under the Plan a contribution allocation for the year of at least 7.5% of compensation, then the amount that cannot be contributed to this Plan shall be contributed on the Participant’s behalf to a Code Section 403(b) annuity or a Code Section 401(a) plan.

**3.04 Eligible Rollover Contributions to the Plan.**

(a) In General. A Participant who is entitled to receive an “eligible rollover distribution” from another “eligible retirement plan” may request to have all or a portion of that eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3) or 457(e)(16), as applicable, and to confirm that such plan is an “eligible retirement plan.”

(b) Definitions. For purposes of paragraph (a) of this section, an “eligible rollover distribution” means any distribution of all or any portion of a Participant’s benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code Section 401(a)(9). An “eligible retirement plan” means a plan that accepts eligible rollover distributions and that is described by Code Section 402(c)(8)(B), including (A) an individual retirement account described in Code Section 408(a), (B) an individual retirement annuity described in Code Section 408(b), (C) a qualified trust described in Code Section 401(a), (D) an annuity plan described in Code Section 403(a) or 403(b), or (E) an eligible governmental plan described in Code Section 457(b).

(c) Separate Accounting. The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that *is not* an eligible governmental plan under Code Section 457(b). In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that *is* an eligible governmental plan under Code Section 457(b).

**3.05 Plan-to-Plan Transfers to the Plan.** At the direction of the Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under Code Section 457(b) to transfer assets to the Plan as provided in this section. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest in that plan to the Plan. The Administrator may require, in its sole discretion, that the transfer be in cash or other property acceptable to the Administrator. The Administrator also may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10) and Treasury Regulation Section 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treasury Regulation Section 1.457-2(f). The amount so transferred shall be credited to the Participant's Account and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral or other contribution under the Plan in determining the maximum contribution under Section 3.02.

**3.06 Leave of Absence.** Unless an election is otherwise revised, if a Participant is absent from work by reason of leave of absence, Annual Deferrals under the Plan shall continue to the extent that the Participant's Compensation continues during the period of absence.

**3.07 Disability.** A disabled Participant may elect Annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed compensation or disability benefits) from which to make contributions to the Plan during the period of disability and has not had a Severance from Employment.

**3.08 Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under Code Section 414(u), or who is on a leave of absence for qualified military service under Code Section 414(u), may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during the period of military service if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals or other contributions, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the Employee's resumption of employment after his or her military service (or, if sooner, for a period equal to three times the period of the interruption or leave).

### **Section 3.09 Impact of Qualified Military Service.**

(a) **In General.** The provisions of this section shall supersede any contrary provisions of the Plan. With respect to Participants who leave employment with the Employer for qualified military service, the Plan shall comply with –

(1) The minimum requirements applicable to Code Section 457(b) defined contribution retirement plans prescribed by:

(A) The Uniformed Services Employment and Rights Act of 1994 (USERRA), effective on and after January 1, 1994, as set forth in paragraph (b) of this section; and

(B) The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), including related guidance contained in IRS Notice 2010-15, generally effective January 1, 2007, as set forth in paragraph (c) of this section; and

(2) The permissive provisions of USERRA and the HEART Act that are described in Section 3.09 and paragraph (d) of this section.

(b) Mandatory USERRA Provisions.

(1) Treatment of Certain Contributions. If any contribution is made by the Employer with respect to a Participant, and if such contribution is required by reason of such Participant's rights under USERRA resulting from qualified military service, then:

(A) Such contribution shall not be subject to any otherwise applicable limitations contained in Code Section 415 and shall not be taken into account in applying such limitations to other contributions or benefits under the Plan or any other plan with respect to the year in which the contribution is made, but instead such contribution shall be subject to the foregoing limitations with respect to the year to which the contribution relates (in accordance with rules prescribed by the Secretary of Treasury); and

(B) The Plan shall not be treated as failing to meet the requirements of Code Section 457(b) by reason of the making of (or the right to make) such contribution.

(2) Certain Retroactive Adjustments Not Required. Notwithstanding part (1) of this paragraph, no provision of USERRA shall be construed as requiring any crediting of earnings to a Participant's Account with respect to any contribution before such contribution actually is made, with respect to the period of qualified military service.

(c) Mandatory HEART Act Provisions. A Participant's period of uniformed service that exceeds 30 days will be deemed to be a Severance from Employment, thereby permitting a Plan distribution of his or her Account that otherwise is contingent on an actual severance event, except that the Plan will not distribute such a Participant's Account under this paragraph unless the Participant specifically elects to receive such a distribution. If a Participant elects to receive a distribution as permitted by this section, then he or she may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a qualified reservist distribution), then the other Plan provision will control and the 6-month suspension will not apply.

(d) Permissive Provisions. Differential pay shall be paid to a Participant who is on leave performing services in the uniformed service as provided by the employment policies of the Employer. Differential pay paid by the Employer to Participants who are on leave for qualified military service shall be treated as "compensation" for all purposes under the Plan.

(e) Definitions. For purposes of this section, the following terms shall have the meanings indicated:

(1) "Compensation" means compensation, as specifically defined for each separate purpose under the Plan, but increased by the amount of differential pay paid to the Participant by the Employer.

(2) "Differential pay" means the difference between (A) the compensation that a Participant would have received during a given period if he or she were not in qualified military service, determined on the basis of the rate of pay he or she would have received from the Employer but for his/her absence during the period of qualified military service, or if the compensation the Participant would have received during such period is not reasonably certain, the Participant's average compensation from the Employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service), and (B) the amount the individual actually receives from the government as military pay during services in the uniformed services for a period of more than 30 days.

(3) "Reemployment rights under USERRA" means the right of an individual, who is on leave from employment with the Employer for the purpose of service in the uniformed services, to be re-employed by the Employer following completion of such service, as guaranteed by USERRA.

(4) "Qualified military service" means service in the uniformed services by an individual if the individual has reemployment rights under USERRA.

(5) “Service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in the uniformed services, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which an individual is absent from his position of employment for the purpose of an examination to determine the individual’s fitness to perform any such duty, and a period for which an individual is absent from employment for the purpose of performing funeral honors duty as authorized by USERRA.

(6) “Uniformed services” means the U.S. Armed Services, the Army National Guard or the Air National Guard, the commissioned corps of the Public Health Service and any other category designated by the United States President in time of war or national emergency.

## **ARTICLE 4 - MAINTENANCE AND INVESTMENT OF ACCOUNTS**

**4.01 Individual Accounts.** The Administrator shall maintain a record, in the form of an individual Account, showing the interest of each Participant in the Plan. The Account shall reflect a Participant's Annual Deferrals and any other contributions under the Plan, and all earnings, gains, losses, and expenses allocable to the investment of those Annual Deferrals and contributions. The Administrator shall furnish each Participant with a written statement of his or her Account at least annually. The statement shall show the total Annual Deferrals and other contributions made for the reporting period, the allocable amount of earnings, gains, losses, and expenses, as well as beginning and ending balances.

**4.02 Trust Fund.** All amounts of Compensation deferred under the Plan and any other contributions, plus all property and rights purchased with such amounts, and all income attributable to such amounts, shall be held in trust in the Trust Fund in accordance with the Plan and the Trust Agreement. For this purpose, a custodial account or contract specified in Code Section 401(f) shall be treated as a trust. The Trust Fund, and any sub-trust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust under the law of the State of Florida. The Trust Fund shall be held in trust pursuant to the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

**4.03 Investment of Accounts.** The balance shown in each Participant's Account shall be invested by the Administrator in accordance with written directions from the Employer or the Participant as specified by Part 6 of the Adoption Agreement. Such directions shall be provided to the Administrator in such form as the Administrator may prescribe. Investments shall be selected from among a variety of investments made available from time to time under the Plan. An election for investment of future contributions may be changed from time to time. Any existing investment of an Account also may be sold on direction, provided the Administrator is given direction as to how the funds realized are to be reinvested among the available investments of the Plan. Any change in investments of an Account must be made in such form as prescribed by the Administrator. The change shall be effected by the Administrator as soon as practical following receipt of the election to change the investments. The Account of any Participant for whom the Administrator fails to receive complete and proper instructions for investment shall be invested in a default investment selected by the Employer until appropriate directions are received by the Administrator; alternatively, the Administrator may deny or suspend participation rights to any Participant for whom full and complete investment directions have not been provided to the Administrator.

**4.04 Allocations to Accounts.** Periodic deferrals made by payroll deduction under the Plan shall be allocated to Accounts following each payroll of the Employer; all other contributions shall be allocated to Accounts as of the end of the Plan Year or as of such earlier Accounting Date as deposited by the Employer and received by the Plan. Earnings, gains, losses, and expenses attributable to investments of Accounts shall be allocated periodically. There also may be charged against Accounts such administrative fees, commissions, and other expenses for operation of the Plan as deemed appropriate from time to time by the Administrator; such amounts may be charged to Accounts on a pro rata or flat dollar rate basis, as the Administrator, in its complete discretion, deems to be appropriate, but in a consistent manner that is communicated to Participants and Beneficiaries.

## **ARTICLE 5 - PAYMENT OF BENEFITS**

**5.01 General.** Benefits under the Plan shall be limited to the balance of a Participant's Account as determined on the most recent Accounting Date, which balance shall be distributed at the time and in the manner elected by the Participant, except as otherwise specifically required by the terms of this article.

### **5.02 Procedures for Distribution Elections.**

(a) **Notice.** Upon the request of a Participant, but in all cases prior to the latest commencement date described in Section 5.05, the Employer shall provide the Participant with a notice describing the available distribution options under the Plan, including a lump sum payment and a direct rollover provided by Section 5.08, but also including any additional options selected by the Employer in Part 5 of the Adoption Agreement. The notice shall be accompanied by a form on which the Participant may make an election as to time and manner of distribution of his or her Account. The same procedure shall apply with respect to payments under the Plan due to a Beneficiary after the Participant's death. The notice also shall set forth the applicable time limitations for making an election, revoking or changing a prior election, and other relevant information.

(b) **Election.** The election form described in paragraph (a) shall be completed by the Participant (or Beneficiary), signed, dated, and returned to the Employer within the time period established by paragraph (c) below. The Employer shall process the election and direct the Administrator to make distribution from the Participant's (or Beneficiary's) Account at the time and in the manner elected by the Participant.

(c) **Timing.** An election for a time and manner of distribution must be made prior to the date the Participant has a Severance from Employment with the Employer and before the latest date for distribution described in Section 5.05(a). A Beneficiary of a deceased Participant may elect a time and manner of distribution at any time within 90 days after the date of the Participant's death and prior to the latest date for distribution described in Section 5.05(b) or (c), whichever is applicable.

(d) **Default Form of Distribution.** Unless otherwise timely elected in accordance with this article, and except as otherwise restricted herein, a Participant's Account shall be distributed in a single lump sum payment as of his or her Normal Retirement Age, or if later, as of the first day of the calendar month coincident with or next following the date of his or her Severance from Employment with the Employer. In the case of death of a Participant, his or her Account shall be distributed to the Beneficiary within one year of the Participant's date of death in the form of a single lump sum payment, unless otherwise timely elected by the Beneficiary as described in this article.



(e) New Maximum Notice Period. Any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code Section 402(f) (the rollover notice relating to an eligible rollover distribution) is changed to 180 days.

**5.03 Beneficiary Designations.** Each Participant may submit a designation of Beneficiary to the Employer. Every Participant's designation shall specify the share to be received by each Beneficiary and shall indicate how any balance is to be paid in the event of the death of each designated Beneficiary. Such designation of a Beneficiary may be changed from time to time by the Participant by filing a new designation with the Employer. If any Participant fails to designate a Beneficiary, or if all Beneficiaries predecease the Participant, any balance in the Account shall be paid to the Participant's surviving spouse, or if his or her spouse does not survive, then to the Participant's estate. If a Beneficiary survives the Participant but fails to collect all amounts payable on behalf of the Beneficiary from the Participant's Account, the balance shall be paid to the Beneficiary's estate, unless specified otherwise by the Participant in his or her Beneficiary designation. A Participant's designation of Beneficiary shall be made on a form prescribed by, provided by, and filed with the Employer.

**5.04 Earliest Distribution Date.** No distribution from his or her Account shall be made to or on behalf of any Participant prior to the earliest of:

- (a) the calendar year in which the Participant attains age 70½;
- (b) the date the Participant retires, dies, or otherwise has a Severance from Employment with the Employer; or
- (c) if the Employer has elected to permit, the date the Participant is faced with an unforeseeable emergency (determined in the manner prescribed by applicable Treasury Regulations).

Notwithstanding the foregoing or any other provision of the Plan, if a Participant has a separate account attributable to rollover contributions made to the Plan, the Participant may elect at any time (in years beginning after December 31, 2003) to receive a distribution of all or any portion of the amount held in the rollover account, even though the Participant has not had a Severance from Employment.

**5.05 Latest Distribution Date.**

(a) Lifetime Distributions. Each Participant's Account balance either must be distributed to him or her in full as a lump sum payment, or must commence to be distributed to him or her (in accordance with regulations under Code Section 401(a)(9)) over the life or life expectancy of the Participant or over the joint and last survivor life or life expectancy of the Participant and his or her Beneficiary or over a comparable period (prescribed by such regulations),

no later than the April 1<sup>st</sup> following the later of the calendar year in which he or she attains age 70½ or the calendar year in which he or she retires or otherwise has a Severance from Employment.

(b) Pre Age 70½ Death Distributions. Except as provided otherwise in this paragraph, if a Participant dies before the latest benefit commencement date described in paragraph (a) above, then the entire Account balance must be distributed to the Participant's Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. Similarly, if the Participant's surviving spouse dies before distribution of the Account balance has commenced to such surviving spouse, then the entire Account balance must be distributed to the Beneficiary of the Participant's surviving spouse by December 31 of the calendar year containing the fifth anniversary of the death of the surviving spouse. Alternatively, if the Beneficiary with respect to the Participant's Account balance is a natural person, then at the Beneficiary's election, distribution can be made in annual installments, calculated in the manner described in Section 5.06 but with the distribution period determined under this paragraph. If the Beneficiary is the Participant's surviving spouse, the distribution period is equal to the Beneficiary's life expectancy, using the single life table in Treasury Regulation Section 1.401(a)(9)-9, A-1, for the spouse's age on the spouse's birthday for that year. If the Beneficiary is not the Participant's surviving spouse, the distribution period is the Beneficiary's life expectancy determined in the year following the year of the Participant's death, using the single life table in Treasury Regulation Section 1.401(a)(9)-9, A-1, for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year. For any year, a Beneficiary may elect distribution of a greater amount (not to exceed the amount of the remaining Account balance) in lieu of the amount calculated using this formula.

(c) Post Age 70½ Death Distributions. If the Participant dies after the latest benefit commencement date described in paragraph (a) above, such that distributions do not commence until the calendar year following the later of the calendar year in which the Participant attains age 70½ or the calendar year in which his or her Severance from Employment occurs, the distribution on the date that distributions do commence must be equal to the minimum annual payment for the year that the Participant has a Severance from Employment, calculated in the manner described in Section 5.06, and an amount equal to the annual installment payment for the year after Severance from Employment, also determined under Section 5.06, that must be paid before the end of the calendar year of commencement. Notwithstanding the foregoing, if (1) the value of a Participant's Account does not exceed the applicable dollar amount under Code Section 411(a)(11)(A), (2) no amount has been deferred under the Plan by the Participant during the two-year period ending on the date of the distribution, and (3) there has been no prior distribution under the Plan to the Participant to which this special exception applied, then the Participant may elect to receive, or the Employer may distribute without the consent of the Participant, a cash-out payment of the entire Account in a lump sum.

**5.06 Minimum Required Annual Distributions.** All distributions under this article shall be determined and made in accordance with Code Sections 401(a)(9) and 457(d) and with Treasury Regulations under Code Section 401(a)(9) and Treasury Regulation Sections 1.457-2(h) and (i). In particular, in the case of any installment or annuity payment option, the amount payable each year shall be equal to at least the product of the Participant's Account balance, determined as provided by this section, and a fraction, the numerator of which is one and the denominator of which is the distribution period set forth in the Uniform Lifetime Table in Treasury Regulation Section 1.401(a)(9)-9, A-2, for the Participant's age on the Participant's birthday for the distribution year. If the Participant's age is less than age 70, the distribution period is 27.4 plus the number of years that the Participant's age is less than age 70. The Account balance for this calculation (other than the final installment payment) is the Participant's Account balance as of the end of the year prior to the year for which the distribution is being calculated. Payments shall commence on the date elected under Section 5.02. For any year, the Participant may elect distribution of a greater amount (not to exceed the amount of the remaining Account balance) in lieu of the minimum amount calculated using this section. An annuity contract with substantially non-increasing payments will be deemed to satisfy the foregoing minimum annual distribution rule. It shall be the responsibility of the Participant (or Beneficiary after the Participant's death), and not the Employer or the Administrator, to assure that any method of distribution elected satisfies the requirements of this section.

**5.07 Mandatory Distributions for Account Balances of \$5,000 or Less.** Without regard to any election made by the Participant, but subject to the option described in Section 5.08, if (a) his or her total Account balance does not exceed \$5,000 (or the dollar limit under Code Section 411(a)(11), if greater), (b) the Participant has not previously received a distribution of the total amount payable to the Participant under this section, and (c) no Annual Deferral has been made with respect to the Participant during the two-year period ending immediately before the date of the distribution, then the Participant's Account shall be paid in a lump sum as soon as practical following his or her Severance from Employment. Notwithstanding the foregoing or any other provision of the Plan, no distribution will be made on or after the first legislative session of the legislative body with authority to amend the Plan that begins on or after January 1, 2006 to any Participant, without the Participant's consent, if Code Section 401(a)(31) would require the Employer independently to establish an IRA for the Participant and make a direct rollover of the distribution into that IRA.

**5.08 Direct Rollover Distribution Option.**

(a) In General. A Participant or the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an "eligible rollover distribution" may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an "eligible retirement plan" specified by the Participant in a direct rollover.

(b) Definitions. For purposes of this section, an “eligible rollover distribution” means any distribution of all or any portion of a Participant’s Account balance, except that an eligible rollover distribution does not include any installment payment for a period of 10 years or more, any distribution made as a result of an unforeseeable emergency, or for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code Section 401(a)(9). An “eligible retirement plan” means a plan that accepts eligible rollover distributions and that is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a qualified trust described in Code Section 401(a), an annuity plan described in Code Section 403(a) or 403(b), or an eligible governmental plan described in Code Section 457(b).

(c) Roth IRA Rollover. In addition to the options described above, a Participant also may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code Section 408A(b).

(d) Non-Spouse Beneficiary Rollover Rights. A Beneficiary who is not the spouse of a Participant, but who is a “designated beneficiary” as described in Code Section 401(a)(9)(E) and the related Treasury Regulations, also may elect to roll over directly all or any portion of an eligible rollover distribution from the Plan as described in paragraph (b) above, but only to an individual retirement account (“IRA”) that the Beneficiary establishes for purposes of receiving the distribution (and *not* to any other type of eligible retirement plan). Although a non-spouse Beneficiary may roll over directly a distribution as provided in this paragraph, any distribution made prior to the first day of the first plan year beginning after December 31, 2009 otherwise is not subject to the direct rollover requirements of Code Section 401(a)(31), including Code Section 401(a)(31)(B), the notice requirements of Code Section 402(f), or the mandatory withholding requirements of Code Section 3405(c). Notwithstanding the foregoing, if a non-spouse Beneficiary actually receives a distribution from the Plan, that distribution is not eligible for a “60-day” rollover to an IRA (or any other eligible retirement plan). If the Participant’s non-spouse Beneficiary is a trust, the Plan still may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a “designated beneficiary” within the meaning of Code Section 401(a)(9)(E). A non-spouse Beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury Regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulation Section 1.401(a)(9)-3, Q&A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse Beneficiary’s distribution.

**5.09 Plan-to-Plan Transfers from the Plan.** At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Accounts transferred to another eligible governmental plan within the meaning

of Code Section 457(b) and Treasury Regulation Section 1.457-2(f). A transfer is permitted under this section for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this section only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred. Upon the transfer of assets under this section, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this section (for example, to confirm that the receiving plan is an eligible governmental plan and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulation Section 1.457-10(b).

**5.10 Permissive Service Credit Transfers.** If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account transferred to the defined benefit governmental plan. A transfer under this section may be made before the Participant has had a Severance from Employment. A transfer may be made under this section only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

## **ARTICLE 6 - ADMINISTRATION**

**6.01 General.** Responsibilities for administration of the Plan shall be divided between the Employer and the Administrator. Their respective duties shall be as set forth throughout the Plan and as described in any resolution or other written instrument of delegation that is properly executed in accordance with procedures set forth in Section 6.04.

**6.02 Employer.** Except to the extent of a delegation to the contrary, the Employer shall have responsibility for the adoption, amendment, termination, and merger of the Plan. Whenever the Employer is required or permitted to act hereunder, the action shall be taken and evidenced by resolution of the Employer's governing body, except to the extent authority has been delegated pursuant to Section 6.04. In addition, the Employer shall be responsible for implementation of the Plan and all amendments, as well as for all major policy decisions regarding the Plan, including selection of the service providers, the making of contracts on behalf of and for the operation of the Plan, adoption of policies and procedures, and supervision of operations of the Plan. The Employer shall be responsible for determining eligible Employees, approving applications for participation in the Plan and any amendments to such applications, collecting and retaining records of Beneficiary designations, conducting periodic reviews of investment options that are available under the Plan, providing information on distribution elections to Participants and Beneficiaries, receiving completed election forms, and communicating the relevant information from such forms to the Administrator.

**6.03 Administrator.** Subject to the accuracy and timeliness of information provided to it by the Employer, the Administrator shall be responsible for all recordkeeping and reporting under the Plan, including the maintenance of Accounts, furnishing of periodic statements of Accounts to Participants and Beneficiaries, and tax reporting of distributions made from the Plan. The Administrator also shall provide access to investments and shall keep records of the allocation of Plan contributions among the available investment choices. Pursuant to its responsibility to provide Participants with access to investments, the Administrator shall provide Participants with access to comprehensive information about the investments, including performance histories and disclosure of applicable fees and charges. Notwithstanding the foregoing, the Administrator shall not give investment advice to any Participant or Beneficiary nor offer for sale to Participants or Beneficiaries any services or securities (other than approved investment options under the Plan), and in all situations, the Administrator shall avoid any action that would present a conflict of interest.

**6.04 Delegation.** By resolution of the Employer's governing body or by other written instrument properly signed and dated and delivered to the Administrator, the Employer may delegate to officers or employees of the Employer, or to individuals or entities retained by the Employer, the powers and responsibilities otherwise reserved herein to the Employer. Such power of delegation shall be without restriction, except that the Employer may not delegate a power or responsibility in contravention of the terms of the Plan, the Code, any Employer charter or

ordinance, or state statute. Each instrument of delegation shall be sufficiently specific so as to clearly define the powers and responsibilities that rest with the party to which the delegation is made.

## **ARTICLE 7 - AMENDMENT, TERMINATION AND MERGER**

**7.01 Amendments.** The Employer may amend the selections previously made in its Adoption Agreement by delivering to Bencor a new Adoption Agreement, signed by an authorized individual on behalf of the Employer and indicating the effective date of each change, which shall not be earlier than the first day of the year in which the amendment is adopted by the Employer. Amendments to the Plan required by law may be made by Bencor without advance notice to the Employer or Participants and shall be effective as of such date as is specified by law (including a retroactive date, provided that the Plan has been administered in good faith in compliance with the amendment since its effective date). Amendments required by law shall be deemed adopted by the Employer upon receipt of a copy of the amendment, unless the Employer provides written notice to Bencor within 60 days of receipt that it does not accept the amendment (even though refusal to accept the amendment may make the Plan non-compliant with applicable law). The Employer shall be responsible for providing Participants with notice of all amendments. Notice shall be deemed given when posted in the Employer's offices. Except as may be required by Code Section 457 or other applicable law, no amendment shall reduce or otherwise adversely affect the benefit that any Participant had earned under the Plan prior to the effective date of the amendment. Changes made by the Employer in the investment options available to Participants under the Plan shall not be deemed amendments to the Plan.

**7.02 Termination.** The Employer may terminate the Plan at any time by written notice to Bencor and Participants. Termination shall be subject to the same prohibition on reduction of benefits that have been earned as Plan amendments made pursuant to the previous section. Upon termination of the Plan, the Employer may make provision for future distribution of benefits through the purchase of annuities or by transfer of Participant rights to a new plan, but no such termination shall result in any distributions to Participants that violate the restrictions on distributions set forth in Article 5.

**7.03 Merger.** The Employer may merge this Plan with any other plan that satisfies the requirements of Code Section 457(b), provided that notice is given to Participants as set forth in Section 7.01 and that no benefits earned through the date of merger are adversely affected by the merger.

**7.04 No Consent.** Any amendment, termination, or merger of the Plan may be accomplished without consent of any Participant or Beneficiary, provided that notice is given as otherwise provided in this article.

## **ARTICLE 8 - MISCELLANEOUS PROVISIONS**

### **8.01 Anti-Alienation.**

(a) General Rule. Except as provided in paragraph (b) of this section, the rights of any Participant under the Plan to the balance of his or her Account, and the corresponding rights of a Beneficiary of a deceased Participant, shall not be subject to the claims of any creditor of the Participant or Beneficiary, and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for creditors, except as to payments actually paid to the Participant or Beneficiary and not otherwise protected by law. Similarly, a Participant's or Beneficiary's interest in the Plan may not be assigned by any Participant or Beneficiary, pledged as security for a loan, or otherwise anticipated or alienated.

(b) Exceptions. Notwithstanding paragraph (a) of this section, the following distributions shall be permitted:

- (1) Domestic Relation Orders. If a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any state ("domestic relations order"), then there shall be paid from the Participant's Account balance, in the amount and manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan at the time. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. A domestic relations order that otherwise satisfies the requirements of this paragraph will not fail to be honored by the Plan solely because the order is issued after, or revises, another domestic relations order, or solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death. A domestic relations order described in the previous sentence is subject to the same requirements and protections that apply to other orders described by this paragraph.
- (2) Levy. The Administrator may pay from a Participant's or Beneficiary's Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.



- (3) Election for Certain Retirees to Deduct Premiums from Distributions. Notwithstanding Section 8.01, an Eligible Retired Public Safety Officer may elect annually for that taxable year to have the Plan deduct an amount from a distribution, which the Eligible Retired Public Safety Officer otherwise would receive from the Plan and include in his or her income for the year, to pay Qualified Health Insurance Premiums directly to the provider of such insurance. Such amounts may not exceed the lesser of \$3,000 or the amount the Participant otherwise would pay for such taxable year for Qualified Health Insurance Premiums. For purposes of this section, the term “Eligible Retired Public Safety Officer” means an individual who, by reason of disability or attainment of Normal Retirement Age, is separated from employment as a Public Safety Officer with the Employer; “Public Safety Officer” has the same meaning as in Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)); and “Qualified Health Insurance Premiums” means premiums for coverage for the Eligible Retired Public Safety Officer, his or her spouse and dependents (as defined in Code Section 152) by an accident or health plan or qualified long-term care insurance contract (as defined in Code Section 7702B(b)).

**8.02 Procedure When Participant or Beneficiary Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means the mailing by certified mail of a notice to the last known address shown on the Employer’s or the Administrator’s records, notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under each entity’s program to identify payees under retirement plans), and the payee has not responded within six months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.

**8.03 Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**8.04 Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value

allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

**8.05 Complete Document.** The terms contained in this document and the accompanying Adoption Agreement set forth all applicable terms of the Plan. The terms herein may not be contradicted or modified in any way by other documents, except for an amendment that is properly adopted in accordance with Section 7.01. No oral statement made by any person may be relied upon by a Participant, Beneficiary, Employee, or person claiming through any of the foregoing, as a modification of the Plan, an interpretation of its terms, or an extension of its benefits.

**8.06 Binding Nature.** The terms of the Plan, as amended from time to time, shall be binding upon the Employer and upon Participants, Beneficiaries, Employees, and upon all respective heirs, administrators, successors, and assigns of the foregoing.

**8.07 No Contract of Employment.** Nothing in this Plan shall be deemed to constitute an employment contract or agreement between any Employee and the Employer, or to modify the terms of any contract or agreement of employment.

**8.08 Impact on Other Benefits.** This Plan is intended to provide benefits in addition to any other retirement plan, pension plan, or benefit system currently in existence or hereafter established for the benefit of Employees of the Employer, and participation in the Plan shall not affect benefits receivable under any other such plan or system, except as specifically provided herein, in such other plan or system, or as required by law.

**8.09 Construction.**

(a) **Gender; Singular and Plural Words.** Wherever any words are used in the Plan in one gender, they shall be construed as though they also were used in the other gender in all cases where they would so apply, and wherever any words are used in the Plan in the singular form, they shall be construed as though they also were used in the plural form in all cases where they would so apply, and vice versa.

(b) **Headings.** Headings of sections and paragraphs of this document are inserted for convenience of reference. They constitute no part of the Plan and are not to be considered in the construction of the Plan.

(c) Savings Clause. If any provisions of the Plan shall be for any reason invalid or unenforceable, the remaining provisions nevertheless shall be carried into effect.

#### **8.10 Acceptance of Risk and Waiver of Claims by Employees.**

(a) Risk of Losses. Each Employee specifically understands and acknowledges that to the extent of any investment loss or other loss arising from the investment elections of the Employee, that the Employee's Account will reflect the loss, and that any loss will reduce the benefits payable hereunder. Each Employee shall be deemed to accept this and other risks of loss inherent under this Plan by his or her signature on his or her application to participate in the Plan.

(b) Waiver of Claims. Each Employee, by means of his or her application to participate, also specifically agrees not to seek recovery against the Employer or any other person having any ministerial or investment position relative to the Plan, for any loss, if any is sustained by the Employee or Beneficiary, for the nonperformance of their duties, negligence, or any other misconduct of the above-named persons, except that this paragraph shall not excuse fraud or a wrongful taking by any person.

(c) Suspension of Payments. The Employer or its agent may suspend or defer any payment hereunder, if there is any doubt concerning the correctness of the action to be taken in making such payment. In the event such suspension or deferral causes a delay in payment resulting in litigation, the benefits shall be paid in accordance with the decision of a court of competent jurisdiction.

(d) INHERENT RISK OF INVESTMENT. EACH EMPLOYEE IS ADVISED THAT INVESTMENT IN A STOCK FUND, BOND FUND, OR ANY OTHER INVESTMENT UNDER THE PLAN INVOLVES SIGNIFICANT RISK, INCLUDING LOSS OF FUNDS INVESTED. THE EMPLOYER, BY OFFERING INVESTMENT OPTIONS, MAKES NO REPRESENTATION THAT SUCH OPTIONS ARE SAFE OR SUITABLE TO THE EMPLOYEE'S NEEDS. EACH EMPLOYEE IS ADVISED TO CONSULT WITH AN ACCOUNTANT, ATTORNEY, OR INVESTMENT ADVISOR.

## **ARTICLE 9 - DEFINITIONS**

**9.01 “Account”** means the bookkeeping account maintained with respect to each Participant maintained on the records of the Administrator and reflecting the value of the deferred Compensation credited to the Participant, including the Participant’s Annual Deferrals, the earnings or loss of the Trust Fund (net of expenses) allocable to the Participant, any transfers for the Participant’s benefit, and any distribution made to the Participant or the Participant’s Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant’s death, then a separate Account shall be maintained for each Beneficiary. An Account includes any account to reflect plan-to-plan transfers made for a Participant, an account established for rollover contributions, the account established for a Beneficiary after a Participant’s death, and any account or accounts established for an alternate payee (as defined in Code Section 414(p)(8)).

**9.02 “Accounting Date”** means the last day of each Plan Year and each other date on which the Plan assets are valued and allocations to Accounts are made pursuant to Article 4.

**9.03 “Administrator”** means the organization(s) specifically designated from time to time by Bencor to carry out the administrative functions specified in the Plan.

**9.04 “Adoption Agreement”** means the agreement executed by the Employer for purposes of adoption of the Plan and election of certain alternative provisions offered herein.

**9.05 “Annual Deferral”** means the amount of a Participant’s Compensation deferred in any year.

**9.06 “Bencor”** means Bencor, Inc.

**9.07 “Beneficiary”** means the person properly designated by a Participant to receive the Participant’s benefits created by his participation in this Plan.

**9.08 “Code”** means the Internal Revenue Code of 1986, as amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

**9.09 “Compensation”** means an Employee’s annual cash compensation from the Employer, as described in Part 2(a) of the Adoption Agreement, not in excess of \$200,000 or such

other cost-of-living amount as set by the Internal Revenue Service and that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b), including an election to defer compensation under Article 3.

**9.10** **"Effective Date"** means the date that the terms of this Plan first become effective with respect to the Employer, or the subsequent effective date of the Plan's amendment and restatement, as set forth in Part 1 of the Adoption Agreement.

**9.11** **"Employee"** means any common law employee of the Employer.

**9.12** **"Employer"** means the governmental entity that has adopted the Plan in accordance with the Adoption Agreement.

**9.13** **"Includible Compensation"** means an Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, and without regard to the definition in Part 2(a) of the Adoption Agreement, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under Section 3). To the extent not included by the preceding sentence, but still subject to the maximum amount described in the sentence, the following amounts also shall be included: (a) amounts paid or reimbursed by the Employer for moving expenses to the extent not reasonably deemed deductible by the Participant at the time of payment; (b) amounts constructively received and includible in gross income under Code Section 409A and 457(f); (c) amounts received from the Employer during leave for qualified military service, as defined in Code Section 414(u), to the extent such amounts do not exceed the amounts the Participant would have received for services in the absence of leave; (d) payments in lieu of wages under a disability plan or policy funded by the Employer due to the Participant's total and permanent disability as defined in Code Section 22(e), provided that the conditions of the Treasury Regulations are satisfied; (e) back pay awarded to the Participant for lost wages by an administrative agency or court or pursuant to a bona fide agreement with the Employer, but only to the extent such payments represent wages that otherwise would be included in compensation for the limitation year under the rules of this paragraph; and (f) amounts earned by the Participant during the limitation year but paid during the first few weeks of the next limitation year due to timing of pay periods and pay dates, but only if so included on a uniform and consistent basis applied to all Participants and only if not included in more than one limitation year. However, Includible Compensation for the limitation year shall exclude amounts received after the Participant's Severance from Employment with the Employer, except for: (i) amounts

received within 2-1/2 months of the end of the limitation year in which occurs the Participant's severance, or if later, by the end of the limitation year in which the severance occurs, provided such amounts meet the other conditions for inclusion within the limitation year specified by the Treasury Regulations under Code Section 415; (ii) payments of regular wages, overtime pay or bonuses that would have been paid prior to severance if the Participant had continued in employment; (iii) leave cash outs of accumulated sick or vacation pay but only to the extent the Participant could have used the leave time if he or she had continued in employment; and (iv) any amount received from an unfunded, non-qualified deferred compensation plan, but only to the extent the amount would have been paid at the same time if the Participant had continued in employment and is includible in gross income.

**9.14 “Normal Retirement Age”** means the age at which an Employee is eligible for retirement as specified in Part 2(b) of the Adoption Agreement, but not (a) prior to the earlier of age 65 or the date that the Employee is entitled to retire and receive an immediate benefit under the Employer’s defined benefit pension plan (or other retirement plan) that is unreduced actuarially for commencement prior to a later specified age, or (b) later than age 70½.

**9.15 “Participant”** means any Employee who has applied for and commenced participation in this Plan as provided by Article 2 and any former Employee as provided in Section 2.03.

**9.16 “Plan”** means the Deferred Pay Plan of the Employer as described in this instrument, the Adoption Agreement, and any subsequent amendments.

**9.17 “Plan Year”** means the 12-month year on which the Plan is administered as specified in Part 1(d) of the Adoption Agreement.

**9.18 “Severance from Employment”** means the term Severance from Employment means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code).

**9.19 “Trust Agreement”** means the written agreement and/or other forms and documents under which the Trust Fund is maintained as executed by BENCOR and the Trustee. By execution of the Adoption Agreement, the Employer agrees to the terms of the Trust Agreement, and the Trustee shall be fully protected in taking, permitting or omitting any action in accordance with the terms of the Trust Agreement and shall incur no liability or responsibility

for carrying out such actions as directed by the Employer or otherwise executing its responsibilities in accordance with the terms of the Trust Agreement.

**9.20**    **“Trust Fund”** means the trust fund created under, and subject to, the Trust Agreement and/or any other required documents and forms, including a custodial account or contract described in Code Sections 457(g)(3) and 401(f) and Treasury Regulation 1.401(f)-1 and treated under each as a qualified trust.

**9.21**    **“Trustee”** means the party duly appointed from time to time by BENCOR and serving as trustee under the Trust Agreement, including a person or entity meeting the requirements of, holding the assets of the Plan pursuant to, and treated as the trustee under, Code Sections 457(g)(3) and 401(f) and Treasury Regulation 1.401(f)-1.

**ARTICLE 10 - EXECUTION**

Effective as provided in Article 1, BENCOR has caused this Plan to be executed on October 23, 2018.

**BENCOR, INC.**

By: \_\_\_\_\_  
Hugh Bishop, President

(BENCOR.L1)  
(10/23/2018)