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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d)**  
**of the Securities Exchange Act of 1934**

**December 17, 2013**  
**Date of Report (Date of earliest event reported)**

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**Smith & Wesson Holding Corporation**  
(Exact Name of Registrant as Specified in Charter)

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**Nevada**  
(State or Other Jurisdiction  
of Incorporation)

**001-31552**  
(Commission  
File Number)

**87-0543688**  
(IRS Employer  
Identification No.)

**2100 Roosevelt Avenue**  
**Springfield, Massachusetts**  
**01104**  
(Address of Principal Executive Offices) (Zip Code)

**(413) 781-8300**  
(Registrant's telephone number, including area code)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On December 17, 2013, the board of directors of Smith & Wesson Holding Corporation adopted the Smith & Wesson Nonqualified Supplemental Deferred Compensation Plan (the “Plan”) to be effective as of March 1, 2014. The Plan is an unfunded deferred compensation plan that is intended to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations thereunder. The Plan provides deferred compensation benefits to a select group of management or highly compensated employees, as selected (in each case) by our company and participating affiliates.

The Plan allows participants to prospectively elect to defer up to 50% of base salary and up to 100% of certain cash bonuses. In the event that salary deferred into the Smith & Wesson Corp. Profit Sharing and Investment Plan (the “401(k) Plan”) must be returned to participants under the Code’s 401(k) rules, a comparable amount of salary will automatically be deferred into the Plan on their behalf. In addition, our company and participating affiliates will make non-elective contributions to the extent necessary to compensate participants for the amount of their “profit sharing” contribution that cannot be made to the 401(k) Plan due to the limitations of Section 415 of the Code. Additional discretionary non-elective contributions may also be made. Participant deferrals and non-elective contributions are at all times 100% vested.

A participant’s deferrals and non-elective contributions are credited to a deferred compensation account and held in a “rabbi trust” until the occurrence of an applicable distributable event. All of the assets of the rabbi trust will be subject to the claims of creditors of our company and participating affiliates, as applicable. The distributable events include the following:

- separation from service with our company and its affiliates;
- death;
- disability;
- specified time designated by the participant in his or her deferral agreement;
- a change in control of our company; and
- unforeseeable emergencies.

Distributable amounts are paid in the form of a lump sum cash payment or, for certain distributions, in a fixed number of cash installment payments, as elected by the participant.

A menu of investment options will be made available to participants to determine the amount of earnings, gains, or losses to be credited to their accounts under the Plan. Each participant will be able to select from such investment options, the investment options to be used to determine the earnings, gains, and losses to be credited to the deferred amounts. We are not required to invest a participant’s account in the investment options selected because they are used only for purposes of determining the earnings, losses, and gains to be credited to a participant’s account. We retain the discretion to amend or terminate the Plan at any time (provided no such action affects a participant’s right to receive the full amount of his or her account balance).

The foregoing description of the Plan does not purport to be complete and is qualified in its entirety by reference to the full text of (i) the Plan’s adoption agreement, which is attached hereto as Exhibit 10.107 and incorporated herein by reference, and (ii) the Plan document, which is attached hereto as Exhibit 10.108 and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(a) *Financial Statements of Business Acquired.*

Not applicable.

(b) *Pro Forma Financial Information.*

Not applicable.

(c) *Shell Company Transactions.*

Not applicable.

(d) *Exhibits.*

<u>Exhibit Number</u>	<u>Exhibits</u>
10.107	Adoption Agreement to the Smith & Wesson Nonqualified Supplemental Deferred Compensation Plan
10.108	Smith & Wesson Nonqualified Supplemental Deferred Compensation Plan Document

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

SMITH & WESSON HOLDING CORPORATION

Date: December 20, 2013

By: /s/ Robert J. Cicero

Robert J. Cicero

Vice President, General Counsel, Chief Compliance Officer, and Secretary

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**EXHIBIT INDEX**

<u>Number</u>	<u>Exhibits</u>
10.107	Adoption Agreement to the Smith & Wesson Nonqualified Supplemental Deferred Compensation Plan
10.108	Smith & Wesson Nonqualified Supplemental Deferred Compensation Plan Document

## TRANSAMERICA RETIREMENT SOLUTIONS CORPORATION

NONQUALIFIED DEFERRED COMPENSATION  
ADOPTION AGREEMENT FORSmith & Wesson Holding Corporation

**This Adoption Agreement is to be used in conjunction with the  
Transamerica Retirement Solutions Corporation  
Nonqualified Deferred Compensation Plan Document**

*This Adoption Agreement is an important legal document. You should consult with your attorney on whether or not it accommodates your particular situation, and on its tax and legal implications. Transamerica Retirement Solutions Corporation ("TRSC") does not and cannot provide legal or tax advice. The Plan Document and Adoption Agreement are intended purely as specimen documents for use by you and your attorney. TRSC can give no assurances that any Employer's Nonqualified Deferred Compensation arrangements will meet all applicable Internal Revenue Service ("IRS") and Department of Labor ("DOL") requirements.*

Account Number:

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Account Number:

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## Introduction

In completing this Adoption Agreement, as in connection with other matters related to this Plan, it is strongly recommended that you consult with your attorney or other tax advisor. This is especially true because if the Plan is not operated in accordance with the terms of the Plan and the options elected in this Adoption Agreement, additional taxes, penalties, and interest under section 409A of the Internal Revenue Code (the "Code") may result.

Transamerica Retirement Solutions Corporation does not and cannot provide legal or tax advice. The Adoption Agreement and the related Plan document (the "Plan") are not prototypes and have not been reviewed or approved by the IRS. They are intended purely as sample documents for use by your attorney in preparing your nonqualified deferred compensation plan.

The Plan is a broad document which allows a participating Employer a number of choices and options. Any capitalized terms used in this document have the meaning as set forth in the Plan Document, unless otherwise indicated. These choices and options are illustrated in this Adoption Agreement; provisions of the Plan which allow no options are not included in the Adoption Agreement. This does not necessarily mean that other alternatives are not legally permissible, but TRSC may not be able to administer such other alternatives. This Adoption Agreement states the provisions specific to your particular Plan.

Account Number:



**Part I – General Information**

1. Sponsoring Employer (Article 2.22 of the Plan).

- (a) Name of Employer: Smith & Wesson Holding Corporation (as Sponsoring Employer).  
Smith & Wesson Corp. (as Participating Employer).
- (b) Address of Employer: 2100 Roosevelt Avenue  
Springfield, MA 01102-2208
- (c) Federal Tax ID Number of Employer: 87-0543688
- (d) Contact Phone Number: (413) 781-8300
- (e) Publicly Traded Company (*check one*):
- (i) No.
  - (ii) Yes. (*Note: For Key Employees, distributions may not be made before the date which is six months after Separation from Service (or if earlier, after the date of death).*)
- (f) If a Publicly Traded Company, enter Key Employee identification date (*complete, if applicable*):
- (i) December 31.
  - (ii) Other .
- (g) If a Publicly Traded Company, enter Key Employee effective date (*complete, if applicable*):
- (i) April 1 following the identification date.
  - (ii) Other December 31

2. Plan Administrator (*if not Sponsoring Employer*) (Article 9.1 of the Plan).

- (a) Name of Plan Administrator:
- (b) Address of Plan Administrator:

Account Number:

(c) Contact Phone Number:

**Part II – Plan Data**

3. Name of Plan(s). (Articles 2.2, 2.38, and 2.41 of the Plan).

(a) The name of this Plan is *(provide name)*:

Smith & Wesson Nonqualified Supplemental Deferred Compensation Plan

4. New Plan or Amendment, Restatement, and Continuation of a Prior Plan. This Plan is *(check one)*:

(a) A new plan.

(b) An amendment, restatement, and continuation of a plan in existence as of October 3, 2004 and applies only to deferred compensation earned or vested after 2004. (There are no material modifications of pre-2005 deferred compensation.)\*

(c) An amendment, restatement, and continuation of a plan in existence as of October 3, 2004, and applies to all contributions regardless of when made, earned or vested. (There are material modifications of pre-2005 deferred compensation.)

*\*Caution: If this is an amendment, restatement, and continuation of an existing plan, the Employer is responsible for ensuring that the amendment and restatement does not result in a “material modification” (within the meaning of Code section 409A and regulations thereunder) of any Grandfathered Amount and that any amendment does not cause a revocation of elections, acceleration of distributions or other event not permissible under Code section 409A and the regulations thereunder.*

5. Effective Date (Article 2.17 of the Plan).

*(check one and provide information required by section (a) or (b), as applicable):*

(a) For new plans:

The Effective Date of the Plan is *(provide date)* March 1, 2014.

6. Plan Year (Article 2.40 of the Plan).

Account Number:

The Plan Year is (a twelve month period – e.g., January 1– December 31) January 1 through December 31

7. Plan Covers:

This Plan shall cover the following (check one):

- (a) Employees at the level of vice president or above, as selected by the Employer, and other eligible “top hat” level Employees, as selected by the Employer.
- (b) Directors, as selected by the Employer.\*
- (c) Other\* .

\* Note: when checked, references to the terms “Employer” and “Eligible Employee” are substituted for the terms “Company” and “Eligible  Director  Other “ , in the Adoption Agreement and Plan, respectively.

8. Type of Plan.

This Plan shall be (check one):

- (a) An Evergreen Plan under which the Employer establishes and maintains a Participant’s Account, which may have sub-accounts depending on the Employer’s election, on behalf of each Eligible Employee which include, if applicable, but are not limited to a (1) Salary Reduction Contribution Account, (2) Performance-Based Compensation Account, (3) Matching Contribution Account, and (4) Nonelective Employer Contribution Account to which (1) Salary Reduction Contributions, (2) Performance-Based Compensation, (3) Matching Contributions and (4) Nonelective Employer Contributions shall be credited.
- (b) A Calendar Year Plan under which the Employer establishes and maintains a Participant’s Account on behalf of each Eligible Employee’s Annual Sub-Account(s) which include, if applicable, but are not limited to a (1) Salary Reduction Contribution Account, (2) Performance-Based Compensation Account, (3) Matching Contribution Account, and (4) Nonelective Employer Contribution Account to which (1) Salary Reduction Contributions, (2) Performance-Based Compensation, (3) Matching Contributions and (4) Nonelective Employer Contributions shall be credited to each respective Annual Sub-Account.

Distribution Election Method (check one if 8(b) above is selected):

- (i) Annual Election—A Participant must make a new Distribution Election each Taxable Year for future contributions to the Annual Sub-Account for the next year.

Account Number:

- (ii) Carry Forward Election—A Participant’s Distribution Election will remain in place from year to year for future contributions to the Annual Sub-Account until such time as the Participant modifies or cancels the Distribution Election in accordance with the terms of the Plan.

**Part III – Compensation**

9. **Compensation** (Articles 2.11 and 2.35 of the Plan).

(a) Compensation shall exclude the item(s) listed below for purposes of determining *(complete, if applicable)*:

(i) Salary Reduction Contributions:

- (1) No exclusions.
- (2) Bonus (e.g., Non-Performance Based Compensation).
- (3) Compensation  in excess of  at or below Code section 401(a)(17) Compensation.
- (4) Commissions.
- (5) Overtime Pay.
- (6) Performance-Based Compensation (see Section 10.(d) for separate election).
- (7) Severance Pay.
- (8) Other: All items of Compensation other than the Participant’s (i) annualized gross rate of base salary payable before deductions of any kind whatsoever (“Base Salary”), and (ii) annual performance-based cash incentive compensation (“Bonus”) shall be excluded.

(ii) Nonelective Contributions:

- (1) No exclusions.
- (2) Bonus.
- (3) Compensation  in excess of  at or below Code section 401(a)(17) Compensation.
- (4) Commissions.
- (5) Overtime Pay.

Account Number:

- (6) Performance-Based Compensation.
- (7) Severance Pay.
- (8) Other: All items of Compensation excluded from the definition of compensation used in the Smith & Wesson Corp. Profit Sharing and Investment Plan (the "Employer's 401(k) Plan") for purposes of allocating non-elective contributions (other than matching contributions) shall be excluded (it being understood that the same definition of compensation will be used in this Plan as is used in the Employer's 401(k) Plan for purposes of determining non-elective contributions, as applicable).

#### Part IV – Elections to Defer Compensation

10. Salary Reduction Contributions (Article 4.1 of the Plan).

- (a) Compensation below includes Performance-Based Compensation unless excluded in Compensation or a separate deferral election is permitted in (d) below. A Participant may enter into a Deferral Agreement to make the following (*complete, if applicable*):
- (i) A Salary Reduction Contribution of Base Salary in one (1) percent increments from a minimum of 1% up to a maximum of 50% of Compensation.
  - (ii) An additional Salary Reduction Contribution from Base Salary equal to the dollar amount of refunds payable in the Plan Year due to a failed Actual Deferral Percentage non-discrimination test in the Employer's 401(k) Plan will automatically be deferred on the Participant's behalf pursuant to a deemed and recurring election.
  - (iii) Once a Participant reaches the deferral limit under the 401(k) Plan, a Salary Reduction Contribution in one (1) percent increments from a minimum of % up to a maximum of % Compensation.
  - (iv) A Salary Reduction Contribution up to a maximum deferral of (*check one, if applicable*):
    - (1) the Calendar Year Code section 402(g) limit.
    - (2) an amount that, when combined with the 401(k) deferrals made to the 401(k) Plan, does not exceed the section 402(g) limit.
    - (3) \$ .

Account Number:

- (b) A Participant may enter into a separate Deferral Agreement to make a Bonus election (*complete, if applicable*):
- (i) Not applicable.
  - (ii) The Bonuses paid by the Employer are included in the definition of Compensation and the Employer permits a Participant to enter into a separate Deferral Agreement to make a Salary Reduction Contribution in one (1) percent increments from a minimum of 1% up to a maximum of 100% of Bonuses.
- (c) An Employer may allow a Participant's Deferral Agreement to remain in place from year to year, so long as the Deferral Agreement becomes irrevocable by the end of the Election Period preceding the Taxable Year in which Compensation subject to the Deferral Agreement is earned. The Employer will define each year the designated Election Period. As specified below, a Deferral Agreement will be made (*check one, if 10(a) or (b) above is applicable*):
- (i) Each Taxable Year (annual deferral election), including any delayed election period as may otherwise be permitted under Treasury Regulation Section 1.409A-2(a)(8).
  - (ii) As of the last day of the Election Period preceding the Plan Year In which Compensation subject to the Deferral Agreement is earned, until such time as the Participant modifies or terminates the automatic Deferral Agreement for future Plan Years by notifying the Plan Administrator (carry forward deferral election).
- (d) Performance-Based Compensation Contributions (Article 4.3 of the Plan).
- (i) Performance-Based Compensation (*i.e.*, Bonuses) may be deferred under the Plan in a separate Performance-Based Compensation Deferral Election (*complete, if applicable*):
    - (1) Not applicable.
    - (2) In one (1) percent increments from a minimum of        % up to a maximum of        .
  - (ii) A Participant must enter into a Deferral Agreement with respect to Performance-Based Compensation Contributions (*check one, if 10(d)(i)(2) above is applicable*):
    - (1) During the same Election Period that is applicable for Salary Reduction Contributions.

Account Number:

(2) By the date that is at least six months before the end of the performance period described in Plan Article 4.3(b).

(iii) An Employer may allow a Participant's Deferral Agreement with respect to Performance-Based Compensation Contributions to remain in place from year to year, so long as such Deferral Agreement becomes irrevocable by the end of the Election Period preceding the Taxable Year in which Compensation subject to the Deferral Agreement is earned. The Employer will define each year the designated Election Period. As specified below, a Deferral Agreement will be made (*check one, if 10(d)(i) above is applicable*):

(1) Each Taxable Year (annual deferral election).

(2) As of the last day of the Election Period preceding the Taxable Year in which Compensation subject to the Deferral Agreement is earned, until such time as the Participant modifies or terminates the automatic Deferral Agreement for future Plan Years by notifying the Plan Administrator (carry forward deferral election).

11. Employer Contributions (Article 4.2 of the Plan).

An Employer may elect to make the following types of Employer Contributions (*complete, if applicable*):

(a) Matching Contributions

(i) No Matching Contributions.

(ii) Matching Contributions will be made on:

(1) Salary Reduction Contributions.

(2) Bonuses (if separate election).

(3) Performance-Based Compensation Contribution.

(4) Any or all of the above as determined by Board Resolution each Plan Year.

(iii) Matching Contributions may be made in the following percentage (*complete if 11(a)(ii) above, is applicable*):

(1) Discretionary Match as determined by Board Resolution each Plan Year.

Account Number:

- (2) Percentage Match:      % of first      % of a Participant's Deferral Compensation (as selected in 11(a)(ii)) for the Plan Year.
- (3) The same percentage as the Employer makes as a matching contribution under the 401(k) Plan.
- (4) Other:      .

(b) Nonelective Employer Contributions

- (i) No Nonelective Employer Contributions.
- (ii) Nonelective Employer Contributions may be in an amount equal to *(complete, if applicable)*:
  - (1) Fixed Percentage:      % of a Participant's Compensation.
  - (2) Flat Dollar Amount: \$      .
  - (3) A discretionary amount as determined by the Compensation Committee of the Board of Directors, or by an authorized officer of the Compensation Committee, each Plan Year.
  - (4) Such amount as cannot be contributed to the Employer's 401(k) Plan due to the limitations of Code Section 415 that are applicable to the discretionary "Non-Elective Employer Contribution" under the Employer's 401(k) Plan will be contributed to the Plan (assuming any such Non- Elective Employer Contribution is made, at the discretion of Smith & Wesson Corp., to the Employer's 401(k) Plan).

**Part V – Forms and Timing of Distributions – Upon Separation from Service**

13. Retirement Age (Article 2.43 of the Plan).

The Retirement Age under the Plan shall be *(check one)*:

- (a) Age 62.
- (b) Age      .

14. Required Distribution Age *(complete if applicable)*:      .

Account Number:



15. Distribution Elections upon Separation from Service (Article 5.3 of the Plan) (*check one*):

- (a) Not permitted. Single sum only at Separation from Service.
- (b) Single distribution election per Participant Account (no separate distribution elections for sub-accounts, e.g., contribution sources); provided, however, that in all cases amounts held in a Participant's Nonelective Employer Contribution Account will be paid in a single sum in accordance with 17 and 18 below (i.e., no distribution election will be allowed for such account).
- (c) Multiple distribution elections per Participant (separate distribution elections permitted for sub-accounts, e.g., contribution sources). Check boxes for which there is a separate distribution election permitted:
  - (i) Salary Reduction Contributions.\*
  - (ii) Bonus (Non-Performance Based Compensation).
  - (iii) Performance-Based Compensation.
  - (iv) Nonelective Employer Contributions.

\* Includes all Matching Contributions

16. Forms of Distribution upon Separation from Service

- (a) A Participant may elect to have his or her Participant's Account balance distributed in the following form(s). If no election is made, a single sum payment is the default election (*check options to be available if 15(b) or (c) above is selected*):
- (i) A single sum payment.
  - (ii) Installment payments over (*check all that apply*):
    - (1) 3 years.
    - (2) 5 years.
    - (3) 7 years.
    - (4) 10 years.
    - (5) A maximum of        years.
    - (6) Other:        .
  - (iii) A partial single sum payment and installment payments not to exceed the installment payment options listed above. (*Must complete (ii)*).
  - (iv) Installment payments over the life expectancy of the Participant.

Account Number:

(b) If a Participant elects any installment payment option above, the Participant must designate that such payments will be made in accordance with the options selected below (*select option(s) to be available. Annual is default option if no option selected.*):

- (i) Monthly.
- (ii) Quarterly.
- (iii) Semi-annually.
- (iv) Annually.

17. Timing of Distributions (*check one*):

- (a) At Separation from Service.
- (b) 6 months following Separation from Service.
- (c) year(s) following Separation from Service.
- (d) Variable year(s) following Separation from Service (enter years below):  
year(s).  
year.  
year.  
year.

18. Processing Schedule for Distributions upon Separation from Service (Articles 5.1A(b) and 5.1B(b) of the Plan).

Distributions shall be made after a distributable event set forth under Articles 5.3 through 5.7 of the Plan occurs, as follows (*check one*):

- (a) In the case of a distribution made pursuant to Article 5.3, on the first business day of the seventh month after Separation from Service and, in the case of a distribution made pursuant to Articles 5.4 through 5.7, within 90 days following the distributable event. In the case of installment payments, subsequent annual installments (after the first installment) will be made each January beginning in the year following the year in which such seventh month after Separation from Service occurs.
- (b) The 1<sup>st</sup> business day following January 1<sup>st</sup> immediately following such distributable event.
- (c) The 1<sup>st</sup> business day of the 1<sup>st</sup> month of the calendar quarter immediately following such distributable event.
- (d) As of the 1<sup>st</sup> business day of the month listed below immediately following such distributable event (can be up to four months):

Account Number:

(e) 1st or 7th month of the calendar year immediately following such distributable event.

19. Single Sum Distributions upon Separation from Service (Articles 5.1A(c) and 5.1B(c) of the Plan).

At the time a distributable event set forth under Article 5.3 of the Plan occurs, if a Participant's Account balance is less than an amount specified below and a Participant has not already attained the minimum Age specified below, such Account balance shall be distributed to the Participant in a single sum in accordance with the Timing of Distributions and Processing Schedule stated above (*complete if applicable*):

(a) Minimum Age (*check one*):

- (i) No minimum Age.  
 (ii) Minimum Age 62.

(b) Minimum Account Balance (*check one*):

- (i) No minimum account balance.  
 (ii) \$10,000.  
 (iii) \$25,000 (must be greater than \$10,000 but not to exceed \$100,000).

20. Change in the Form, Timing or Processing Schedule of Distribution upon Separation from Service (Article 4.4(b) of the Plan) (*check one*):

- (a) Not permitted.  
 (b) Permitted.

(i) A Participant may elect to change his or her form, timing or processing schedule under the Plan (*check one*):

- (1) Permitted only during an Election Period.  
 (2) Permitted at any time consistent with Code section 409A.

(ii) Maximum number of times a Participant may elect to change either the form or timing of distribution (*check one, if applicable*):

- (1) No limit.

Account Number:

- (2) Number of changes:

**Part VI – Forms and Timing of Distributions as of a Specified Time**

21. Form of Distribution as of a Specified Time (Article 5.2 of the Plan). Applies to all contribution sources (*select options to be available*):

- (a) Not permitted.
- (b) Lump sum distribution.
- (c) Partial distribution up to 100% (must be in whole percentages).
- (d) Partial distribution in dollar amounts.
- (e) Equal installment payments of entire account. Installment provisions are the same as the Forms of Distribution upon Separation from Service.

22. Processing Schedule for Distributions as of a Specified Time (Article 5.2(a) of the Plan).

A Participant may elect to receive a distribution as of the following Specified Times (*select options to be available*):

- (a) The 1<sup>st</sup> business day immediately following January 1<sup>st</sup> of the year of payout.
- (b) The 1<sup>st</sup> business day of any month during the calendar year.
- (c) The 1<sup>st</sup> business day of any quarter during the calendar year.
- (d) The 1<sup>st</sup> or 7<sup>th</sup> month of the calendar year.

23. Distribution as of Specified Time Waiting Period. (Article 5.2(c) of the Plan) (*complete, if applicable*):

No earlier than the January 1<sup>st</sup> that is two calendar year(s) following the year of deferral. (For example: a Distribution as of a Specified Time for 2014 of 2014 Base Compensation can occur no earlier than on January 1, 2017).

24. Change in Form, Timing or Processing Schedule of Distributions as of a Specified Time (Article 4.4(b) of the Plan) (*check one, if applicable*):

- (a) Not permitted.
- (b) Permitted.
- (i) A Participant may elect to change his or her Form of Distribution to another Form of Distribution under the Plan (*check one*):

Account Number:

- (1) Permitted only during an Election Period.
- (2) Permitted at any time consistent with Code section 409A.
  - (ii) Maximum number of times a Participant may elect to change either the Form or Timing of distribution (*check one, if applicable*):
- (1) No limit.
- (2) Number of changes: .

**Part VII—Forms and Timing of Distributions Upon Other Events**

25. Accelerated Payment Exceptions (Article 5.12 of the Plan)

In accordance with the terms of the Plan, an accelerated payment on behalf of an active or terminated participant may be paid under certain circumstances set forth in Article 5.12 of the Plan. Such circumstances are to comply with a domestic relations order, conflicts of interest, cashouts if the annual amount does not exceed certain limits, tax withholding, plan termination and liquidation, cancellation of deferral elections due to disability, unforeseeable emergency or hardship, 409A violation or certain offsets to cover a debt owed to the company not to exceed \$5,000 per calendar year. (*check one; if not checked, the first box below is the default election*):

- (a) The plan will provide for the accelerated payment exception.
- (b) The plan will not provide for the accelerated payment exception.

26. Determination and Distribution upon Disability (Articles 2.15 and 5.4 of the Plan).

If a Participant becomes Disabled while employed with the Employer, the unpaid portion of his or her Participant's Account balance, if any, shall be distributed in a single sum.

A Participant shall be deemed Disabled (*check one; if not checked, the first box below is the default definition*):

- (a) In accordance with a disability insurance program sponsored by the Employer, provided the definition set forth in the program satisfies the requirements of Article 2.15(a) of the Plan.
- (b) By the Social Security Administration.
- (c) In the Plan Administrator's sole discretion, subject to the requirements of Article 2.15(a) of the Plan.

27. Distributions upon Death (Article 5.5 of the Plan).

Account Number:

If a Participant dies while employed with the Employer, the unpaid portion of his or her Participant's Account balance, if any, shall be distributed in a single sum.

28. Withdrawals for an Unforeseeable Emergency (Articles 2.51 and 5.6 of the Plan) (*check one*):

- (a) Not permitted.
- (b) Permitted.

29. Termination of Deferral Agreement upon Withdrawals for an Unforeseeable Emergency (Article 5.6(b) of the Plan)

A Participant's Deferral Agreement shall terminate as soon as practicable following a withdrawal for an Unforeseeable Emergency or if applicable below, a hardship withdrawal from the 401(k) Plan or other plan of the Employer. A Participant will again be able to elect to defer into the Plan as of the first Election Period immediately following the end of the suspension period.

Check (a) below if 401(k) Plan or other plan of the Employer has a suspension provision for hardship withdrawals:

- (a) If a Participant's Deferral Agreement is required to be terminated in order for the Participant to receive a hardship distribution under the 401(k) Plan or other plan of the Employer, a Participant's Deferral Agreement will terminate as soon as practicable following a withdrawal for a hardship distribution under the 401(k) Plan or other plan of the Employer.
- (b) No suspension provision for hardship withdrawals.

30. Distribution upon a Change in Control Event (Article 5.7 of the Plan).

Upon a Change in Control Event affecting Smith & Wesson Holding Corporation, the unpaid portion of a Participant's Account balance, if any, shall be distributed as follows (*check one; if not checked, the first box is the default option*):

- (a) A single sum upon the occurrence of a Change in Control Event.
- (b) No distribution upon a Change in Control Event.

31. Intervening Distributable Events (Article 5.8 of the Plan).

If a Participant has incurred a Separation from Service (whether or not such Participant is currently receiving a distribution form), then in lieu of the foregoing distribution form(s), the remainder of the Participant's Account balance will be distributed in a single sum upon the occurrence of (*select options to be available, if applicable*):

- (a) Disability.

Account Number:

- (b) Death.
- (c) Unforeseeable Emergency. (An amount may not exceed the amount necessary to satisfy such Emergency and the balance of installments will be recalculated.)
- (d) A Change in Control Event.

32. Transfer to 401(k) Plan (“Tandem Plan”) (check one; if not checked, the first box is the default option):

- (a) Not applicable. No transfer to 401(k) plan.
- (b) Transfer to 401(k) Plan—As of the end of each calendar year (and not later than January 31 of the next following calendar year), the Employer shall determine the maximum amount that may be contributed to the 401(k) Plan on behalf of each Participant as a salary deferral contribution with respect to the corresponding plan year of the 401(k) Plan. The Employer’s determination of the maximum amount that may be contributed to the 401(k) Plan on behalf of each Participant shall be conclusive. Unless the Participant has elected to have such amount contributed to the 401(k) Plan as a salary deferral contribution, the amount (exclusive of any earnings credited under this Plan) so determined with respect to the Participant (but not in excess of the Participant’s Deferred Compensation for that calendar year) shall be paid in a single sum to the Participant as soon as is practicable after such computation is made. If such payment is paid to a Participant after December 31 of the year in which the Deferred Compensation is earned, it shall nonetheless be treated by the Employer and reported on the Participant’s Form W-2 as wages paid in the year the Deferred Compensation was earned.

Each Participant may elect to have the amount otherwise payable to the Participant contributed to the 401(k) Plan as a salary deferral contribution. Such election must be made not later than December 31 of the calendar year preceding the calendar year for which the Deferred Compensation election is made, and such election may not be revoked after that date. If such election is made, the Employer shall contribute such amount (exclusive of any earnings credited under this Plan) to the 401(k) Plan as soon as is practicable after the end of the plan year that corresponds with the calendar year for which the election was made. The Employer shall also contribute to the 401(k) Plan any matching contributions that are due from the Employee for such plan year. The Participant’s Account shall be debited by the amount of such contributions. Notwithstanding any otherwise conflicting provision in this Plan, a Participant’s election with respect to a calendar year shall not be given effect, and the Employer shall not make a contribution to the 401(k) Plan on behalf of such Participant for such calendar year, unless such Participant is in the employ of the Employer on the last day of such calendar year.

Account Number:

**Part VIII – Vesting**

33. Salary Reduction Contributions (Article 8.1 of the Plan).

Salary Reduction Contributions and Performance-Based Compensation shall be 100 percent vested immediately.

34. Matching Contributions (Article 8.1 of the Plan).

A Participant shall be 100% vested upon Death, Disability, Retirement Age or Plan Termination. Matching Contributions shall vest in accordance with the following schedule:

(a) Not applicable. No Matching Contributions.

(b) 100 percent vesting immediately.

(c) 3 year cliff:

<u>Percentage</u>	<u>Years of Service</u>
0 percent	0-2
100 percent	3

(d) 5 year cliff:

<u>Percentage</u>	<u>Years of Service</u>
0 percent	0-4
100 percent	5

(e) 6 year graded:

<u>Percentage</u>	<u>Years of Service</u>
0 percent	0-1
20 percent	2
40 percent	3
60 percent	4
80 percent	5
100 percent	6

(f) 7 year graded:

<u>Percentage</u>	<u>Years of Service</u>
0 percent	0-2
20 percent	3
40 percent	4
60 percent	5
80 percent	6

Account Number:



(g) Other .

35. Nonelective Employer Contributions (Article 8.1 of the Plan).

A Participant shall be 100% vested upon Death, Disability, Retirement Age or Plan Termination. Nonelective Employer Contributions shall vest in accordance with the following schedule (*default to Matching Contribution Vesting Schedule if nothing checked*):

(a) Not applicable. No Nonelective Employer Contributions.

(b) 100 percent vesting immediately.

(c) 3 year cliff:

<u>Percentage</u>	<u>Years of Service</u>
0 percent	0-2
100 percent	3

(d) 5 year cliff:

<u>Percentage</u>	<u>Years of Service</u>
0 percent	0-4
100 percent	5

(e) 6 year graded:

<u>Percentage</u>	<u>Years of Service</u>
0 percent	0-1
20 percent	2
40 percent	3
60 percent	4
80 percent	5
100 percent	6

(f) 7 year graded:

<u>Percentage</u>	<u>Years of Service</u>
0 percent	0-2
20 percent	3
40 percent	4
60 percent	5
80 percent	6
100 percent	7

(g) Other .

Account Number:

**Part IX – Miscellaneous**

36. Year of Service is defined as follows:

- (a) Not applicable. All contributions are 100% vested.
- (b) Not applicable. No Employer contributions.
- (c) Year of Service as defined in 401(k) Plan of the Employer.
- (d) Other .

37. Plan Investments (Article 6 of the Plan) (check one; if not checked, the first box is the default option):

- (a) Participants will be permitted to request the investment of the deferred amounts from a menu of investment alternatives made available by the Employer.
- (b) Participants will not be permitted to request the investment of the deferred amounts from a menu of investment alternatives made available by the Employer.
- (c) Participants will be permitted to make a phantom investment election of the deferred amounts from a menu of investment alternatives made available by the Employer.
- (d) The Plan will provide a notional investment rate and Plan assets are not specifically set aside from Employer’s general assets.

38. Addendum Items:

39. State Law (Article 10.7 of the Plan).

This Plan shall be construed under the laws of the Commonwealth of Massachusetts.

EXECUTION PAGES FOLLOW

Account Number:

**Execution**

By executing this Adoption Agreement, the undersigned sponsoring Employer hereby adopts the Plan. The selections and specifications contained in this Adoption Agreement and the terms, provisions and conditions provided in the Transamerica Retirement Solutions Corporation Specimen Nonqualified Deferred Compensation Plan Document constitute the Plan. No other plan document may be used with this Adoption Agreement.

The sponsoring Employer further understands and acknowledges that:

- Transamerica Retirement Solutions Corporation is not a Party to the Plan and shall not be responsible for any tax or legal aspects of their Plan. The sponsoring Employer assumes responsibility for these matters.
- The sponsoring Employer has counseled, to the extent necessary, with its own selected legal and tax advisors.
- The obligations of Transamerica Retirement Solutions Corporation shall be governed solely by the provisions of TRSC's contracts and policies; there is no requirement that Transamerica Retirement Solutions Corporation look into any action taken by the Plan Administrator or the Employer, and Transamerica Retirement Solutions Corporation and its affiliates shall be fully protected in taking, permitting or omitting any action on the basis of the actions of the Plan Administrator or Employer.
- Transamerica Retirement Solutions Corporation shall incur no liability for carrying out actions as directed by the Employer or Plan Administrator.
- Transamerica Retirement Solutions Corporation shall be under no obligation to update this Adoption Agreement or the Transamerica Retirement Solutions Corporation Nonqualified Deferred Compensation Plan Document for any subsequent changes in applicable law.

IN WITNESS WHEREOF, the Sponsoring Employer has caused this Adoption Agreement to be executed by a duly authorized representative this 19th day of December, 2013.

Attest: Smith & Wesson Holding Corporation  
Name of Sponsoring Employer

By: /s/ P. James Debney

Title: President and Chief Executive Officer

Account Number:

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Attest: Smith & Wesson Corp.  
Name of Sponsoring Participating Employer

By: /s/ P. James Debney

Title: President and Chief Executive Officer

Account Number:

**TRANSAMERICA RETIREMENT SOLUTIONS CORPORATION  
NONQUALIFIED DEFERRED COMPENSATION  
PLAN DOCUMENT**

**This Plan is to be used in conjunction with the  
Transamerica Retirement Solutions Corporation  
Nonqualified Deferred Compensation Adoption Agreement**

*This Plan is an important legal document. You should consult with your attorney on whether or not it accommodates your particular situation, and on its tax and legal implications. Transamerica Retirement Solutions Corporation ("TRSC") does not and cannot provide legal or tax advice. The Plan Document and Adoption Agreement are intended purely as specimen documents for use by you and your attorney. TRSC can give no assurance that any Employer's Nonqualified Deferred Compensation arrangements will meet all applicable Internal Revenue Service ("IRS") and Department of Labor ("DOL") requirements.*

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ARTICLE 1. – INTRODUCTION

Whereas, the Employer wishes to establish a nonqualified employee retirement plan (the “Plan”) solely to provide deferred compensation for a select group of management or highly compensated employees within the meaning of sections 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974, effective January 1, 2005, and

Whereas, the Plan is intended to comply with section 409A of the Internal Revenue Code, as amended (the “Code”) and regulations thereunder, and

*[If this is an amendment, restatement, and continuation of an existing plan, the following shall apply:*

Whereas, the following provisions constitute an amendment, restatement, and continuation of the Prior Plan, and

Whereas, amounts that were Earned and Vested under the Prior Plan as of December 31, 2004, including earnings thereon, shall be considered Grandfathered Amounts, and thereby, exempt from the requirements under Code section 409A, and amounts that are earned or vested under this Plan after December 31, 2004, including earnings thereon, shall be subject to the requirements under Code section 409A.]

Whereas, the Employer has determined that pursuant to the laws of the Employer’s state, it may establish such a Plan, and

Whereas, the Employer wishes to provide that the Plan to be established under this Agreement shall have the name specified in Section 3 of the Adoption Agreement, and

Whereas, the Employer wishes to provide under the Plan that the Employer shall pay the entire cost of vested accrued benefits from its general assets and/or assets set aside in a grantor trust by the Employer to meet its obligations under the Plan, and

Whereas, the Employer intends that the assets of the Plan and, if applicable, the Trust shall at all times be subject to the claims of the general creditors of the Employer,

Now therefore, the Employer does hereby establish the Plan as follows, and does hereby agree that the Plan shall be structured, held and disposed of as follows:

ARTICLE 2. – DEFINITIONS

- 2.1 “401(k) Deferrals” means for purposes of the Adoption Agreement, an election to defer Compensation under the 401(k) Plan.
- 2.2 “401(k) Plan” means the qualified cash or deferred arrangement of the Employer.
- 2.3 “Adoption Agreement” means the Adoption Agreement executed by the Employer and submitted to Transamerica Retirement Solutions Corporation. The Adoption Agreement shall be considered to be a part of this Plan.
- 2.4 “Age” means age at the most recent birthday.
- 2.5 “Annual Sub-Account” means a bookkeeping account under a Calendar Year Plan established and maintained by the Employer to which (1) Salary Reduction Contributions, (2) Matching Contributions, (3) Nonelective Employer Contributions, and (4) Performance-Based Compensation for a Plan Year shall be credited to each respective Annual Sub-Account.
- 2.6 “Beneficiary” shall have the meaning set forth in Section 7.1.
- 2.7 “Board” means the Employer’s Board of Directors or Board of Trustees, as applicable.
- 2.8 “Calendar Year Plan” means a Plan under which the Employer establishes and maintains a Participant’s Account on behalf of each Eligible Employee’s Annual Sub-Accounts which include, if applicable, but are not limited to a (1) Salary Reduction Contribution Account, (2) Performance-Based Compensation Contribution Account, (3) Matching Contribution Account, and (4) Nonelective Employer Contribution Account to which (1) Salary Reduction Contributions, (2) Performance-Based Compensation Contributions, (3) Matching Contributions, and (4) Nonelective Employer Contributions shall be credited to each respective Annual Sub-Account.
- 2.9 “Claimant” means a Participant (or in the case of the Participant’s death, the Participant’s Beneficiary or Beneficiaries) who makes a written application to the Plan Administrator for benefits that he or she believes are due under the Plan.
- 2.10 “Code” means the Internal Revenue Code of 1986, as amended.
- 2.11 “Compensation” means amounts so elected by the Employer (or if applicable, Company) in the Adoption Agreement that are payable to an Eligible Employee (or if applicable, Eligible Director or Independent Contractor) for services rendered to the Employer (or if applicable, Company), including but not limited to wages, salary, bonuses, overtime, commissions, and other remuneration that is reportable to the Federal government, or which would be reportable if it were not deferred under this Plan. Compensation shall be based on amounts paid during that portion of the Plan Year in which the Eligible Employee (or if applicable, Eligible Director or Independent Contractor) is a Participant



in the Plan. Compensation must be earned in the Plan Year in which any amount of such Compensation is credited to a Participant's Account.

- 2.12 "Company" means the entity designated as the Employer in Section 1 of the Adoption Agreement. For purposes of this Plan, references to Employer shall mean Company, unless the context clearly indicates otherwise.
- 2.13 "Deferral Agreement" means an election by an Eligible Employee to (1) make a Salary Reduction Contribution and/or (2) specify a time of distribution for Salary Reduction Contributions or Employer Contributions made on his or her behalf, as so elected by the Employer in the Adoption Agreement. A Deferral Agreement to make a Salary Reduction Contribution must be made prior to the end of the Election Period preceding the close of the Taxable Year preceding the Taxable Year in which Compensation subject to the Salary Reduction Contribution is earned. A Deferral Agreement must specify the time and the form of distribution as permitted by the election of the Employer in the Adoption Agreement. Changes to a Deferral Agreement may be made, but only before the Deferral Agreement becomes irrevocable, which is generally the last day of a Participant's Taxable Year. The Participant must also list his or her designated Beneficiary or Beneficiaries as described in Article 7.
- 2.14 "Deferred Compensation" means the amount of Compensation that the Participant elects to defer under the Deferral Agreement and that the Participant and the Employer mutually agree shall be deferred in accordance with the Plan, if any, and the amount of any Employer Contributions, if any, made on behalf of the Participant.
- 2.15 "Disability" or "Disabled" means:
- (a) A Participant (1) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or (2) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of the Participant's Employer.
  - (b) As specified in the Adoption Agreement, a Participant shall be deemed Disabled:
    - (1) If determined to be totally disabled by the Social Security Administration;
    - (2) In accordance with a disability insurance program sponsored by the Employer, provided the definition of Disability set forth in such insurance program satisfies the requirements of Section 2.15(a); or
    - (3) In the Plan Administrator's sole discretion, provided that the Participant is disabled under Section 2.15(a).

- (c) In the event the determination of Disability is made under Section 2.15(b)(2) or Section 2.15(b)(3), the Plan Administrator shall have the exclusive right of determining, with the assistance of a competent physician, whether a Participant is Disabled. A certificate to that effect executed by the Plan Administrator and supported by the affidavit of an examining physician, shall be sufficient evidence of such fact and may be so accepted by the Plan Administrator without further inquiry, provided that all Participants under similar circumstances shall be treated alike.
- 2.16 “Earned and Vested” means amounts deferred under the Prior Plan, if any, to which a Participant had a nonforfeitable right to receive as of December 31, 2004. Such amounts are considered Grandfathered Amounts. The term Earned and Vested is only applicable to a plan that is an amendment, restatement, and continuation of a Prior Plan, as indicated in Section 4 of the Adoption Agreement.
- 2.17 “Effective Date” means the effective date specified in Section 5(a) of the Adoption Agreement for new plans, or Section 5(b) of the Adoption Agreement for a plan that is an amendment, restatement, and continuation of a Prior Plan.
- 2.18 “Election Period” means the enrollment window(s) designated by the Employer in which a Participant may be permitted to enter into a Deferral Agreement, make a distribution election(s) upon Separation from Service and/or a Specified Time, and make any changes to such election(s).
- 2.19 “Eligible Director” means the director of the Company who has been chosen by the Board each year, in its sole discretion, to be eligible to participate in the Plan. For purposes of this Plan, references to Eligible Employee shall mean Eligible Director, unless the context clearly indicates otherwise.
- 2.20 “Eligible Employee” means an individual who is part of a select group of management or highly compensated individuals who performs services for the Employer as an employee and who has been chosen by the Employer each year, in its sole discretion, to be eligible to participate in the Plan. If Eligible Directors and/or Eligible Independent Contractors participate in this Plan in accordance with the Employer’s election in the Adoption Agreement, the term “Eligible Employee” shall also mean such Eligible Directors and/or Eligible Independent Contractors and the term “employment” shall include service as a director or independent contractor unless the context clearly indicates otherwise.
- 2.21 “Eligible Independent Contractor” means the Independent Contractor of the Company who has been chosen by the Company each year, in its sole discretion, to be eligible to participate in the Plan. For purposes of this Plan, references to Eligible Employee shall mean Eligible Independent Contractor, unless the context clearly indicates otherwise.
- 2.22 “Employer” means the employer named in Section 1 of the Adoption Agreement and any succeeding or continuing corporation. For purposes of Article 10.2, Employer shall also include all persons with whom the Employer would be considered a single employer under Code sections 414(b) or (c). If Eligible Directors and/or Eligible Independent Contractors participate in this Plan in accordance with the Employer’s election in the

Adoption Agreement, the term “Employer” shall also mean Company unless the context clearly indicates otherwise.

- 2.23 “Employer Contributions” means Matching Contributions and/or Nonelective Employer Contributions made by the Employer on behalf of a Participant, as so elected by the Employer in the Adoption Agreement.
- 2.24 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.
- 2.25 “Evergreen Plan” means a Plan under which the Employer establishes and maintains a Participant’s Account, which may have sub-accounts depending on the Employer’s election, on behalf of each Eligible Employee including, if applicable, but are not limited to a (1) Salary Reduction Contribution Account, (2) Performance-Based Compensation Contribution Account (3) Matching Contribution Account, and (4) Nonelective Employer Contribution Account to which (1) Salary Reduction Contributions, (2) Performance-Based Compensation Contributions, (3) Matching Contributions, and (4) Nonelective Employer Contributions shall be credited.
- 2.26 “Grandfathered Amounts” means amounts, if any, that were deferred under the Prior Plan and Earned and Vested as of December 31, 2004. Grandfathered Amounts are not subject to the requirements under Code section 409A. The term Grandfathered Amounts is only applicable to a plan that is an amendment, restatement, and continuation of a Prior Plan, as indicated in Section 4 of the Adoption Agreement.
- 2.27 “Key Employee” means an Eligible Employee treated as a “specified employee” as of his Separation from Service under Code section 409A(a)(2)(B)(i), i.e., a key employee (as defined in Code section 416(i) without regard to paragraph (5) thereof) of the Company or its affiliates if the Company is a Publicly Traded Company. Key Employees shall be determined in accordance with Code section 409A using an identification date set forth in the Adoption Agreement. A listing of Key Employees as of an identification date shall be effective for the 12-month period beginning on the effective date set forth on the Adoption Agreement.
- 2.28 “Legally Binding Right” means a nonforfeitable right that cannot be reduced or eliminated within the meaning of Code section 409A and regulations thereunder.
- 2.29 “Matching Contribution” means an amount contributed by the Employer on behalf of a Participant that elects to make a Salary Reduction Contribution under the Plan.
- 2.30 “Matching Contribution Account” means a bookkeeping account established by the Employer for each Participant to which Matching Contributions shall be credited.
- 2.31 “Nonelective Employer Contribution” means an amount contributed by the Employer on behalf of a Participant.
- 2.32 “Nonelective Employer Contribution Account” means a bookkeeping account established by the Employer for each Participant to which Nonelective Employer Contributions shall be credited.

- 2.33 “Participant” means any Eligible Employee (or if applicable, Eligible Director or Independent Contractor) selected by the Employer who has elected to participate in the Plan by entering into a Deferral Agreement.
- 2.34 “Participant’s Account” means a bookkeeping account established and maintained by the Employer to which (1) Salary Reduction Contributions, (2) Matching Contributions, (3) Nonelective Employer Contributions, and (4) Performance-Based Compensation shall be credited. A Participant’s Account includes the Participant’s Annual Sub-Account, if applicable.
- 2.35 “Performance-Based Compensation” means Compensation a participant will be entitled to upon satisfying organizational or individual performance goals for a performance period that is at least 12 consecutive months. For performance-based compensation elections, a participant is permitted to make deferral elections after the beginning of the taxable year the participant will perform the services, provided that:
- The participant makes the deferral election on or before the date that is six months prior to the end of the related performance period;
  - The participant performs services continuously from the later of: (i) the beginning of the performance period or (ii) the date the Company establishes the performance criteria, through the date the participant makes the deferral election; and
  - The amount of performance-based compensation that will be earned is not readily ascertainable (e.g., the performance goals are not certain to be achieved at the time the participant makes the deferral election).
- Whether or not Compensation is considered Performance-Based Compensation shall be determined under procedures established by the Plan Administrator and in accordance with Code section 409A and regulations thereunder.
- 2.36 “Performance-Based Compensation Contribution Account” means a bookkeeping account established by the Employer for each Participant electing to defer all or a portion of his or her Performance-Based Compensation.
- 2.37 “Performance-Based Compensation Deferral Election” means an election to defer all or a portion of Performance-Based Compensation earned during a service period.
- 2.38 “Plan” means this plan, as named in the Adoption Agreement.
- 2.39 “Plan Administrator” means the Employer or other person(s) or entity(ies) appointed by the Employer in accordance with Article 9.
- 2.40 “Plan Year” means a twelve (12) consecutive month period beginning and ending on the dates specified in the Adoption Agreement.

- 2.41 “Prior Plan” means a predecessor nonqualified deferred compensation plan, if any, that was in existence as of October 3, 2004 and is named in the Adoption Agreement. The Prior Plan is or is not intended to be subject to Code section 409A depending on the election made by the Employer in the Adoption Agreement. The term Prior Plan is only applicable to a plan that is an amendment, restatement, and continuation of a plan in existence as of October 3, 2004, as indicated in the Adoption Agreement.
- 2.42 “Publicly Traded Company” means an entity any stock of which is publicly traded on an established securities market or otherwise.
- 2.43 “Retirement Age” means the age specified in the Adoption Agreement.
- 2.44 “Salary Reduction Contribution” means an amount of Compensation a Participant elects to defer under his or her Deferral Agreement which shall be deducted from the Participant’s Compensation without reduction for any taxes or withholding (except to the extent required by law or under Code section 409A and regulations thereunder.)
- 2.45 “Salary Reduction Contribution Account” means a bookkeeping account established by the Employer for each Participant electing to make a Salary Reduction Contribution under the Plan.
- 2.46 “Separation from Service” means a “separation from service” within the meaning of Code section 409A and regulations thereunder.
- 2.47 “Specified Time” means the time a Participant’s account may be distributed prior to a Separation from Service. A Participant’s distribution as of a Specified Time shall be null and void upon a Participant’s Separation from Service.
- 2.48 “Taxable Year” means the Participant’s taxable year.
- 2.49 “Trust” means the Trust Agreement between the Employer and the Trustees that meets the requirements of a “grantor” trust under Revenue Procedures 92-64 and 92-65 and otherwise meets the requirements under Code section 409A and regulations thereunder.
- 2.50 “Trustees” means the Trustees named in the Trust and their duly appointed and acting successor Trustee(s) which shall be appointed by the corporation and may consist of one or more persons.
- 2.51 “Unforeseeable Emergency” means a severe financial hardship to a Participant resulting from an illness or accident of the Participant, the Participant’s spouse, or a dependent (as defined in Code section 152(a)) of the Participant, loss of the Participant’s property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Whether or not a Participant has an Unforeseeable Emergency shall be determined by the Plan Administrator in accordance with Code section 409A and applicable regulations thereunder.

ARTICLE 3. – ELIGIBILITY AND PARTICIPATION

- 3.1 Eligibility to Participate in the Plan.
- (a) (1) If this Plan is an amendment, restatement, and continuation of the Prior Plan, as indicated in the Adoption Agreement, every Eligible Employee who was a Participant in the Prior Plan immediately prior to the Effective Date shall continue to be an Eligible Employee eligible to participate in this Plan. Each other Eligible Employee shall be eligible to participate in the Plan on the Effective Date. Thereafter, each employee, independent contractor or director shall be eligible to participate in the Plan on the date the Employer, in its sole discretion, determines that such person is an Eligible Employee.
- (2) If this Plan is a new plan, as indicated in the Adoption Agreement, each Eligible Employee shall be eligible to participate in the Plan on the Effective Date. Thereafter, each employee, independent contractor or director shall be eligible to participate in the Plan on the date the Employer, in its sole discretion, determines that such person is an Eligible Employee.
- (b) An Eligible Employee shall become a Participant in the Plan by executing a Deferral Agreement in accordance with procedures established by the Plan Administrator.
- 3.2 Re-Employment. A Participant whose employment or service with the Employer is terminated and is subsequently re-employed or re-enters service may become a Participant only if he or she (1) is designated an Eligible Employee by the Employer and (2) elects to participate in the Plan by executing a Deferral Agreement in accordance with procedures established by the Plan Administrator.
- 3.3 Re-Employment of Previously Eligible Employee. A previously Eligible Employee whose employment or service with the Employer is terminated is subsequently re-employed or re-enters service, may become a Participant only if he or she (1) is designated an Eligible Employee by the Employer, (2) elects to participate in the Plan by executing a Deferral Agreement in accordance with procedures established by the Plan Administrator, and (3) has already taken a complete distribution or has *not* taken a full distribution but has not accrued any benefit under the plan, except earnings, for a period of 24 months.
- 3.4 Change in Employment Status. During any period in which a Participant remains in the employ or service of the Employer, but ceases to be an Eligible Employee, he or she shall cease to be a Participant in the Plan.

## 4.1 Election to Make Salary Reduction Contributions.

## (a) Deferral Agreement.

- (1) An Eligible Employee may make an irrevocable Deferral Agreement to make a Salary Reduction Contribution in one (1) percent increments, not to exceed the percentage of Compensation specified in the Adoption Agreement, by the end of the Election Period preceding the Taxable Year in which such Compensation subject to the Salary Reduction Contribution is earned.
- (2) Unless otherwise specified in the Adoption Agreement, the Deferral Agreement must specify:
  - (i) The time of distribution; and
  - (ii) The form of distribution.
- (3) A Deferral Agreement shall be made in accordance with procedures established by the Plan Administrator and in accordance with Code section 409A and regulations thereunder.

## (b) Timing of Initial Deferral Agreement. If this Plan is a new Plan, and the Eligible Employee is not a participant in another account balance plan of the Employer within the meaning of Code section 409A and regulations thereunder, the Eligible Employee who is eligible to participate in this Plan as of the Plan's Effective Date may make an initial Deferral Agreement to make a Salary Reduction Contribution within thirty (30) days after the Plan's Effective Date. Each other Eligible Employee, Re-Employed Employee or Re-Employed Previously Eligible Employee who is not a participant in another account balance elective plan of the Employer within the meaning of Code section 409A and regulations thereunder may make an initial Deferral Agreement to make a Salary Reduction Contribution within thirty (30) days after the date the Eligible Employee first becomes eligible to participate in the Plan. Any such Deferral Agreement must apply only to compensation paid for services performed after the election. In all other cases, the initial Deferral Agreement to make a Salary Reduction Contribution must be made no later than the last day of the Election Period preceding the Taxable Year in which Compensation subject to the Salary Reduction Contribution is earned.

## (c) Frequency of Making a Deferral Agreement after Initial Election.

- (1) If the Employer so elects in the Adoption Agreement, a Participant may elect to make a Salary Reduction Contribution on his or her Deferral Agreement each Plan Year (annual deferral election).

- (2) If the Employer so elects in the Adoption Agreement, a Participant's Deferral Agreement shall remain in effect such that the Participant will automatically be deemed to have made a Deferral Agreement each Plan Year so long as the Deferral Agreement becomes irrevocable no later than the last day of the Election Period preceding the Taxable Year in which Compensation subject to the Salary Reduction Contribution is earned (carry-forward deferral election).
  - (i) The Participant may modify or terminate his or her automatic Deferral Agreement by notifying the Plan Administrator at any time, but any such modification or termination must be made no later than the last day of the Election Period preceding the Taxable Year in which Compensation subject to the Deferral Agreement would have otherwise been earned.
  - (ii) The modification or termination of a Participant's automatic Deferral Agreement shall be made in accordance with procedures established by the Plan Administrator and in accordance with Code section 409A and regulations thereunder.
- (d) Failure to Make Timely Election. If an Eligible Employee fails to enter into a timely Deferral Agreement, the Eligible Employee shall be deemed to have elected to make no Salary Reduction Contributions for the applicable Plan Year.
- (e) Crediting of Salary Reduction Contributions. Salary Reduction Contributions made by a Participant under this Section 4.1 shall be credited to the Participant's Account as soon as practicable after the Compensation subject to the Salary Reduction Contribution would have otherwise been paid to the Participant. All Salary Reduction Contributions shall be held as an asset of the Employer.
- (f) Any Deferral Agreement to make Salary Reduction Contributions under this Section 4.1 shall be at all times subject to the rules set forth under Section 4.4.

4.2 Employer Contributions.

- (a) Matching Contributions. If the Employer so elects in the Adoption Agreement, the Employer may make a Matching Contribution as specified in the Adoption Agreement.
- (b) Nonelective Employer Contributions. If the Employer so elects in the Adoption Agreement, the Employer may make Nonelective Employer Contributions under this Plan. The amount of such Nonelective Employer Contributions shall be equal to the amount specified in the Adoption Agreement.
- (c) Election of Time and Form of Distribution for Employer Contributions.



- (1) If the Employer so elects in the Adoption Agreement, a Participant may elect on his or her Deferral Agreement to defer Employer Contributions by specifying:
    - (i) The time of distribution; and
    - (ii) The form of distribution.
  - (2) The time and form of distribution must be specified no later than the time the Participant obtains a Legally Binding Right to such Employer Contributions. After such time, modification to the time or form of distribution may only be made in accordance with Section 4.4.
  - (3) A Deferral Agreement shall be made in accordance with procedures established by the Plan Administrator and in accordance with Code section 409A and regulations thereunder.
  - (4) The Participant may modify or terminate the time and/or form of distribution specified under this Section 4.2(c) by notifying the Plan Administrator prior to the Participant obtaining a Legally Binding Right to the Employer Contributions subject to the modification and/or termination. After such time, modification to the time or form of distribution may only be made in accordance with Section 4.4.
  - (5) The modification or termination of the time and/or form of distribution specified under this Section 4.2(c) shall be made in accordance with procedures established by the Plan Administrator and in accordance with Code section 409A and regulations thereunder.
- (d) Failure to Make Timely Election. If an Eligible Employee fails to set the time and form of distribution prior to the time the Participant obtains a Legally Binding Right to Employer Contributions made on his or her behalf, any election to defer such Employer Contributions after such time shall be subject to the rules set forth under Section 4.4. Such election to defer Employer Contributions after the date the Participant obtains a Legally Binding Right to such Employer Contributions shall be made in accordance with procedures established by the Plan Administrator and in accordance with Code section 409A and regulations thereunder.
- (e) Crediting of Employer Contributions. Employer Contributions made on behalf of a Participant and deferred under this Section 4.2 shall be credited to the Participant's Account as soon as practicable. All Employer Contributions deferred under this Section 4.2 shall be held as an asset of the Employer.
- (f) A Deferral Agreement under this Section 4.2 shall be at all times subject to the rules set forth under Section 4.4.

4.3 Performance-Based Compensation.

- (a) If the Employer so elects in the Adoption Agreement, a Participant may make a Performance-Based Compensation Deferral Election, subject to the requirements of Section 4.3(b).
- (b) If the Plan Administrator, in its sole discretion, determines that Compensation constitutes Performance-Based Compensation that is based on services performed over a period of at least twelve (12) months, the Plan Administrator will establish procedures under which an Eligible Employee may elect to defer such Performance-Based Compensation, but such election must be made no later than six (6) months before the end of the performance period. Such procedures established by the Plan Administrator shall be made in accordance with Code section 409A and regulations thereunder.
- (c) A Performance-Based Compensation Deferral Election must specify:
  - (1) The time of distribution; and
  - (2) The form of distribution.
- (d) Crediting of Performance-Based Compensation. Performance-Based Compensation deferred under this Section 4.3 shall be credited to the Participant's Account as soon as practicable after such Performance-Based Compensation would have otherwise been paid to the Participant.
- (e) A Performance-Based Compensation Deferral Election made under this Section 4.3 shall apply to Performance-Based Compensation only. The rules set forth under Section 4.1 or Section 4.2 shall not apply and shall not supplant the rules set forth under this Section 4.3.
- (f) A Performance-Based Compensation Deferral Election to defer made under this Section 4.3 shall be at all times subject to the rules set forth under Section 4.4.

4.4 Changes in Time or Form of Distribution.

- (a) A Participant may make a subsequent election to change the time and/or form of a distribution he or she specified in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3, but only if the following conditions are satisfied:
  - (1) The election may not take effect until at least twelve (12) months after the date on which the election is made;
  - (2) In the case of an election to change the time and/or form of a distribution under Sections 5.2 and 5.3, a distribution may not be made earlier than at least five (5) years from the date the distribution would have otherwise been made;

- (3) In the case of an election to change the time and/or form of a distribution under Sections 5.2 and 5.3, the election must be made at least twelve (12) months before the date of the first scheduled distribution; and
  - (4) The election may not result in an impermissible acceleration of payment prohibited under Code section 409A and applicable guidance thereunder. If the Plan Administrator, in its sole discretion, determines that a change in the time and/or form of a distribution will result in an impermissible acceleration, the Plan Administrator reserves the right to refuse to honor the change.
- (b) A Participant may change the form of distribution he or she specified in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 to any one of the distribution form(s) elected by the Employer in the Adoption Agreement, so long as the change meets the requirements set forth under Section 4.4(a).
  - (c) For purposes of making a subsequent election under Section 4.4(a)(2), any form of distribution elected by the Participant and any amounts payable in the form(s) set forth under Sections 5.1A(a)(3) and 5.1A(a)(4) or Sections 5.1B(a)(3) and 5.1B(a)(4) shall be treated as a single payment.
  - (d) The rules set forth in this Section 4.4 may apply separately to each time and/or form of distribution specified in a Participant's Deferral Agreement under Section 4.1, Employer Contributions under Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3.
  - (e) A change in the time and/or form of distribution shall be made in accordance with procedures established by the Plan Administrator and in accordance with Code section 409A and regulations thereunder.
  - (f) *Change in the time and/or form of distribution elections or conditions on or before December 31, 2008.* If the Employer so elects in the Adoption Agreement by December 31, 2008, a Participant may make a subsequent election to change the time and/or form of a distribution he or she specified in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 and such subsequent distribution election shall not be treated as a change in the time or form of distribution or an acceleration of a payment under Section 4.4(a) provided that the following conditions are met:
    - (1) Such subsequent election by the Participant is made on or before December 31, 2008.
    - (2) With respect to a subsequent election to change a time and/or form of distribution made on or after January 1, 2006 and on or before December 31, 2006, the election may apply only to amounts that would not otherwise

be payable in 2006 and may not cause an amount to be paid in 2006 that would not otherwise be payable in 2006.

- (3) With respect to a subsequent election to change a time and/or form of distribution made on or after January 1, 2007 and on or before December 31, 2007, the election may apply only to amounts that would not otherwise be payable in 2007 and may not cause an amount to be paid in 2007 that would not otherwise be payable in 2007.
- (4) With respect to a subsequent election to change a time and/or form of distribution made on or after January 1, 2008 and on or before December 31, 2008, the election may apply only to amounts that would not otherwise be payable in 2008 and may not cause an amount to be paid in 2008 that would not otherwise be payable in 2008.

4.5 Right to Terminate Participation or Cancel a Deferral Election During Calendar Year 2005.

- (a) So long as the Employer so adopted by December 31, 2005 as indicated in the Adoption Agreement, a Participant and/or the Plan Administrator may elect to:
  - (1) Terminate a Participant's participation in this Plan at any time during all or part of calendar year 2005; or
  - (2) Cancel a Participant's deferral election made under Section 4.1, Section 4.2, and/or Section 4.3 during all or part of calendar year 2005.
- (b) In order to effectuate any termination of participation under Section 4.5(a)(1) or cancellation of a deferral election under Section 4.5(a)(2), amounts subject to such termination or cancellation must be includible in income in the taxable year in which the Participant obtains a nonforfeitable right to receive such amounts. Any termination of participation or cancellation of a deferral election may result in a lower amount of deferrals under this Plan, without a complete elimination of the deferrals.
- (c) In the event of a termination of participation under Section 4.5(a)(1) or the cancellation of a deferral election under Section 4.5(a)(2), and a distribution of deferred amounts subject to the cancellation or payable upon termination is made, such distribution will not cause this Plan to violate Code section 409A, provided that the full amount of the distribution is included in the Participant's income in calendar year 2005, or if later, the taxable year in which the Participant obtains a nonforfeitable right to receive such amount.

4.6 Elections to Defer Compensation Earned on or Before December 31, 2005. If this Plan is an amendment, restatement, and continuation of the Prior Plan, as indicated in the Adoption Agreement, a Participant electing to defer Compensation earned on or before December 31, 2005 will not be subject to this Article 4 with respect to such election, provided that the:

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- (a) Election to defer is made on or before March 15, 2005;
  - (b) Amounts to which the deferral election relate have not been paid or become payable at the time of election; and
  - (b) Election to defer such Compensation or Employer Contributions is made in accordance with the terms of this Plan.

5.1A Distribution Forms for Evergreen Plans.

- (a) If this Plan is an Evergreen Plan as specified in the Adoption Agreement, then a Participant may, to the extent permitted by the elections of the Employer specified in the Adoption Agreement, elect in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 to have his or her Participant's Account balance distributed in:
- (1) A lump sum payment;
  - (2) Installment payments over the life expectancy of the Participant (as determined under IRS tables for purposes of Section 72 of the Code). In accordance with the Employer's election(s), a Participant electing installment payments over his or her life expectancy must designate in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 that such payments will be made monthly, quarterly, semi-annually or annually;
  - (3) Installment payments over a period of time, not to exceed twenty (20) years. In accordance with the Employer's election(s), a Participant electing installment payments over a period of years must designate in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 that such payments will be made monthly, quarterly, semi-annually or annually over three (3), five (5), ten (10), fifteen (15), or twenty (20) years, or on some other payment schedule; or
  - (4) A partial single, lump sum payment and installment payments. A Participant electing such partial payment must specify in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 the percentage of the payment required to be paid as a single, lump sum and the percentage of the payment required to be paid as installment payments. In accordance with the Employer's election(s) under the Adoption Agreement, a Participant must designate in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 whether such payments will be made over the life expectancy of the Participant or over a period of years (specifying the number of years) and whether such distributions shall be made monthly, quarterly, semi-annually or annually.
- (b) As specified in the Adoption Agreement, the distribution form(s) elected under this Section 5.1A shall be made upon the occurrence of a distributable event, and

in accordance with the Employer's distribution procedure as specified in the Adoption Agreement.

- (c) Notwithstanding the distribution form(s) elected, if a Participant's Account balance and/or Age is less than the minimum specified in the Adoption Agreement at the time a distributable event occurs, the full Participant's Account balance shall be distributed in a lump sum payment in accordance with Section 5.1A(b).

5.1B Distribution Forms for Calendar Year Plans.

- (a) If this Plan is a Calendar Year Plan as specified in the Adoption Agreement, then a Participant may, to the extent permitted by the elections of the Employer specified in the Adoption Agreement, elect in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 to have his or her Calendar Year balance(s) distributed with respect to such Plan Year in:
  - (1) A lump sum payment;
  - (2) Installment payments over the life expectancy of the Participant (as determined under IRS tables for purposes of Section 72 of the Code). In accordance with the Employer's election(s), a Participant electing installment payments over his or her life expectancy must designate in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 that such payments will be made monthly, quarterly, semi-annually or annually;
  - (3) Installment payments over a period of time, not to exceed twenty (20) years. In accordance with the Employer's election(s), a Participant electing installment payments over a period of years must designate in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 that such payments will be made monthly, quarterly, semi-annually or annually over three (3), five (5), ten (10), fifteen (15), or twenty (20) years, or on some other payment schedule; or
  - (4) A partial single, lump sum payment and installment payments. A Participant electing such partial payment must specify in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 the percentage of the payment required to be paid as a single, lump sum and the percentage of the payment required to be paid as installment payments. In accordance with the Employer's election(s) under the Adoption Agreement, a Participant must designate in his or her Deferral Agreement under Section 4.1, Section 4.2, and/or a Performance-Based Compensation Deferral Election under Section 4.3 whether such payments will be made over the

life expectancy of the Participant or over a period of years (specifying the number of years) and whether such distributions shall be made monthly, quarterly, semi-annually or annually.

- (b) As specified in the Adoption Agreement, the distribution forms elected under this Section 5.1B shall be made upon the occurrence of a distributable event and in accordance with the Employer's distribution procedure as specified in the Adoption Agreement.
- (c) Notwithstanding the distribution form(s) elected, if a Participant's Account balance(s) and/or Age is less than the minimum specified in the Adoption Agreement at the time a distributable event occurs, the full Account balance(s) shall be distributed in a lump sum payment in accordance with Section 5.1B(b).
- (d) Different forms of distribution may be elected for different years.

5.2 Distribution as of a Specified Time.

- (a) A Participant may designate at the time he or she completes his or her Deferral Agreement to receive a Specified Time distribution in the form(s) so elected by the Employer in the Adoption Agreement and as of a Specified Time designated by the Employer in the Adoption Agreement.
- (b) Distributions made under this Section 5.2 shall be made in accordance with Section 5.1A(b) or Section 5.1B(b) as applicable.
- (c) Notwithstanding Section 5.2(b), if the Employer so elects, distributions under this Section 5.2 may not commence until the date or Age specified in the Adoption Agreement.
- (d) Different dates of distribution may be elected for different years.

5.3 Distribution upon Separation from Service.

- (a) Upon a Participant's Separation from Service, the unpaid portion of his or her Participant's Account balance, if any, shall be distributed in the form(s) so elected by the Employer in the Adoption Agreement.
- (b) Distributions made under this Section 5.3 shall be made in accordance with Section 5.1A(b) or Section 5.1B(b), as applicable.
- (c) In the case of a Separation from Service of a Key Employee, distributions under this Section 5.3 may not be made before the date which is six (6) months after the date of the Key Employee's Separation from Service (or, if earlier, the date of death of the Key Employee).



- 5.4 Distribution upon Disability. If a Participant becomes Disabled while employed with the Employer, the unpaid portion of his or her Participant's Account balance, if any, shall be distributed in a single sum.
- 5.5 Distribution upon Death. If a Participant dies while employed with the Employer, the unpaid portion of his or her Participant's Account balance, if any, shall be distributed in a single sum.
- 5.6 Withdrawals for Unforeseeable Emergency.
- (a) A Participant may withdraw all or any portion of his or her Participant's Account balance for an Unforeseeable Emergency. The amounts distributed with respect to an Unforeseeable Emergency may not exceed the amounts necessary to satisfy such Unforeseeable Emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship) or by cessation of deferrals under the Plan. The Plan Administrator, in its sole discretion, shall determine whether an Unforeseeable Emergency has occurred and shall distribute all or any portion of a Participant's Account balance as soon as practicable after such a determination.
- (b) If a Participant receives a distribution on account of an Unforeseeable Emergency under this Plan, such Participant's Deferral Agreement shall terminate:
- (1) As soon as practicable following a withdrawal for an Unforeseeable Emergency; or
- (2) If a Participant's Deferral Agreement is required to be terminated in order for the Participant to receive a hardship distribution under the 401(k) Plan, or other plan of the Employer, as soon as practicable following a withdrawal for an Unforeseeable Emergency.
- 5.7 Distribution upon a Change in Control Event. Upon a Change in Control Event, the unpaid portion of a Participant's Account balance, if any, shall be distributed at the time so elected by the Employer in the Adoption Agreement.
- (a) A "Change in Control Event" means an event described under Code section 409A(a)(2)(A)(v) and regulations thereunder.
- (b) Generally, to constitute a Change in Control Event as to a Participant, the Change in Control Event must relate to (1) the corporation for whom the Participant is performing services at the time of the Change in Control Event, (2) the corporation that is liable for the payment of Plan benefits to the Participant (or all corporations liable for the payment if more than one corporation is liable), or (3) a corporation that is a majority shareholder of a corporation identified in (1) or (2), or any corporation in a chain of corporations in which each corporation is a

majority shareholder of another corporation in the chain, ending in a corporation identified in (1) or (2). The ultimate parent corporation in such a chain shall be referred to as the "Parent."

(c) Generally, the types of Change in Control Events are:

- (1) *Change in ownership*, if a person, or a group of persons acting together, acquires more than 50% of the stock of the corporation;
- (2) *Change in effective control* if, over a 12-month period, a person or group acquires stock representing 30% of the voting power of the corporation or a majority of the members of the board of directors of the parent corporation is replaced by directors not endorsed by the persons who were members of the board before the new directors' appointment;
- (3) *Change in ownership of a substantial portion of corporate assets* if a person or group acquires 40% or more of the gross fair market value of the assets of a corporation over a 12-month period; or
- (4) A narrower definition in a separate written agreement increasing the percentages listed in this section above. The entering into of any such separate written agreement must satisfy the requirements of Code section 409A and the regulations thereunder.

5.8 **Intervening Distributable Events.** If a Participant has incurred a Separation from Service (whether or not such Participant is currently receiving a distribution in the form(s) set forth under Sections 5.1A(a)(2), 5.1A(a)(3), and 5.1A(a)(4) or Sections 5.1B(a)(2), 5.1B(a)(3), and 5.1B(a)(4) on account of a distributable event under Sections 5.2 or 5.3), then in lieu of the foregoing distribution form(s), the remainder of the Participant's Account balance may be distributed in a lump sum in accordance with Section 5.1A(b) or Section 5.1B(b) upon the occurrence of an intervening distributable event under Sections 5.4 through 5.7. The Employer shall specify in the Adoption Agreement whether such lump sum payment is to be made under any or all of the distributable events set forth under Sections 5.4 through 5.7.

5.9 **Impermissible Acceleration.** If the Plan Administrator, in its sole discretion, determines that a distribution under this Article will result in an impermissible acceleration prohibited under Code section 409A and applicable guidance thereunder, the Plan Administrator reserves the right to refuse to make any such distribution unless and until the Plan Administrator determines that the distribution will be made in accordance with Code section 409A.

5.10 **Delay in Payment.** If the Plan Administrator cannot make a distribution by the dates specified under Section 5.1A(b) or Section 5.1B(b) for reasons beyond the Employer's control, or if a distribution would jeopardize the Employer's solvency or if the Plan Administrator, in its sole discretion, determines that (1) the deduction associated with a distribution under this Plan would be limited by Code section 162(m), or (2) a

distribution would violate federal securities laws, the Plan Administrator may delay such distributions.

5.11 Default time and form of distribution. If the Participant does not select a time and form of distribution in accordance with this Article 5, the time and form of distribution shall be a lump sum distribution paid as soon as administratively feasible following Separation from Service in accordance with the Plan's distribution procedures.

5.12 Accelerated Payment Exceptions. Unless otherwise elected in the Adoption Agreement, the plan will provide for an accelerated payment under the following circumstances:

(a) Domestic Relations Order—Accelerated distributions for an alternate payee to comply with a Qualified Domestic Relations Order. For this purpose, a Qualified Domestic Relations Order means a judgment, decree, or order (including the approval of a settlement agreement) which is:

- (1) issued pursuant to a State's domestic relations law;
- (2) relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of the Participant;
- (3) creates or recognizes the right of a spouse, former spouse, child or other dependent of the Participant to receive all or a portion of the Participant's benefits under the Plan;
- (4) requires payment to such person of their interest in the Participant's benefits in an immediate lump payment; and
- (5) meets such other requirements established by the Company.

The Company shall determine whether any document received by it is a Qualified Domestic Relations Order. In making this determination, the Company may consider the rules applicable to "domestic relations orders" under Code section 414(p) and ERISA section 206(d), and such other rules and procedures as it deems relevant.

(b) Conflicts of interest— To the extent necessary for any Federal officer or employee in the executive branch to comply with an ethics agreement with the Federal government, or, to the extent reasonably necessary to avoid the violation of an applicable Federal, state, local or foreign ethics law or conflicts of interest law;

(c) Limited cashouts (de minimis distributions)—Discretion to cash out a Participant's interest at any time, or automatic cashouts under specified circumstances, such as Separation from Service, if the annual amount does not exceed the section 402(g) limit and all plans in the same category are cashed out at the same time. Installment distributions will also be cashed out if the amount is

less than a plan-established threshold as set forth in the Adoption Agreement, which may be any pre-determined amount;

- (d) Taxes—Accelerated distributions may be paid to cover any employment tax, where applicable, on amounts deferred under the Plan, to pay federal income tax withholding amounts (or the corresponding state, local or foreign tax withholding amounts as a result of the payment of any employment taxes), and any additional income withholding attributable to the pyramiding of wages and taxes. The total payment under this acceleration provision must not exceed the aggregate employment taxes and withholding related to such employment taxes;
- (e) Plan termination and liquidation—Distributions due to a termination and liquidation of the plan in accordance with Treasury Reg. §1.409-3(j)(4)(ix);
- (f) Cancellation of a deferral election due to a Participant meeting the requirements of Disability, Unforeseeable Emergency under the Plan;
- (g) Payment upon income inclusion under Code section 409A—Accelerated payments income inclusion that is due to a violation of Code section 409A; and
- (h) Certain offsets—Accelerated payment to a participant to cover a debt owed to the company if the participant incurred the debt in the ordinary course of business, the offset does not exceed \$5,000 per calendar year, and payment occurs on the due date of the debt.

5.13 Distributions under this Plan shall only be made in cash unless otherwise provided in the Adoption Agreement.

ARTICLE 6. – PLAN INVESTMENTS

- 6.1 Unless otherwise stated in the Adoption Agreement, all contributions will be invested under Transamerica’s Mutual Funds (the “Mutual Funds”), or other investments that may be selected by the Plan Administrator from time to time under which Participant’s Accounts will be established for each Participant. The Employer invests Plan assets in its discretion, taking into account (to the extent it deems advisable) instructions received from Participants. A Participant’s investment choices are limited to the types of investments as so elected by the Employer.
- Unless otherwise so elected, the Employer hereby designates that Participants will be permitted to request the investment of the deferred amounts from a menu of investment alternatives made available by the Employer under the Plan and under a policy established by the Employer. The Employer and the provider of investments under the Plan may impose such restrictions on the investment of deferred compensation, as they may deem appropriate in their sole discretion. The Mutual Funds are not a party to this Plan.
- 6.2 All amounts under this Plan, including all investments purchased with such amounts and all income attributable thereto, shall remain (until made available to the Participant or Beneficiary) solely the property of the Employer (without being restricted to the provision of benefits under the Plan) subject to the claims of the Employer’s general creditors. A Participant has no greater right to Trust assets than the general creditors of the Employer in the event that the Employer shall become insolvent. Any vested accrued benefits under the Plan represent an unfunded, unsecured promise by the Employer to pay these benefits to the Participants when due. Trust assets can be used to pay only vested accrued benefits under the Plan or the claims of the Employer’s general creditors.

ARTICLE 7. – BENEFICIARY

7.1 A Participant shall designate on his or her Deferral Agreement or other form provided by the Employer, the Beneficiary or Beneficiaries who are to receive distributions in the event of the Participant's death. If the Participant has not properly designated a Beneficiary, or if for any reason such designation shall not be legally effective, or if said designated Beneficiary or Beneficiaries shall predecease the Participant, then the Participant's estate shall be treated as the Beneficiary. A Participant may change his or her Beneficiary designation at any time by amending his or her Deferral Agreement or other form provided by the Employer.

ARTICLE 8. – VESTING AND FORFEITURES

- 8.1 Vesting. The value of a Participant's Account with respect to his or her Salary Reduction Contributions, Matching Contributions, and Nonelective Employer Contributions shall vest in accordance with the vesting schedules elected by the Employer under the Adoption Agreement.
- 8.2 When employment or service with the Employer is terminating and payment is not deferred, the amount of the payment shall be based on the value of the Participant's Account plus any contributions subsequently credited to such Account and less any distributions subsequently made from the Account.
- 8.3 Forfeitures. If applicable, any remainder of a terminating Participant's Account, which is not vested, shall be forfeited on the date of his or her Separation from Service. Any such forfeiture shall be applied to offset future Employer Contributions under the Plan, or, if none, revert to the Employer.

ARTICLE 9. – ADMINISTRATION

- 9.1 Plan Administrator. The Plan Administrator shall be the Employer adopting this Plan, as listed in Section 1 of the Adoption Agreement, or, if applicable, the person(s) or entity appointed by the Employer to administer the Plan, as listed in Section 2 of the Adoption Agreement. The Plan Administrator shall serve at the pleasure of the Employer and the Employer shall have the right to appoint, in its sole and absolute discretion, any successor Plan Administrator.
- 9.2 Claims for Benefits.
- (a) Filing a Claim. A Participant or his or her authorized representative may file a claim for benefits under the Plan. Any claim must be in writing and submitted to the Plan Administrator. Claimants will be notified in writing of approved claims, which will be processed as claimed. A claim is considered approved only if its approval is communicated in writing to a Claimant.
- (b) Denial of Claim. In the case of the denial of a claim respecting benefits paid or payable with respect to a Participant, a written notice will be furnished to the Claimant within ninety (90) days of the date on which the claim is received by the Plan Administrator. If special circumstances (such as for a hearing) require a longer period, the Claimant will be notified in writing, prior to the expiration of the ninety (90) day period, of the reasons for an extension of time; provided, however, that no extensions will be permitted beyond ninety (90) days after the expiration of the initial ninety (90) day period.
- (c) Reasons for Denial. A denial or partial denial of a claim will be dated and signed by the Plan Administrator and will clearly set forth:
- (1) The specific reason or reasons for the denial;
  - (2) Specific reference to pertinent Plan provisions on which the denial is based;
  - (3) A description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material or information is necessary; and
  - (4) An explanation of the procedure for review of the denied or partially denied claim set forth below, including the Claimant's right to bring a civil action under ERISA section 502(a) following an adverse benefit determination on review.
- (d) Review of Denial. Upon denial of a claim, in whole or in part, a Claimant or his or her duly authorized representative will have the right to submit a written request to the Plan Administrator for a full and fair review of the denied claim by filing a written notice of appeal with the Plan Administrator within sixty (60) days



of the receipt by the Claimant of written notice of the denial of the claim. A Claimant or the Claimant's authorized representative will have, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits and may submit issues and comments in writing. The review will take into account all comments, documents, records, and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

If the Claimant fails to file a request for review within sixty (60) days of the denial notification, the claim will be deemed abandoned and the Claimant precluded from reasserting it. If the Claimant does file a request for review, his or her request must include a description of the issues and evidence he or she deems relevant. Failure to raise issues or present evidence on review will preclude those issues or evidence from being presented in any subsequent proceeding or judicial review of the claim.

(e) Decision upon Review. The Plan Administrator will provide a prompt written decision on review. If the claim is denied on review, the decision shall set forth:

- (1) The specific reason or reasons for the adverse determination;
- (2) Specific reference to pertinent Plan provisions on which the adverse determination is based;
- (3) A statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits; and
- (4) A statement describing any voluntary appeal procedures offered by the Plan and the Claimant's right to obtain the information about such procedures, as well as a statement of the Claimant's right to bring an action under ERISA section 502(a).

A decision will be rendered no more than sixty (60) days after the Plan Administrator's receipt of the request for review, except that such period may be extended for an additional sixty (60) days if the Plan Administrator determines that special circumstances (such as for a hearing) require such extension. If an extension of time is required, written notice of the extension will be furnished to the Claimant before the end of the initial sixty (60) day period.

(f) Finality of Determinations; Exhaustion of Remedies. To the extent permitted by law, decisions reached under the claims procedures set forth in this Section shall be final and binding on all parties. No legal action for benefits under the Plan shall be brought unless and until the Claimant has exhausted his or her remedies under this Section. In any such legal action, the Claimant may only present evidence and theories which the Claimant presented during the claims procedure. Any claims which the Claimant does not in good faith pursue through the review stage of the procedure shall be treated as having been

irrevocably waived. Judicial review of a Claimant's denied claim shall be limited to a determination of whether the denial was an abuse of discretion based on the evidence and theories the Claimant presented during the claims procedure. Any suit or legal action initiated by a Claimant under the Plan must be brought by the Claimant no later than one year following a final decision on the claim for benefits by the Plan Administrator. The one-year limitation on suits for benefits will apply in any forum where a Claimant initiates such suit or legal action. Any claim under this Plan relating to an alleged failure to make a contribution to this Plan, and any suit or legal action for benefits under this Plan must be made within two years of the date on which the claimed contribution is alleged should have been made or, if later, the date on which the Claimant is or should have been aware that such contributions have not been made.

(g) Disability Claims. Claims for disability benefits shall be determined under the DOL Regulation section 2560.503-1 which is hereby incorporated by reference.

- 9.3 Indemnification. To the extent not covered by insurance, the Employer shall indemnify the Plan Administrator, each employee, officer, director, and agent of the Employer, and all persons formerly serving in such capacities, against any and all liabilities or expenses, including all legal fees relating thereto, arising in connection with the exercise of their duties and responsibilities with respect to the Plan, provided however that the Employer shall not indemnify any person for liabilities or expenses due to that person's own gross negligence or willful misconduct.
- 9.4 Power and Authority. The Plan Administrator shall have full power and authority to adopt rules and regulations (including without limitation a reasonable claims procedure) for the administration of the Plan, and to interpret, alter, amend, or revoke any rules and regulations so adopted. The Plan Administrator shall have full power and authority to interpret the terms and provisions of this Plan and any instrument filed hereunder.
- 9.5 Finality of Decisions. The Plan Administrator's decisions or interpretations made under the Plan shall be binding and final on all interested parties.
- 9.6 Presumption of Fairness. Every action taken by the Plan Administrator shall be presumed to be a fair and reasonable exercise of the authority vested in, or the duties imposed upon, the Plan Administrator. The Plan Administrator shall be deemed to have acted impartially as to all persons interested, unless the contrary be proven by affirmative evidence. The Plan Administrator shall not be liable for amounts of Deferred Compensation by a Participant or for other amounts payable under this Plan.
- 9.7 Other Parties. Any person or entity which issues policies, contracts, or investment media to the Employer or in respect of a Participant is not a party to this Plan and such person or entity shall have no responsibility, accountability or liability to the Employer, the Plan Administrator, any Participant, or any Beneficiary with regard to the operation or adequacy of this Plan, including any future amendments made thereto.
- 9.8 Information Requests. Any party entitled to payment under this Plan shall comply with all written requests of the Plan Administrator or its designee to furnish the Employer with

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any information known or available to such party and necessary to the administration of the Plan.

- 9.9 Expenses. If not paid by the Employer, all reasonable expenses incurred in the administration of the Plan, including without limitation those of any Trustee and the Plan Administrator, shall be paid from Participants' Accounts to which such expenses are allocable.
- 9.10 No Fiduciary Relationship. Neither the Plan, nor any action taken by the Plan Administrator or the Employer, shall create or be deemed to create a trust or fiduciary relationship of any kind between the Employer and the Participant, his or her Beneficiary, or any other person.

10.1 Amendment of Plan. The Employer or its delegate reserves the right to amend any provisions of the Plan at any time to the extent that it may deem advisable without the consent of Participants or any Beneficiaries provided that no such amendment shall reduce the amount of Compensation deferred before such amendment without the consent of affected Participants or Beneficiaries.

If this Plan is an amendment, restatement, and continuation of a Prior Plan, as indicated in Section 4 of the Adoption Agreement, and if the Plan Administrator, in its sole discretion, determines that an amendment to this Plan will result in a material modification of the Prior Plan, as defined under Code section 409A and Internal Revenue Service guidance issued thereunder, the amendment shall not become effective unless and until the Plan Administrator determines that the amendment will not result in such a material modification.

10.2 Termination of Plan.

(a) The Employer may terminate the Plan at any time, provided the following requirements are satisfied:

- (1) If this is an account balance elective plan, there are no other account balance elective plans maintained by the Employer with respect to any Participants in this Plan or all account balance elective plans maintained by the Employer have been terminated with respect to all Participants in this Plan;
- (2) If this is an account balance non-elective plan, there are no other account balance non-elective plans maintained by the Employer with respect to any Participants in this Plan or all account balance non-elective plans maintained by the Employer have been terminated with respect to all Participants in this Plan;
- (3) No payments to Participants other than payments that would have been paid absent the termination are made within twelve (12) months of the Plan termination;
- (4) All payments are made within twenty-four (24) months of the Plan termination; and
- (5) The Employer does not adopt a plan of the same type as the Plan for a period of three (3) years following the date of Plan termination.

(b) Section 10.2(a) shall not apply if the Plan is terminated:

- (1) Within twelve (12) months of a corporate dissolution taxed under Code section 331 or with the approval of a bankruptcy court pursuant to 11 U.S.C. §503(b)(1)(A), provided that amounts deferred under the Plan are included in the Participants' income in the latest of:
    - (i) The calendar year in which the Plan termination occurs;
    - (ii) The calendar year in which the amount is no longer subject to a substantial risk of forfeiture; or
    - (iii) The first calendar year in which the payment is administratively practicable.
  - (2) Within thirty (30) days preceding or twelve (12) months following a Change in Control Event as defined under Section 5.7, provided that all substantially similar arrangements sponsored by the Employer are terminated, so that the Participant in the arrangement and all Participants under substantially similar arrangements are required to receive all amounts of Compensation deferred under the terminated arrangements within twelve (12) months of the date of termination of the arrangements.
- (c) Upon Plan termination in accordance with Section 10.2(a) and Section 10.2(b), a Participant's Account balance shall be payable in a lump sum cash payment to Participants. Any Participant who is already in pay status and has been receiving payments in a form or forms under Section 5.1A(a)(2), 5.1A(a)(3), and 5.1A(a)(4) or Section 5.1B(a)(2), Section 5.1B(a)(3), and 5.1B(a)(4) shall receive the balance(s) of his or her Participant's Account balance(s) in a lump sum cash payment.
- (d) Notwithstanding the foregoing, if the Plan Administrator, in its sole discretion, determines that any accelerated payments made on account of Plan termination are prohibited under Code section 409A and applicable guidance thereunder, the Plan Administrator reserves the right to refuse to make any such payments unless and until the Plan Administrator determines that the payments may be made in accordance with Code section 409A.

10.3 The Employer may, from time to time, hire outside consultants, accountants, actuaries, legal counsel, or recordkeepers to perform such tasks as the Employer may from time to time determine.

10.4 No benefits under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge or encumbrance. The provisions of this Plan shall be binding upon and inure to the benefit of the Employer and Participants and their respective successors, heirs, personal representatives, executors, administrators, and legatees.

10.5 Employment. Participation in this Plan shall not be deemed to be a contract of employment between the Employer and any Eligible Employee. Nor shall anything contained herein be deemed to give any Eligible Employee the right to be retained in the

employ of the Employer or to interfere with the right of the Employer to discharge any Eligible Employee at any time, nor shall it be deemed to give the Employer the right to require any employee to remain in its employ, nor shall it interfere with such Eligible Employee's right to terminate his or her employment at any time (as may be provided in any contract or agreement affecting such employment).

10.6 This Plan and the Deferral Agreement, and any subsequently adopted amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement or other written document regarding the Plan may be relied upon by the Participant.

10.7 This Plan shall be construed under the laws of the State specified in the Adoption Agreement.