

# **Willamette University**

## **TRANSPORTATION FRINGE BENEFIT PLAN**

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# TRANSPORTATION FRINGE BENEFIT PLAN

## ARTICLE I

### INTRODUCTION

#### 1.1 Establishment of Plan

The Employer hereby establishes a Transportation Fringe Benefit Plan (Plan). Capitalized terms used in this Plan that are not otherwise defined shall have the meanings set forth in Article II.

#### 1.2 Legal Status

This Plan is intended to qualify as a “qualified transportation fringe” benefit plan under Code §132(f) and regulations issued thereunder and shall be interpreted to accomplish that objective. The Transportation Benefits are intended to be eligible for exclusion from participating Employees’ gross income under Code §132(f). This document amends and supersedes any previous plans or programs adopted by the Employer intended to qualify as a qualified transportation fringe benefit plan.

## ARTICLE II

### DEFINITIONS

#### 2.1 Definitions

The terms used in this Plan shall have the meanings set forth in this Article unless the context in which they are used clearly indicates that some other meaning is intended.

- (a) "**Administrator**" means the Employer.
- (b) "**Code**" means the Internal Revenue Code of 1986, as amended.
- (c) "**Commuter Highway Vehicle**" (aka **Van Pool**) and "**Commuter Highway Vehicle Expenses**" have the meanings described in Section 6.4.
- (d) "**Compensation**" means the wages or salary paid to an Employee by the Employer, determined prior to (1) any Compensation Reduction election under this Plan; and (2) any compensation reduction election under any other Code §132(f)(4) transportation fringe benefit plan; but determined after any salary deferral elections under any Code §401(k), 403(b), 408(k) or 457(b) plan or arrangement, and any salary reduction elections under any Code §125 cafeteria plan. Thus, “Compensation” generally means wages or salary paid to

an Employee by the Employer, as reported in Box 1 of Form W-2, but adding back any wages or salary foregone by virtue of any election described in (1) or (2) of the prior sentence.

(e) **"Compensation Reduction"** means the amount by which the Participant's Compensation is reduced and applied by the Employer under this Plan to pay on a pre-tax basis for one or more of the Transportation Benefits elected by the Participant.

(f) **"Cost"** has the meaning described in Section 6.2.

(g) **"Effective Date"** of this Plan is the effective date set forth in the Adoption Agreement

(h) **"Election Form/Compensation Reduction Agreement"** means the form provided by the Administrator for the purpose of allowing an Eligible Employee to participate in this Plan by electing Compensation Reductions to pay for Transportation Expenses. It includes an agreement pursuant to which an Eligible Employee or Participant authorizes the Employer to make Compensation Reductions.

(i) **"Eligible Employee"** means an Employee eligible to participate in this Plan as provided in Section 3.1.

(j) **"Employee"** means an individual that the Employer classifies as a common-law employee and who is on the Employer's W-2 payroll, but it does not include the following: (1) an individual classified by the Employer as a contract worker, independent contractor, temporary employee or casual employee for the period during which such individual is so classified, whether or not any such individual is on the Employer's W-2 payroll or is determined by the IRS or others to be a common-law employee of the Employer; (2) any individual who performs services for the Employer but who is paid by a temporary or other employment or staffing agency for the period during which such individual is paid by such agency, whether or not such staffing agency is determined by the IRS or others to be a common-law employee of the Employer; (3) any employee covered under a collective bargaining agreement except to the extent provided for in such collective bargaining agreement; (4) any self-employed individual under Code §401(c)(1); (5) any partner; (6) any more-than-2% shareholder of a Subchapter S corporation; or (7) any other individual excluded from participation under Code § 132(f).

(k) **"Employer"** means the entity listed in the Adoption Agreement as the Employer and any Related Employer that adopts this Plan with the approval of the undersigned entity, as listed in the Adoption Agreement. However, for purposes of Section 2.1(a), Article VII and Sections 8.3 and 8.4, "Employer" means only the entity listed in the Adoption Agreement as the Employer and not any Related Employer.

(l) **“Employment”** means the performance of services by an Employee for the Employer.

(m) **“Employment Commencement Date”** means the first regularly-scheduled working day on which the Employee first performs an hour of service for the Employer for Compensation.

(n) **“Participant”** means a person who is an Eligible Employee and who is participating in this Plan in accordance with the provisions of Article III. Participants include those who elect one or more of the Transportation Benefits and Compensation Reductions to pay for their share of the Cost for such Transportation Benefits. A Participant also includes someone who is an Eligible Employee with an account balance who is no longer making Compensation Reductions for Transportation Benefits.

(o) **“Period of Coverage”** means a calendar month during which an Election Form/Compensation Reduction Agreement is in effect and irrevocable.

(p) **“Plan”** means the Transportation Fringe Benefit Plan as set forth herein and as amended from time to time.

(q) **“Plan Year”** means the plan year set forth in the Adoption Agreement, provided that a period of less than 12 months may be a Plan Year for the initial Plan Year, the final Plan Year, and for a transition period to a different Plan Year.

(r) **“Qualified Parking Expenses”** has the meaning described in Section 6.6.

(s) **“Related Employer”** means any employer affiliated with the undersigned entity that, under Code §414(b), (c), (m), or (o), is treated as a single employer with the undersigned entity.

(t) **“Transportation Account(s)”** has the meaning described in Section 6.9.

(u) **“Transportation Benefits”** has the meaning described in Section 6.1.

(v) **“Transportation Expenses”** has the meaning described in Section 6.3.

(w) **“Transit Pass Expenses”** has the meaning described in Section 6.5.

## **ARTICLE III**

### **ELIGIBILITY AND PARTICIPATION**

#### **3.1 Eligibility to Participate**

(a) An individual is eligible to participate in this Plan if the individual:

- (1) is an Employee;
- (2) meets any requirements related to regularly scheduled hours as set forth in the Adoption Agreement;
- (3) meets any waiting period as specified in the Adoption Agreement; and
- (4) meets any other requirements for participation specified in the Adoption Agreement.

(b) Once an Employee has met the Plan's eligibility requirements, the Employee may elect coverage effective the first day of the next Period of Coverage following such eligibility, in accordance with the procedures described in Article IV.

#### **3.2 Termination of Participation**

(a) A Participant will cease to be a Participant in this Plan upon the earlier of:

- (1) the termination of this Plan;
- (2) the date on which the Employee ceases (because of retirement, termination of employment, layoff, reduction in hours, or any other reason) to be an Eligible Employee; or
- (3) the date the Participant revokes his or her election for the next Period of Coverage as permitted under Section 4.2.

(b) Reimbursements from the Transportation Accounts after termination of participation will be made pursuant to Section 6.12.

#### **3.3 Participation Following Termination of Employment or Loss of Eligibility**

If an Employee (whether or not a Participant) terminates his or her Employment for any reason, and then is rehired, the Employee must complete any applicable waiting period established by the Employer before again becoming eligible to participate in the

Plan. If an Employee (whether or not a Participant) ceases to be an Eligible Employee for any reason (including but not limited to reduction in hours), and then becomes an Eligible Employee, the Employee must complete any applicable waiting period described in Section 3.1 before again becoming eligible to participate in the Plan.

## **ARTICLE IV**

### **METHOD AND TIMING ELECTIONS**

#### **4.1 Elections When First Eligible**

An Employee may commence participation on the first day of the Period of Coverage after the eligibility requirements have been satisfied. The election shall be made by submitting an Election Form/Compensation Reduction Agreement to the Administrator before the first day of the Period of Coverage in which participation will commence (or within such other time frames as the Administrator shall determine in its sole discretion). The Election Form/Compensation Reduction Agreement must be made before (a) the date on which the Period of Coverage to which it relates commences; and (b) the date on which the Transportation Benefits to which it relates are provided. (For purposes of determining whether an election relates to Transportation Benefits, the date on which Transportation Benefits are “provided” is (a) the date the Employee receives a Voucher or similar item; or (b) in any other case, the date the Employee uses the Transportation Benefit.) If an Eligible Employee makes an election to participate when first eligible, then the Employee becomes a Participant on the first day of the next Period of Coverage. Such election will automatically renew for subsequent Periods of Coverage unless the Employee submits a new Election Form/Compensation Reduction Agreement to the Administrator prior to the first day of the next Period of Coverage, as described in Section 4.2.

#### **4.2 New Elections Permitted for Future Periods of Coverage**

A Participant (or an Eligible Employee not currently participating) may make a new election for future Periods of Coverage by submitting a new Election Form/Compensation Reduction Agreement to the Administrator. The new Election Form/Compensation Reduction Agreement must be submitted to the Administrator and must be made before (a) the date on which the Period of Coverage to which it relates commences; and (b) the date on which the Transportation Benefits to which it relates are “provided” as defined in Section 4.1. Such election will automatically renew for subsequent Periods of Coverage unless the Employee submits a new Election Form/Compensation Reduction Agreement to the Administrator prior to the first day of the next Period of Coverage.

### **4.3 Elections Irrevocable During One-Month Period of Coverage**

A Participant's election under the Plan is irrevocable for the duration of the one-month Period of Coverage to which it relates. In other words, the Participant may not change any elections for the duration of the Period of Coverage regarding:

- (a) participation in this Plan;
- (b) Compensation Reduction amounts; or
- (c) Election of particular Transportation Benefits.

## **ARTICLE V**

### **BENEFITS OFFERED AND METHOD OF FUNDING**

#### **5.1 Benefits Offered**

When eligible as described under Article IV and as specified in the Adoption Agreement, Participants will be given the opportunity to elect one or more of the following Transportation Benefits:

- (a) Commuter Highway Vehicle Benefits, as described in Section 6.4;
- (b) Transit Pass Benefits, as described in Section 6.5; and
- (c) Qualified Parking Benefits, as described in Section 6.6.

#### **5.2 Employer and Participant Contributions**

(a) *Employer Contributions.* The Employer may, in its discretion, contribute towards the Cost of Transportation Benefits for any classification of Participants.

(b) *Participant Contributions.* Participants who elect any of the Transportation Benefits must pay for their share of the Cost on a pre-tax Compensation Reduction Basis.

#### **5.3 Using Compensation Reductions to Make Contributions**

(a) *Compensation Reductions per Pay Period.* The Compensation Reduction per pay period for a Participant is, for the Transportation Benefits elected, an amount equal to (i) the monthly Cost for such Benefits (as described in Section 6.2) times the number of monthly Periods of Coverage remaining in the Plan Year (commencing with the first Period of Coverage elected by the

Participant), (ii) divided by the number of pay periods remaining in the Plan Year, or as otherwise agreed upon between the Employer and the Participant

(b) *Compensation Reduction Balance Upon Termination of Coverage.* If, as of the date that any elected coverage under this Plan terminates, a Participant's year-to-date Compensation Reductions exceed or are less than the Participant's required contributions for the coverage, then the Employer will, as applicable, either return the excess to the Participant as additional taxable wages or recoup the due Compensation Reduction amounts from any remaining Compensation.

#### **5.4 Funding This Plan**

All of the amounts payable under this Plan shall be paid from the general assets of the Employer. Nothing herein will be construed to require the Employer or the Administrator to maintain any fund or to segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in any fund, account or asset of the Employer from which any payment under this Plan may be made. There is no trust or other fund from which benefits are paid. While the Employer has complete responsibility for the payment of benefits out of its general assets, it may hire an outside paying agent to make benefit payments on its behalf. The maximum contributions that may be made under this Plan for a Participant is the total of the maximums that may be elected (a) as Employer and Participant contributions as described in Section 5.3; and (b) as described in Section 6.7(b).

### **ARTICLE VI**

#### **TRANSPORTATION BENEFITS**

##### **6.1 Benefits**

An Eligible Employee can elect to participate in this Plan by electing (a) to receive benefits in the form of reimbursements for Transportation Expenses (Transportation Benefits), and (b) to pay the Participant's share of the Cost for such benefits on a pre-tax Compensation Reduction basis. Such election is irrevocable for the duration of the monthly Period of Coverage to which it relates; however, a Participant can make a new election for future Periods of Coverage as described in Section 4.2.

##### **6.2 Benefit Costs**

The monthly cost ("Cost") for a Participant's Transportation Benefits is equal to the monthly benefit amount elected by the Participant .

### **6.3 Eligible Transportation Expenses**

An Eligible Employee can elect to participate in this Plan by electing to receive reimbursement for Transportation Expenses specified in the Adoption Agreement incurred or paid during the Period of Coverage for which an election is in force, provided that the Participant is currently an Eligible Employee at the time the Transportation Benefit is “provided,” as described in Section 4.1. Only eligible employee’s expenses are allowed; family member’s expenses are not eligible.

(a) *Incurred or Paid.* A Transportation Expense is incurred at the time the transportation service giving rise to the expense is furnished. A Transportation Expense is paid when the Participant formally pays for the service; it is not paid when the Participant is formally billed for or charged for the service.

(b) *Transportation Expenses.* “Transportation Expenses” means those qualified expenses incurred or paid by the Employee to purchase or pay for Transit Pass Expenses, Commuter Vehicle Expenses and/or Qualified Parking Expenses incurred or paid for purposes of transportation between an Employee’s residence and regular place of Employment.

### **6.4 Commuter Highway Vehicle (Van Pool) Benefits**

If permitted by the Employer, an Eligible Employee can elect to participate in this Plan by electing (a) to receive benefits in the form of reimbursements for Commuter Highway Vehicle Expenses (Commuter Highway Vehicle Benefits), subject to the limits described in Section 6.8, and (b) to pay the Cost for such benefits on a pre-tax Compensation Reduction basis. Only eligible employee’s expenses are allowed; family member’s expenses are not eligible.

(a) *Commuter Highway Vehicle Expenses.* “Commuter Highway Vehicle Expenses” means expenses incurred or paid for transportation in a Commuter Highway Vehicle if such transportation is provided to an Employee in connection with travel between the Employee’s residence and place of Employment.

(b) *Commuter Highway Vehicle.* “Commuter Highway Vehicle” means any highway vehicle:

(1) that has a seating capacity of at least six (6) adults (excluding the driver), and

(2) of which at least eighty percent (80%) of the mileage for a year is reasonably expected to be used:

(A) for purposes of transporting Employees in connection with travel between their residences and their places of Employment; and

(B) on trips during which the number of Employees transported for such purposes is at least one-half (1/2) of the adult seating capacity of such vehicle (excluding the driver).

## 6.5 Transit Pass Benefits

If permitted by the Employer, an Eligible Employee can elect to participate in this Plan by electing (a) to receive benefits in the form of reimbursements for Transit Pass Expenses (Transit Pass Benefits), subject to the limits described in Section 6.8; and (b) to pay for the Participant's share of the Cost for the such benefits on a pre-tax Compensation Reduction basis. Only eligible employee's expenses are allowed; family member's expenses are not eligible.

(a) *Transit Pass Expenses.* "Transit Pass Expenses" means expenses incurred or paid for any pass, token, fare card, voucher, or similar item (including an item exchanged for fare media) that entitles a person to transportation (or transportation at a reduced price) if such transportation is (1) on any mass transit facilities (such as a train, bus, subway, or ferry), whether or not publicly owned; or (2) provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a highway vehicle with a seating capacity of at least six adults (excluding the driver).

(b) *Cash Reimbursement for Transit Passes Only if No Voucher (defined below) is Readily Available.* A cash reimbursement may be provided for an Employee's Transit Expenses only if no Voucher (or similar item that may be exchanged only for a transit pass) is Readily Available for direct distribution by the Employer to Employees. If a Voucher is Readily Available, the Voucher shall be distributed in-kind by the Employer or by any other person on behalf of the Employer.

(c) *Readily Available.* A Voucher (or similar item) is Readily Available for direct distribution only if the Employer can obtain the Voucher from a Voucher Provider (defined below) and: (1) the average annual fare media charges that the Employer reasonably expects to incur for transit system Vouchers purchased from the Voucher Provider (disregarding reasonable and customary delivery charges imposed by the Voucher Provider—for example, not in excess of \$15) are not more than one percent (1%) of the average annual value of the Vouchers for the transit system, and (2) the Voucher Provider does not impose restrictions that effectively prevent the Employer from obtaining Vouchers appropriate for distribution to employees, such as certain advance purchase requirements, purchase quantity requirements and limitations on denominations of Vouchers, as described under Treas. Reg. §1.132-9, Q-16.

(d) *Vouchers and Voucher Providers.* "Voucher" means an instrument that may be purchased by Employers from a Voucher Provider that is accepted by one or more mass transit operators in any areas as fare media or in exchange

for fare media. "Voucher Provider" means any person in the trade or business of selling transit system Vouchers to Employers, or any transit system or transit operator that sells Vouchers to Employers for the purpose of direct distribution to Employees. A Voucher Provider does not include a third-party administrator that administers a transit pass benefits program for an Employer using Vouchers that the Employer could obtain directly.

## **6.6 Qualified Parking Benefits**

If permitted by the Employer, an Eligible Employee can elect to participate in this Plan by electing (a) to receive benefits in the form of reimbursements for Qualified Parking Expenses (Qualified Parking Benefits), subject to the limits described in Section 6.8; and (b) to pay the Participant's share of the Cost for such benefits on a pre-tax Compensation Reduction basis. Only eligible employee's expenses are allowed; family member's expenses are not eligible.

(a) *Qualified Parking Expenses Defined.* "Qualified Parking Expenses" means expenses incurred or paid for "Qualified Parking"—that is, parking provided to an Eligible Employee by an Employer (as described in subsection (b)) either

(1) on or near the Employer's business premises (including parking on or near the Employee's regular place of Employment); or

(2) at a location from which the Employee commutes to his or her regular place of Employment, including commuting by any of the following:

(A) carpool (that is, an arrangement under which two or more individuals commute together in a motor vehicle on a regular basis);

(B) Commuter Highway Vehicle;

(C) Mass transit facilities; or

(D) Transportation provided by any person in the business of transporting persons for compensation or hire, if such transportation is provided in a Commuter Highway Vehicle.

(b) *Provided by an Employer.* Parking is provided by an Employer if: (1) the parking is on property that the Employer owns or leases; (2) the Employer pays for the parking; or (3) the Employer reimburses the Employee for parking expenses.

(c) *Exclusion From Qualified Parking Expenses.* Notwithstanding the above, Qualified Parking Expenses do not include any of the following:

(1) parking on or near property used by the Employee for residential purposes;

(2) the value of parking provided to an Employee that is excludable from his or her gross income as a working condition fringe under Code §132(a)(3); and

(3) reimbursements paid to the Employee for parking costs that are excludable from his or her gross income as an amount paid under an accountable plan under Treas. Reg §1.62-2.

## **6.7 Bicycle Commuting Fringe Benefit**

Effective January 1, 2009, the bicycle commuting fringe benefit may be offered through Code Section 132 (f). The employer may offer a maximum benefit of \$20 per month on a tax-free basis. (The \$20 is not indexed for cost-of-living changes.) Reimbursable expenses include the cost of purchasing a bicycle, bicycle improvements, repair, and storage, so long as the bicycle is regularly used for travel between the employee's residence and place of employment. Unlike other qualified transportation fringe benefits, the qualified bicycle commuting benefit cannot be funded with pre-tax compensation reductions. Reimbursements must be made during the calendar year in which the expenses are incurred or during the three months following that year in order to qualify for income exclusion.

## **6.8 Maximum and Minimum Benefits**

(a) *Maximum Reimbursement Available; Statutory Limitations.* Payment shall be made to the Participant in cash as reimbursement for Transportation Expenses incurred or paid during the Period of Coverage for which the Participant's election is effective, provided that the other requirements of this Article VI have been complied with. No payment otherwise due to a Participant hereunder shall exceed the smallest of the following:

(1) the year-to-date Compensation Reduction and any Employer Contributions as described in Section 5.2 for reimbursement for Transportation Expenses for the Period of Coverage, less any prior reimbursements for Transportation Expenses during the Period of Coverage; or

(2) the Statutory Limits for the applicable Transportation Benefit, as defined in Section 6.8.

(b) *Maximum and Minimum Dollar Limits.* The maximum monthly benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Transportation Expenses incurred or paid in any Period of

Coverage shall be the combined applicable statutory monthly limits described in Section 6.8 for Commuter Highway Vehicle Benefits, Transit Pass Benefits and Qualified Parking Benefits, subject to the other limitations described above. The minimum monthly benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Transportation Benefits in any Period of Coverage shall be \$25.

## **6.9 Monthly Statutory Limits for Transportation Benefits**

(a) *Monthly Limit for Qualified Parking Expenses.* Reimbursements for Qualified Parking Expenses will not exceed the monthly value as set forth in Code §132(f), as adjusted for inflation. If an Employee obtains a qualified parking space as a result of membership in a car pool or van pool, the monthly limit for Qualified Parking Expenses shall apply to the individual designated as the “prime member” in accordance with Treas. Reg. §1.132-9, Q/A-22.

(b) *Combined Monthly Limit for Transit Pass Expenses and Commuter Highway Vehicle Expenses.* Reimbursements for combined expenses for Transit Pass Expenses and Commuter Highway Vehicle Expenses will not exceed the monthly value as set forth in Code §132(f), as adjusted for inflation. Notwithstanding the foregoing, the limitation set forth in this Section 6.8(b) shall not be exceeded where Vouchers are distributed in advance for more than one (1) month but not more than twelve (12) months so long as the limitation is met by taking into account the monthly limit for all months for which the Vouchers are distributed. Additionally, in the case of a Voucher that is valid for more than one (1) month, the value of the Voucher shall be decided by the number of months for which it is valid for purposes of determining whether the Voucher exceeds the limitation.

(c) *Calculating Limits Where Benefits Are Provided for More Than One Month.* The Employer may reimburse Employees for Transportation Expenses incurred in more than one month, provided that the reimbursement for each month is calculated separately and does not exceed the applicable statutory monthly limit.

(d) *Valuation of Transportation Benefits.* All Transportation Benefits shall be valued in accordance with Treas. Reg. §1.132-9, Q-8, -9, -20 and -20, as applicable.

## **6.10 Establishment of Account**

The Administrator will establish and maintain an account (Transportation Account) with respect to each Participant who has elected to participate in the Plan, but it will not create a separate fund or otherwise segregate assets for this purpose. The Transportation Account will be merely a recordkeeping account with the purpose of keeping track of contributions and determining forfeitures under Section 6.10.

(a) *Crediting of Accounts.* A Participant's Transportation Account will be credited periodically during each Period of Coverage with an amount equal to the Participant's Compensation Reductions elected to be allocated to such Account.

(b) *Debiting of Accounts.* A Participant's Transportation Account will be debited during each Period of Coverage for any reimbursement of Transportation Expenses incurred or paid during the Period of Coverage.

#### **6.71 Carry-Over Rule; Forfeiture of Accounts**

(a) *Carry-Over of Unused Amounts Where Participating in Plan.* If any balance remains in the Participant's Transportation Account for a Period of Coverage after all reimbursements have been made for the Period of Coverage, and the Participant continues to participate in the Plan following such Period of Coverage, such balance shall be carried over to reimburse the Participant for Transportation Expenses incurred or paid during a subsequent Period of Coverage.

(b) *Forfeiture of Unused Amounts Where Participant Ceases to Participate and/or Does Not Cash Checks.* If any balance remains in the Participant's Transportation Account for a Period of Coverage after all reimbursements have been made for the Period of Coverage, and the Participant does not continue to participate in the Plan following such Period of Coverage (for example, because of termination of employment), such balance shall not be carried over to reimburse the Participant for Transportation Expenses incurred or paid during a subsequent Period of Coverage. The Participant shall forfeit all rights with respect to such balance. In addition, any Account benefit payments that are unclaimed (e.g., uncashed benefit checks) by the close of the Plan Year following the Period of Coverage in which the Transportation Expense was incurred or paid shall be forfeited and applied as described above.

(c) *Use of Forfeitures.* All unused amounts under this Plan shall be forfeited to the Employer.

#### **6.82 Reimbursement Procedure**

(a) *Timing.* Within a reasonable period of time not to exceed 90 days after receipt by the Administrator of a reimbursement claim from a Participant, the Employer will reimburse the Participant for the Participant's Transportation Expenses (if the Administrator approves the claim), or the Administrator will notify the Participant that his or her claim has been denied.

(b) *Claims Substantiation.* A Participant who has elected to receive Transportation Benefits for Period of Coverage may apply for reimbursement by submitting an application in writing to the Administrator in such form as the

Administrator may prescribe, but in no event later than 180 days following the date on which the Transportation Expense was incurred or paid, setting forth:

- (1) the name of the Participant incurring the Expenses;
- (2) the nature and date of the Expenses incurred or paid;
- (3) the amount of the required reimbursement;
- (4) the name of the person, organization or entity to whom the Expense was or is to be paid; and
- (5) a statement that such Expenses have not otherwise been reimbursed and are not reimbursable through any other source.

The application shall be accompanied by bills, invoices, statements from an independent third party, parking receipts, used transit passes, or other evidence of payment showing the amounts of such Transportation Expenses, together with any additional documentation that the Administrator may request. The information requested from the Employee may vary depending on the facts and circumstances surrounding the Expenses, including the method of payment and the particular transportation method used by the Employee. For example, where no third party is able to provide a statement, the Administrator may accept Employee certification. Except for the final reimbursement claim for a Period of Coverage, no claim for reimbursement may be made unless and until the aggregate claims for reimbursement is at least \$25.

(c) *Claims Denied.* For reimbursement claims that are denied, see Section 8.9.

### **6.93 Reimbursements After Termination**

When a Participant ceases to be a Participant as described under Section 3.2, the Participant's Compensation Reductions will terminate, as will the Participant's election to receive reimbursements, subject to the following: such Participant (or the Participant's estate) may claim reimbursement for any Transportation Expenses incurred or paid during the Period of Coverage prior to termination, provided that the Participant (or the Participant's estate) files a claim no later than the earliest to occur of (a) 180 days following the date on which the Transportation Expenses were incurred or paid, and (b) 90 days after the Participant ceases to be a Participant. Amounts remaining in the Employee's Transportation Account shall be forfeited in accordance with Section 6.10. The value of transit passes provided to an Employee with respect to a month in which the individual is not an Employee is included in the Employee's wages for income tax purposes pursuant to Treas. Reg. §1.132-9, Q/A-9.

## **ARTICLE VII**

## **RECORDKEEPING AND ADMINISTRATION**

### **7.1 Administrator**

The administration of this Plan shall be under the supervision of the Administrator. It is the principal duty of the Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan.

### **7.2 Powers of the Administrator**

The Administrator shall have such duties and powers as it considers necessary or appropriate to discharge its duties. It shall have the exclusive right to interpret the Plan and to decide all matters there under, and all determinations of the Administrator with respect to any matter hereunder shall be conclusive and binding on all persons. Without limiting the generality of the foregoing, the Administrator shall have the following discretionary authority:

(a) to construe and interpret this Plan, including all possible ambiguities, inconsistencies and omissions in the Plan and related documents, and to decide all questions of fact, questions relating to eligibility and participation, and questions of benefits under this Plan;

(b) to prescribe procedures to be followed and the forms to be used by Employees and Participants to make elections pursuant to this Plan;

(c) to prepare and distribute information explaining this Plan and the benefits under this Plan in such manner as the Administrator determines to be appropriate;

(d) to request and receive from all Employees and Participants such information as the Administrator shall from time to time determine to be necessary for the proper administration of this Plan;

(e) to furnish each Employee and Participant with such reports with respect to the administration of this Plan as the Administrator determines to be reasonable and appropriate, including appropriate statements setting forth the amounts by which a Participant's Compensation has been reduced in order to provide benefits under the Plan;

(f) to receive, review and keep on file such reports and information concerning the benefits covered by this Plan as the Administrator determines from time to time to be necessary and proper;

(g) to appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and benefit consultants;

(h) to sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan; and

(i) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

### **7.3 Reliance on Participant, Tables, etc.**

The Administrator may rely upon the direction, information or election of a Participant as being proper under the Plan and shall not be responsible for any act or failure to act because of a direction or lack of direction by a Participant. The Administrator will also be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, attorneys, or other experts employed or engaged by the Administrator.

### **7.4 Provision for Third-Party Plan Service Providers**

The Administrator may employ the services of such persons as it may deem necessary or desirable in connection with the operation of the Plan. Unless otherwise provided in the service agreement, obligations under this Plan shall remain the obligation of the Employer.

### **7.5 Liability**

To the extent permitted by law, the Administrator shall not incur any liability for any acts or for failure to act except for its own willful misconduct or willful breach of this Plan.

### **7.6 Inability to Locate Payee**

If the Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participant or other person after reasonable efforts have been made to identify or locate such person, then such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited following a reasonable time after the date any such payment first became due.

### **7.7 Effect of Mistake**

In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the account of any Participant, or the amount of benefits paid to or to be paid to a Participant or other person, the Administrator shall, to the extent it deems possible, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as it will in its judgment accord to such

Participant or other person the credits to the account or distributions to which he or she is properly entitled under the Plan. Such action by the Administrator may include withholding of any amounts due to the Plan or the Employer from Compensation paid by the Employer.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

#### **8.1 Expenses**

All reasonable expenses incurred or paid in administering the Plan may be paid by the Employer.

#### **8.2 No Contract of Employment**

Nothing herein contained is intended to be or shall be construed as constituting a contract or other arrangement between any Employee and the Employer to the effect that such Employee will be employed for any specific period of time.

#### **8.3 Amendment and Termination**

This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Employer may amend or terminate all or any part of this Plan at any time by the appropriate representatives of the Employer, and any such amendment or termination will automatically apply to Related Employers that are participating in this Plan.

#### **8.4 Governing Law**

This Plan shall be construed, administered and enforced according to the laws of the state of the Employer's principal business location as specified in the Adoption Agreement, to the extent not superseded by the Code or any other federal law.

#### **8.5 Code Compliance**

It is intended that this Plan meet all applicable requirements of the Code, and of all regulations issued there under. This Plan shall be construed, operated and administered accordingly, and in the event of any conflict between any part, clause or provision of this Plan and the Code, the provisions of the Code shall be deemed controlling, and any conflicting part, clause or provision of this Plan shall be deemed superseded to the extent of the conflict.

#### **8.6 No Guarantee of Tax Consequences**

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participant's gross income for federal, state or local income tax

purposes. It shall be the obligation of each Participant to determine whether each payment under this Plan is excludable from the Participant's gross income for federal, state and local income tax purposes, and to notify the Administrator if the Participant has any reason to believe that such payment is not so excludable.

### **8.7 Indemnification of Employer**

If any Participant receives one or more payments or reimbursements under Article VI that are not for Transportation Expenses, such Participant shall indemnify and reimburse the Employer for any liability that it may incur for failure to withhold federal income taxes, Social Security taxes, or other taxes from such payments or reimbursements.

### **8.8 Non-Assignability of Rights**

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the Participant by assignment or any other method and shall not be subject to claims by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to the extent as required by law.

### **8.9 Procedure If Benefits Are Denied Under This Plan**

If a claim for reimbursement under this Plan is wholly or partially denied, a written notice of adverse benefit determination shall be furnished to the claimant within a reasonable period of time, not to exceed 90 days after receipt of the claim by the Administrator. Upon receipt of an adverse benefit determination, the claimant may, within 60 days appeal in writing the denial to the Administrator (seeking reconsideration of the denial). This appeal step is a prerequisite to pursuing any other avenues of relief.

### **8.10 Headings**

The headings of the various Articles and Sections (but not subsections) are inserted for convenience of reference and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.

### **8.11 Plan Provisions Controlling**

In the event that the terms or provisions of any summary or description of this Plan, or of any other instrument, are in any construction interpreted as being in conflict with the provisions of this Plan as set forth in this document, the provisions of this Plan shall be controlling.

### **8.12 Severability**

Should any part of this Plan subsequently be invalidated by a court of competent jurisdiction, the remainder of the Plan shall be given effect to the maximum extent possible.



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