

ABC CORPORATION, INC.

DEFERRED COMPENSATION PLAN

Effective as of _____, _____

This sample is provided for general information purposes. Deferral.com does not practice law or render legal, tax or investment advice. No plan should be adopted without review and advice of legal counsel and other professional advisers familiar with the employer's business, facts and circumstances, as affected by Section 409A of the Internal Revenue Code and other applicable law.

NOTE: This Sample Plan was prepared after enactment of new Section 409A of the Internal Revenue Code. Interpretative regulations by the Secretary of the Treasury are expected to affect how Section 409A will be construed and applied. Any plan should be reviewed by counsel against the most recent regulatory releases and rulings available under new Section 409A.

ABC CORPORATION, INC.

DEFERRED COMPENSATION PLAN

Effective as of _____, _____

TABLE OF CONTENTS

ARTICLE 1

DEFINITIONS

ARTICLE 2

ELIGIBILITY AND PARTICIPATION

- 2.1 SELECTION
- 2.2 ENROLLMENT
- 2.3 ELIGIBILITY

ARTICLE 3

CONTRIBUTIONS AND CREDITS

- 3.1 MINIMUM DEFERRAL
- 3.2 SHORT PLAN YEAR
- 3.3 MAXIMUM DEFERRAL
- 3.4 ELECTION TO DEFER
 - 3.4(a) FIRST PLAN YEAR
 - 3.4(b) SUBSEQUENT PLAN YEAR
 - 3.4(c) PERFORMANCE-BASED COMPENSATION
- 3.5 WITHHOLDING OF ANNUAL DEFERRAL AMOUNTS
- 3.6 ANNUAL COMPANY MATCHING AMOUNT

ARTICLE 4

ALLOCATION OF FUNDS

- 4.1 CREDITING/DEBITING OF ACCOUNT BALANCES
- 4.2 ELECTION OF INVESTMENT OPTIONS
- 4.3 PROPORTIONATE ALLOCATION
- 4.4 CREDITING OR DEBITING METHOD
- 4.5 NO ACTUAL INVESTMENT

ARTICLE 5

VESTING

- 5.1 VESTING OF BENEFITS

ARTICLE 6

DISTRIBUTION OF BENEFITS

- 6.1 RETIREMENT BENEFIT
- 6.2 INSTALLMENT PAYMENTS
- 6.3 ACCELERATED PAYMENTS
- 6.4 DISABILITY RETIREMENT BENEFITS
- 6.5 DEATH BENEFIT PRIOR TO COMMENCEMENT OF RETIREMENT BENEFITS
- 6.6 DEATH BENEFIT AFTER COMMENCEMENT OF RETIREMENT BENEFITS
- 6.7 TERMINATION BENEFITS

ARTICLE 7

BENEFICIARY DESIGNATION

- 7.1 BENEFICIARY
- 7.2 BENEFICIARY DESIGNATION; CHANGE; SPOUSAL

- CONSENT
- 7.3 ACKNOWLEDGEMENT
- 7.4 NO BENEFICIARY DESIGNATION
- 7.5 DOUBT AS TO BENEFICIARY
- 7.6 DISCHARGE OF OBLIGATION

ARTICLE 8

HARDSHIP DISTRIBUTIONS

- 8.1 APPLICATION OF HARDSHIP DISTRIBUTION
- 8.2 AMOUNT OF DISTRIBUTION
- 8.3 RULES ADOPTED BY PLAN ADMINISTRATOR
- 8.4 LIMIT ON NUMBER OF HARDSHIP DISTRIBUTIONS

ARTICLE 9

ADMINISTRATION

- 9.1 ADMINISTRATIVE AUTHORITY
- 9.2 INFORMATION FROM COMPANY
- 9.3 INVESTMENTS

ARTICLE 10

CLAIMS PROCEDURE

- 10.1 CLAIMS PROCEDURE
- 10.2 CLAIM DECISION
- 10.3 REQUEST FOR REVIEW
- 10.4 REVIEW OF DECISION

ARTICLE 11

MISCELLANEOUS

- 11.1 NO TRUST CREATED
 - 11.2 BENEFITS PAYABLE ONLY FROM GENERAL CORPORATE ASSETS (UNSECURED GENERAL CREDITOR STATUS OF PARTICIPANT)
 - 11.3 CAPTIONS
 - 11.4 FURNISHING INFORMATION
 - 11.5 NO CONTRACT OF EMPLOYMENT
 - 11.6 BENEFITS NOT TRANSFERABLE
 - 11.7 SUCCESSORS
 - 11.8 SPOUSE'S INTEREST
 - 11.9 LEGAL FEES TO ENFORCE RIGHTS AFTER CHANGE IN CONTROL
 - 11.10 AMENDMENT
 - 11.11 NOTICE
 - 11.12 FACILITY OF PAYMENT
 - 11.13 GOVERNING LAW
-

ABC CORPORATION, INC.

DEFERRED COMPENSATION PLAN

This sample plan is provided for general information purposes. Deferral.com does not practice law or render legal, tax or investment advice. No plan should be adopted without review and advice of legal counsel and other professional advisers familiar with the employer's business, facts and circumstances, as affected by Section 409A of the Internal Revenue Code and other applicable law.

NOTE: This Sample Plan was prepared after enactment of new Section 409A of the Internal Revenue Code. Interpretative regulations by the Secretary of the Treasury are expected to affect how Section 409A will be construed and applied. Any plan should be reviewed by counsel against the most recent regulatory releases and rulings available under new Section 409A.

Preamble

This plan, which shall be known as the ABC Corporation, Inc. Deferred Compensation Plan (the "Plan"), is adopted as of the ____ day of _____, 200__, by ABC Corporation, Inc., a _____ corporation with principal offices and place of business in the State of _____ (the "Company"). The Company intends that the Plan shall at all times be administered and interpreted in such a manner as to constitute an unfunded Plan for a select group of management and highly compensated employees who contribute materially to the continued growth of the Company, so as to qualify for all available exemptions from the provisions of Title I of ERISA.

ARTICLE 1 DEFINITIONS

Defined Terms. Certain words and phrases are defined when first used in later paragraphs of this Plan. In addition, the following words and phrases when used herein, unless the context clearly requires otherwise, shall have the following respective meanings:

1.1 **Account Balance.** Credits on the records of the Company equal to the sum of (i) the Deferral Account balance and (ii) the Company Matching Account balance. The Account Balance, shall be a bookkeeping entry only and shall be utilized solely as a measurement and determination of the amounts to be paid to a Participant, or his or her designated Beneficiary, pursuant to this Plan.

1.2 **Affiliate.** Any corporation, partnership, joint venture, association, or similar organization or entity, which is a member of a controlled group of companies which include; or which is under common control with the Company under section 414 of the Code and which has duly adopted the Plan.

1.3 **Annual Bonus.** Any compensation, in addition to Base Annual Salary relating to services performed during any calendar year, whether or not paid in such calendar year or included on the Federal Income Tax Form W-2 for such calendar year, payable to a Participant as an employee under the Company's annual bonus and cash incentive plans.

1.4 **Annual Company Matching Amount.** The amount for any one Plan Year, determined in accordance with Section 3.6.

1.5 **Annual Deferral Amount.** That portion of a Participant's Base Annual Salary and Annual Bonus that a Participant elects to have, and is deferred, in accordance with Section 3, for any one Plan Year. In the event of a Participant's Retirement, Disability, death or a Termination of Employment prior to the end of a Plan Year, such year's Annual Deferral Amount shall be the actual amount withheld prior to such event.

1.6 **Base Annual Salary.** Total annual salary and commissions relating to services performed during any Calendar Year, whether or not paid in such Calendar Year or included on the Federal Income Tax Form W-2 for such Calendar Year, exclusive of year-end bonuses.

1.7 **Beneficiary.** One or more persons, trusts, estates, or other entities, designated in accordance with Section 7 that are entitled to receive benefits under this Plan upon the death of a Participant.

1.8 **Beneficiary Designation Form.** The form established from time to time by the Company that a Participant completes, signs and returns to the Company to designate one or more Beneficiaries.

1.9 **Calendar Year.** January 1 to December 31.

1.10 **Change in Control.** A change in the ownership or control of the Company, or of a substantial portion of the assets of the Company, to the extent provided or allowed by the Secretary of the Treasury for purposes of Section 409A.

[Drafting Note: This sample plan uses the defined term "Change in Control" only for purposes of addressing certain plan enforcement rights. Section 409A limits distributions for changes in control "to the extent provided" by the Secretary of the Treasury, and the relevant Congressional Report calls for regulations that would provide something more restrictive than what currently is allowed for golden parachute purposes under Code section 280G. Notice 2005-1 provides a definition covering changes in stock ownership, changes in effective (i.e., voting) control and changes in asset ownership. Not all three must be included, but any that are must conform to the requirements of the Notice (and ensuing regulations).]

1.11 **Code.** The Internal Revenue Code of 1986, as the same may be amended from time to time.

1.12 **Company Matching Account.** The sum of (i) all of the Participant's Annual Company Matching Amounts, plus (ii) amounts credited in accordance with all the applicable crediting provisions of this Plan that relate to the Participant's Company Matching Account, less (iii) all distributions made to the Participant or his or her Beneficiary pursuant to this Plan that relate to the Participant's Company Matching Account.

1.13 **Claimant.** Shall have the same meaning set forth in Section 10.1.

1.14 **Day.** A calendar day or any part thereof.

1.15 **Deferral Account.** The sum of (i) all of a Participant's Annual Deferral Amounts, plus (ii) amounts credited in accordance with all the applicable

crediting provisions of this Plan that relate to the Participant's Deferral Account, less (iii) all distributions made to the Participant or his or her Beneficiary pursuant to this Plan that relate to the Participant's Deferral Account.

1.16 **Disability.** An inability 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 12 months, or the receipt of income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the Company 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 12 months, all as determined by the Plan Administrator in accordance with Section 409A.

1.17 **Disability Benefit.** The benefit set forth in Section 6.4.

1.18 **Election of Deferral Agreement.** A written notice filed by a Participant with the Plan Administrator in substantially the form attached hereto as Exhibit B, as the same may be amended from time to time, specifying the amount of the Participant's Base Annual Salary and/or Annual Bonus to be deferred.

1.19 **Eligible Employee.** Any employee of the Company or an Affiliate who is selected to participate herein in accordance with the provisions of Section 2 hereof, and is one of a select group of management and highly compensated employees.

1.20 **ERISA.** The Employee Retirement Security Act of 1974, as may be amended from time to time.

1.21 **First Plan Year.** The period beginning _____, 200__ and ending December 31, 200__.

1.22 **Investment Elections Agreement.** A written notice filed by a Participant with the Plan Administrator in substantially the form attached hereto as Exhibit C, as the same may be amended from time to time, specifying the allocation of the Participant's Annual Deferral Amount and the Annual Company

Matching Amount that is to be deferred under the Plan among the investment options provided under the Plan.

1.23 **Normal Retirement Date.** The date the Participant attains 65 years of age.

1.24 **Participant.** Any Eligible Employee (i) who is selected to participate in the Plan, (ii) who elects to participate in the Plan, (iii) who signs a Participation Agreement, an Election of Deferral Agreement, an Investment Elections Agreement, and a Beneficiary Designation Form, (iv) whose signed Participation Agreement, Election of Deferral Agreement, Investment Elections Agreement, and Beneficiary Designation Form are accepted by the Plan Administrator, and (v) who commences participation in the Plan. A spouse or former spouse of a Participant shall not be treated as a Participant in the Plan, even if he or she has an interest in the Participant's benefits under the Plan as a result of applicable law or property settlements resulting from legal separation or divorce.

1.25 **Participation Agreement.** A written agreement in substantially the form of Exhibit A hereto, as the same may be amended from time to time, which is entered into by and between the Company and a Participant.

1.26 **Permissible Change Election.** An election to delay payment of any benefit under the Plan (and if and to the extent the Plan now or hereafter allows elections to be made to change the form of any payment of a benefit, any such election to change the form of a payment) that:

- a) does not take effect until at least 12 months after the date on which such election to delay or change is made;
- b) in the case of any election to delay a payment (other than for payments that are made with respect to, and following, the Participant's death or Disability or an Unforeseeable Emergency), postpones such payment for a period of not less than 5 years from the date such payment otherwise would have been made; and
- c) in the case of an election to delay a payment pursuant to an existing schedule, is made not less than 12 months prior to the first

payment in such schedule (unless, for purposes of this clause (iii), such schedule pertains to and follows the Participant's death or Disability, a Change in Control or an Unforeseeable Emergency).

[Drafting Note: This Sample Plan only provides for payments that are tied to other distribution events permitted under Section 409A. Despite that, it may be advisable to keep clause (c) in the definition of Permissible Change Election in case of future amendments adding separate calendar-specific payment schedules, for which clause (c) would be needed to conform to Section 409A Requirements.]

1.27 **Plan.** This Plan shall have the meaning as provided for in the preamble.

1.28 **Plan Administrator.** The Company or its designee.

1.29 **Plan Year.** The Calendar Year.

1.30 **Retirement.** The severing of an employee's employment as a result of such employee having reached the age specified for the Normal Retirement Date under the Plan.

1.31 **Retirement Benefit.** The benefit set forth in Section 6.1.

1.32 **Section 409A.** Section 409A of the Code, as the same may be amended from time to time, and any successor statute to such section of the Code. References to Section 409A or any requirement under Section 409A, as the same may be interpreted, construed or applied to this Plan at any particular time, shall be deemed to mean and include, to the extent then applicable and then in force and effect (but not to the extent overruled, limited or superseded), published rulings and similar announcements issued by the Internal Revenue Service under or interpreting Section 409A, regulations issued by the Secretary of the Treasury under or interpreting Section 409A, decisions by any court of competent jurisdiction involving a Participant or a beneficiary and any closing agreement made under section 7121 of the Code that is approved by the Internal Revenue Service and involves a Participant, all as determined by the Plan Administrator in good faith, which determination may (but shall not be required

to) be made in reliance on the advise of such tax counsel or other tax professional(s) with whom the Plan Administrator from time to time may elect to consult with respect to any such matter.

1.33 **Section 409A Requirement.** Any requirement under Section 409A, the failure of which would result in the imposition or accrual of interest or additional taxes under Section 409A on or with respect to any income intended to be deferred under the Plan.

1.34 **Specified Employee.** Key employees who are “Specified Employees” within the meaning of Section 409A (as of the date of adoption of this Plan, senior officers who make \$130,000 or more annually (limited to the top 3 such officers or, if greater (up to a maximum of 50), the top 10%); 1 percent owners whose compensation is \$150,000 or more annually; and 5 percent owners regardless of their compensation).

1.35 **Termination Benefit.** The benefit set forth in Section 6.7.

1.36 **Termination of Employment.** The severing of employment with the Company, voluntary or involuntary, for any reason other than Retirement, Disability, death or an authorized leave of absence.

1.37 **Unforeseeable Emergency.** A severe financial hardship to a Participant resulting from an illness or accident of the Participant, the Participant’s spouse or a dependent (within the meaning of section 152(a) of the Code) 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, or such other circumstances or events, if any, that are included within the meaning of “unforeseeable emergency” under Section 409A.

It is intended that the Plan shall conform with all applicable Section 409A Requirements. Accordingly, in interpreting, construing or applying any of the foregoing definitions or any of the terms, conditions or provisions of the Plan, the same shall be construed in such manner as shall meet and comply with Section

409A Requirements then applicable thereto, and in the event of any inconsistency with any Section 409A Requirements, the same shall be reformed so as to meet such Section 409A Requirements.

ARTICLE 2 ELIGIBILITY AND PARTICIPATION

2.1 **Selection.** Participation in the Plan shall be limited to any Eligible Employee, as determined by the Plan Administrator in its sole discretion.

2.2 **Enrollment.** As a condition to participate, each Eligible Employee shall complete, execute, and return to the Plan Administrator a Participation Agreement, an Election Form, and Beneficiary Designation Form, all within 30 days after he or she is selected to participate in the Plan. In addition, the Plan Administrator shall establish from time to time such other enrollment requirements as it determines in its sole discretion are necessary, convenient or appropriate to carry out any of the purposes or intent of the Plan or to better assure the Plan's compliance with Section 409A Requirements.

2.3 **Eligibility.** Provided an Eligible Employee has met all enrollment requirements set forth in this Plan and required by the Plan Administrator, including returning all required documents to the Plan Administrator within the specified time period, an Eligible Employee shall commence participation in the Plan on the first day of the month following the month in which the Eligible Employee completes all enrollment requirements. If an Eligible Employee fails to meet all such requirements within the period required in accordance with Section 2.2, that Eligible Employee shall not be eligible to participate in the Plan until the first day of the Plan Year following the delivery to and acceptance by the Plan Administrator of the required documents. Once an Eligible Employee becomes a Participant, he or she shall remain a Participant until his or her Termination of Employment with the Company or an Affiliate for any reason other than Disability, Retirement, or death.

ARTICLE 3
CONTRIBUTIONS AND CREDITS

3.1 **Minimum Deferral.** For each Plan Year, a Participant shall elect to defer, a minimum amount of 1% of Base Annual Salary and/or Annual Bonus as his or her Annual Deferral Amount.

3.2 **Short Plan Year.** Notwithstanding the foregoing, if a Participant first becomes a Participant after the first day of a Plan Year, or in the case of the first Plan Year of the Plan itself, the Annual Deferral Amount shall be an amount equal to the minimum amount set forth in accordance with Section 3.1, multiplied by a fraction, the numerator of which is the number of completed months remaining in the Plan Year and the denominator of which is 12.

3.3 **Maximum Deferral.** For each Plan Year, a Participant may elect to defer, a maximum amount of \$_____ or _____% of Base Annual Salary and/or Annual Bonus as his or her Annual Deferral Amount.

Notwithstanding the foregoing, if a Participant first becomes a Participant after the first day of a Plan Year, or in the case of the first Plan Year of the Plan itself, the maximum Annual Deferral Amount, with respect to Base Annual Salary and Annual Bonus shall be limited to the amount of Compensation not yet earned by the Participant as of the date the Participant submits a Participation Agreement and Election Form to the Plan Administrator for acceptance.

3.4 **Election to Defer.**

- a) **First Plan Year.** In connection with a Participant's commencement of participation in the Plan, the Participant shall make an irrevocable deferral election for the Plan Year in which the Participant commences participation in the Plan, along with such other elections, as the Plan

Administrator deems necessary or desirable under the Plan. For these elections to be valid, the Election Form must be completed and signed by the Participant, timely delivered to the Plan Administrator in accordance with Section 2.2 above and accepted by the Plan Administrator.

b) **Subsequent Plan Years.** For each succeeding Plan Year, an irrevocable deferral election for that Plan Year, and such other elections as the Plan Administrator deems necessary or desirable under the Plan, shall be made by timely delivering to the Plan Administrator, in accordance with its rules and procedures, before the end of the Plan Year preceding the Plan Year for which the election is made, a new Election of Deferral Agreement.

c) **Performance-Based Compensation.** In the case of any performance-based compensation (within the meaning of Section 409A) based on services performed over a period of at least 12 months, such election may be made no later than 6 months before the end of such period.

3.5 **Withholding of Annual Deferral Amounts.** For each Plan Year, the portion of the Base Annual Salary portion of the Annual Deferral Amount shall be withheld from each regularly scheduled Base Annual Salary payroll in equal amounts, as adjusted from time to time for increases and decreases in Base Annual Salary. The Annual Bonus portion of the Annual Deferral Amount shall be withheld at the time the Annual Bonus are or otherwise would be paid to the Participant, whether or not this occurs during the Plan Year itself.

3.6 **Annual Company Matching Amount.** A Participant's Annual Company Matching Amount for any Plan Year shall be equal to 1% of the Participant's Annual Deferral Amount for such Plan Year. If a Participant is not employed by the Company as of the last day of a Plan Year other than by reason of his or her Retirement or death, the Annual Company Matching Amount for such Plan Year shall be zero. In the event of Retirement or death, a Participant shall be credited with the Annual Company Matching Amount for the Plan Year in which he or she retires or dies.

ARTICLE 4 ALLOCATION OF FUNDS

4.1 **Crediting/Debiting of Account Balances.** In accordance with, and subject to, the rules and procedures that are established from time to time by the Plan Administrator, in its sole discretion, amounts shall be credited or debited to a Participant's Account Balance in accordance with the following rules:

4.2 **Election of Investment Options.** A Participant in connection with his or her initial deferral election in accordance with Section 3.4 above, shall elect, on the Investment Election Form, one or more Investment Option(s) to be used to determine the additional amounts to be credited to his or her Account Balance for the first calendar quarter or portion thereof in which the Participant commences participation in the Plan and continuing thereafter for each subsequent calendar quarter in which the Participant participates in the Plan, unless changed in accordance with the next sentence. Commencing with the first calendar quarter that follows the Participant's commencement of participation in the Plan and continuing thereafter for each subsequent calendar quarter in which the Participant participates in the Plan, no later than the next to last business day of the calendar quarter the Participant may (but is not required to) elect, by submitting an Investment Election Agreement to the Plan Administrator, to add or delete one or more Investment Option(s) to be used to determine the additional

amounts to be credited to his or her Account Balance, or to change the portion of his or her Account Balance allocated to each previously or newly elected Investment Option. If an election is made in accordance with the previous sentence, it shall apply to the next calendar quarter and continue thereafter for each subsequent calendar quarter in which a Participant participates in the Plan, unless changed in accordance with the previous sentence.

4.3 **Proportionate Allocation.** In making any election described in Section 3.4 above, the Participant shall specify on the Investment Election Agreement, in increments of ____ percentage points (___%), the percentage of his or her Account Balance to be allocated to a Investment Option (as if the Participant was making an investment in that Investment Option with that portion of his or her Account Balance).

4.4 **Crediting or Debiting Method.** The Participant's Account Balance will be credited or debited with the increase or decrease on a daily basis based on the performance of each Investment Option selected by the Participant, as though the portion of the Participant's Annual Deferral Amount and Annual Company Matching Amount was actual invested in the Investment Options selected by the Participant, in the percentages applicable to such calendar quarter on each date the Participant's Company Matching Account and the Participant's Deferral Account are credited or the first business day thereafter.

4.5 **No Actual Investment.** Notwithstanding any other provision of this Plan that may be interpreted to the contrary, the Investment Options are to be used for measurement purposes only, and a Participant's election of any Investment Option(s), the allocation to his or her Account Balance thereto, the calculation of additional amounts and the crediting or debiting of such amounts to a Participant's Account Balance shall not be considered or construed in any manner as an actual investment of his or her Account Balance in any such Investment Option. In the event that the Company, in its own discretion, decides to invest funds in any or all of the Investment Options, no Participant shall have any rights in or to such investment themselves. Without limiting the foregoing, a

Participant's Account Balance shall at all times be a bookkeeping entry only and shall not represent any investment made on his or her behalf by the Company; the Participant shall at all times remain an unsecured creditor of the Company.

ARTICLE 5 VESTING

5.1 **Vesting of Benefits.** The Participant's Account balance attributable to his or her Deferral Accounts and his or her Company Matching Account and investment earnings or losses thereon, will always be 100% vested.

ARTICLE 6 DISTRIBUTION OF BENEFITS

6.1 **Retirement Benefit.** From and after the Retirement of the Participant from the service of the Company or an Affiliate (or, in the case of Specified Employees, commencing 6 months after such retirement), the Company shall thereafter pay to the Participant his or her Account Balance. Such benefit shall be payable in annual installments for a period not to exceed (12) calendar years, as set forth in the Participant's original election. Such payments shall commence as of the first day of the first month following the Participant's retirement (or, in the case of Specified Employees, commencing 6 months after such retirement).

6.2 **Installment Payments.** The amount of each installment to be paid during the Calendar Year in which payment begins shall be equal to (i) the total amount of the Participant's Account Balance as of his or her Normal Retirement Date; divided by (ii) the total number of installment payments to be made. As of January 1 of each subsequent Calendar Year during the benefit payment period, the amount of each installment to be paid during such Calendar Year shall be recalculated, and shall be equal to (i) the remaining amount payable to the

Participant as of such January 1; divided by (ii) the number of installment payments to be made in or after such subsequent Calendar Year. The final installment payment shall be equal to the remaining amount payable to the Participant. In no event shall the amount of any installment payment exceed the remaining amount payable to the Participant. The number of installments shall be selected by the Participant upon enrollment in the Plan (and in the absence of such an election, the Participant shall be deemed to have elected to have his or her Account Balance paid in a ____ annual installment[s]). No election may be made to delay or change the form of payment of any installment, except for a Permissible Change Election.

6.3 **Accelerated Payments.** The time or schedule for payment of any distribution under the Plan may not be accelerated, except as set forth in this Plan and permitted under applicable Section 409A Requirements.

6.4 **Disability Retirement Benefit.** The Participant shall be entitled to receive payments hereunder prior to his or her Normal Retirement Date if it is determined by a duly licensed physician selected by the Company that the Participant has suffered or incurred a Disability. If the Participant's employment is terminated as a result of Disability, the benefit payable hereunder shall be the same amount as would have been payable as a Retirement Benefit had the Participant attained his or her Normal Retirement Date on the date of the physician's disability determination. The Disability Retirement Benefit payable under this Section shall be distributed in accordance with the provisions of Section 6.2 as if the Participant had retired on the date of the physician's disability determination.

6.5 **Death Benefit Prior to Commencement of Retirement Benefits.** In the event of the Participant's death while in the employment of the Company or an Affiliate and prior to commencement of benefit payments, the Company shall pay the Account Balance as of the date of his or her death. The death benefit payable under this Section shall be distributed to the Participant's beneficiary in accordance with the provisions of Section 6.1 and 6.2 as if the Participant had

retired on the date of his or her death, in accordance with the last Beneficiary designation received by the Plan Administrator from the Participant prior to his or her death. If no such designation has been received by the Corporation, such payments shall be made to the Participant's surviving legal spouse. If such spouse dies before receiving all payments to which he or she is entitled hereunder, then payments shall continue, for the remainder of the payment period, to such person or persons, including his or her estate, as he or she may designate in the last Beneficiary designation received by the Company from such spouse prior to his or her death. If the Participant is not survived by a legal spouse, or if such spouse shall fail to so appoint, the said payments shall be made to the then living children of the Participant, if any, in equal shares. If there are no surviving children, the payments will be made to the estate of the later to die of the Participant and (if any) his or her legal spouse. Such payments shall commence as of the first day of the first month following the Participant's death.

6.6 Death Benefit After Commencement of Retirement Benefits. In the event of the Participant's death after the commencement of benefit payments, but prior to the completion of all such payments due and owing hereunder, the Company shall continue to make such payments, in installments over the remainder of the period specified in Section 6.2 hereof that would have been applicable to the Participant had he or she survived. Such continuing payments shall be made to the Participant's designated beneficiary in accordance with the last such designation received by the Plan Administrator from the Participant prior to his or her death. If no such designation has been received by the Plan Administrator, such payments shall be made to the Participant's surviving legal spouse. If such spouse dies before receiving all payments to which he or she is entitled hereunder, then payments shall continue, for the remainder of the payment period, to such person or persons, including his or her estate, as he or she may designate in the last beneficiary designation received by the Company from such spouse prior to his or her death. If the Participant is not survived by a legal spouse, or is such spouse shall fail to so appoint, then said payments shall

be made to the then living children of the Participant, if any, in equal shares. If there are no surviving children, the payments will be made to the estate of the later to die of the Participant and (if any) his or her legal spouse. Such continuing payments shall commence as of the first day of the first month following the Participant's death.

6.7 Termination Benefits. Subject to Section 409A Requirements (including without limitation any regulations of the Secretary of the Treasury that pertain to separation from service and any requirements as to timing as it pertains to Specified Employees), in the event of the Participant's termination of employment either voluntarily or involuntarily with the Company or an Affiliate, for any reason other than Disability, Retirement or death, the Corporation shall pay to the Participant a Termination Benefit in a lump sum. The amount payable shall be equal to the portion of the Account Balance attributable to the Participant's Deferral Account and the Participant's Company Matching. Such payment shall be made as of the first day of the first month following the Participant's termination (or, in the case of Specified Employees, commencing 6 months after such retirement).

ARTICLE 7

Beneficiary Designation

7.1 Beneficiary. Each Participant shall have the right, at any time, to designate his or her Beneficiary(ies) (both primary as well as contingent) to receive any benefits payable under the Plan to a beneficiary upon the death of a Participant. The Beneficiary designated under this Plan may be the same as or different from the Beneficiary designation under any other plan of the Company in which the Participant participates.

7.2 Beneficiary Designation; Change; Spousal Consent. A Participant shall designate his or her Beneficiary by completing and signing the Beneficiary Designation Form as attached hereto as **Exhibit D**, as the same may be

amended from time to time, and returning it to the Plan Administrator. A Participant shall have the right to change a Beneficiary by completing, signing and otherwise complying with the terms of the Beneficiary Designation Form and the Plan Administrator's rules and procedures, as in effect from time to time. If the Participant names someone other than his or her spouse as a Beneficiary, then to the extent required by applicable law, a spousal consent, in the form designated by the Plan Administrator, must be signed by that Participant's spouse and returned to the Plan Administrator. The Plan Administrator shall be entitled to rely on the last Beneficiary Designation Form filed by the Participant and accepted by the Plan Administrator prior to his or her death.

7.3 **Acknowledgement.** No designation or change in designation of a Beneficiary shall be effective until received and acknowledged in writing by the Plan Administrator.

7.4 **No Beneficiary Designation.** If a Participant fails to designate a Beneficiary as provided in Sections 7.1, 7.2 and 7.3 above or, if all designated Beneficiaries predecease the Participant or die prior to complete distribution of the Participant's benefits, then the Participant's designated Beneficiary shall be deemed to be his or her surviving spouse. If the Participant has no surviving spouse, the benefits remaining under the Plan to be paid to a Beneficiary shall be payable to the executor or personal representative of the Participant's estate.

7.5 **Doubt as to Beneficiary.** If the Plan Administrator has any doubt as to the proper Beneficiary to receive payments pursuant to this Plan, the Plan Administrator shall have the right, exercisable in its discretion, to cause the Participant's employer to withhold such payments until this matter is resolved to the Plan Administrator's satisfaction.

7.6 **Discharge of Obligation.** The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge the Company and the Plan Administrator from all further obligations under the Plan with respect to the Participant, and that Participant's Plan Agreement shall terminate upon such full payment of benefits.

ARTICLE 8

Hardship Distribution

8.1 **Application for Hardship Distribution.** In the event that any Participant incurs an Unforeseeable Emergency, such Participant may apply to the Plan Administrator for a hardship distribution. After the Participant's death, his or her beneficiary may apply for a hardship distribution, and references herein to the Participant shall include the beneficiary. The Plan Administrator shall consider the circumstances of each such case, and the best interests of the Participant and his or her family, and shall have the right, in its sole discretion, to allow such application, in full or in part, or to refuse to make a Hardship Distribution.

8.2 **Amount of Distribution.** In no event shall the amount of any hardship distribution exceed the lesser of: (a) The portion of the Participant's Retirement Account attributable to his or her deferrals pursuant to Section 3.4 hereof, including investment earnings or losses thereon, or (b) the amount determined by the Plan Administrator to be necessary to alleviate the hardship, including any taxes payable by the Participant as a result of receiving such hardship distribution, and which is not reasonably available from other resources of the Participant, all in a manner consistent with any applicable Section 409A Requirements.

8.3 **Rules Adopted by Plan Administrator.** The Plan Administrator shall have the authority to adopt additional rules relating to Hardship Distributions. In administering these rules, The Plan Administrator shall act in accordance with the principle that the primary purpose of this Plan is to provide additional retirement income, not additional funds for current consumption, and that the intent of the Plan is to comply with all applicable Section 409A Requirements.

8.4 **Limit on Number of Hardship Distributions.** No Participant may receive more than one hardship distribution in any Calendar Year.

ARTICLE 9 ADMINISTRATION

9.1 **Responsibility for Administration of the Plan.** (a) The Plan Administrator shall be responsible for the management, operation and administration of the Plan. The Plan Administrator may employ others to render advice with regard to its responsibilities under this Plan. It may also allocate its responsibilities to others and may exercise any other powers necessary for the discharge of its duties. (b) The primary responsibility of the Plan Administrator is to administer the Plan for the benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Plan Administrator shall administer the Plan in accordance with its terms and shall have the power to determine all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination shall be conclusive and binding upon all persons. The Plan Administrator shall have all powers necessary or appropriate to accomplish its duties under the Plan.

9.2 **Information from Company.** The Company and each Affiliate shall supply full and timely information to the Plan Administrator on all matters as may be required properly to administer the Plan. The Plan Administrator may rely upon the correctness of all such information as is so supplied and shall have no duty or responsibility to verify such information. The Plan Administrator shall also be entitled to rely conclusively upon all tables, valuations, certifications, opinions and reports furnished by any actuary, accountant, controller, counsel or other person employed or engaged by the Plan Administrator with respect to the Plan.

9.3 **Investments.** The Plan Administrator shall determine, in its sole discretion, whether, and if so, to what extent, contributions made to the Plan on behalf of a Participant shall be invested in the funds selected by such Participant. In its discretion, the Plan Administrator may (i) hold contributions as

part of its general assets and/or (ii) invest contributions in investments other than the funds selected by such Participant.

ARTICLE 10

Claims Procedures

10.1 **Claim Procedure.** A person who believes that he or she is being denied a benefit to which he or she is entitled under the Plan (hereinafter referred to as a "Claimant") may file a written request for such benefit with the Company, setting forth his or her claim. The request must be addressed to the President of the Company at its then principal place of business.

10.2 **Claim Decision.** Upon receipt of a claim, the Company shall advise the Claimant that a reply will be forthcoming within 90 days and the Plan Administrator shall, in fact, deliver such reply within such period. The Plan Administrator may, however, extend the reply period for an additional 90 days for reasonable cause. If the claim is denied in whole or in part, the Plan Administrator shall adopt a written opinion, using language calculated to be understood by the Claimant, setting forth:

- i. The specific reason or reasons for such denial;
- ii. Specific reference to pertinent provisions of this Plan on which such denial is based;
- iii. A description of any additional material or information necessary for the Claimant to perfect his or her claim and an explanation why such material or such information is necessary;
- iv. Appropriate information as to the steps to be taken if the Claimant wishes to submit the claim for review; and
- v. The time limits for requesting a review under subsection iii and for review under subsection iv hereof.

10.3 **Request for Review.** Within 60 days after receipt by the Claimant of the written opinion described above, the Claimant may request in writing that the Company review the Plan Administrator's determination. Such request must be addressed to the Secretary of the Company at its then principal place of business. The Claimant or his or her duly authorized representative may, but need not, review the pertinent documents and submit issues and comments in writing for consideration by the Company. If the Claimant does not request a review of the determination within such 60 day period, he or she shall be barred and estopped from challenging the determination.

10.4 **Review of Decision.** Within 60 days after the Company's receipt of a request for review, it will review the Plan Administrator's determination. After considering all materials presented by the Claimant, the Company will render a written opinion, written in a manner calculated to be understood by the Claimant, setting forth the specific reasons for the decision and containing specific references to the pertinent provisions of this Plan on which the decision is based. If special circumstances require that the 60 day time period be extended, the Company will so notify the Claimant and will render the decision as soon as possible, but no later than 120 days after receipt of the request for review.

ARTICLE 11

Miscellaneous

11.1 **No Trust Created.** Nothing contained in this Plan, and no action taken pursuant to its provisions by any person shall create, or be construed to create, a trust of any kind, or a fiduciary relationship between the Company and any other person.

11.2 **Benefits Payable Only From General Corporate Assets: (Unsecured General Creditor Status of Participant).**

(a) Payments to the Participant or any Beneficiary hereunder shall be made from assets which shall continue, for all purposes, to be part of the general,

unrestricted assets of the Company no person shall have any interest in any such asset by virtue of any provision of this Plan. The Company's obligation hereunder shall be an unfunded and unsecured promise to pay money in the future. To the extent that any person acquires a right to receive payments from the Company under the provisions hereof, such right shall be no greater than the right of any unsecured general creditor of the Company; no such person shall have or acquire any legal or equitable right, interest or claim in or to any property or assets of the Company.

(b) In the event that, in its discretion, the Company purchases an insurance policy or policies insuring the life of a Participant (or any other property), to allow the Company to recover or meet the cost of providing benefits, in whole or in part, hereunder, no Participant or Beneficiary shall have any rights whatsoever therein or in the proceeds therefrom. The Company shall be the sole owner and beneficiary of any such insurance policy or property and shall possess and may exercise all incidents of ownership therein.

11.3 **Captions.** The captions of the articles, sections and paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

11.4 **Furnishing Information.** A Participant or his or her Beneficiary will cooperate with the Plan Administrator by furnishing any and all information requested by the Plan Administrator and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Plan Administrator may deem necessary.

11.5 **No Contract of Employment.** Nothing contained herein shall be construed to be a contract of employment for any term of years, nor as conferring upon the Participant the right to continue to be employed by the Company in his or her present capacity or in any capacity. It is expressly understood that this Plan relates to the payment of deferred compensation for the Participant's

services, payable after termination of his or her employment with the Company, and is not intended to be an employment contract.

11.6 **Benefits Not Transferable.** No Participant or beneficiary under this Plan shall have any power or right to transfer, assign, anticipate, hypothecate or otherwise encumber any part of all of the amounts payable hereunder. No such amounts shall be subject to seizure by any creditor of any such Participant or Beneficiary, by a proceeding at law or in equity, nor shall such amounts be transferable by operation of law in the event of bankruptcy, insolvency or death of the Participant or Beneficiary. Any such attempted assignment shall be void.

11.7 **Successors.** The provisions of this Plan shall bind and inure to the benefit of the Participant's employer and its successors and assigns and the Participant and the Participant designated Beneficiaries.

11.8 **Spouse's Interest.** The interest in the benefits hereunder of a spouse of a Participant who predeceases the Participant shall automatically pass to the Participant and shall not be transferable by such spouse in any manner, including but not limited to such spouse's will, nor shall such interest pass under the laws of intestate succession.

11.9 **Legal Fees To Enforce Rights After Change in Control.** The Company and each employer is aware that upon the occurrence of a Change in Control, the Board or the board of directors of a Participant's employer (which might then be composed of new members) or a shareholder of the Company, or any successor corporation might then cause or attempt to cause the Company, or such successor to cause the Company to institute, or may institute, litigation seeking to deny Participants the benefits intended under the Plan. In these circumstances, the purpose of the Plan could be frustrated. Accordingly, if, following a Change in Control, it should appear to any Participant that the Company or any successor corporation has failed to comply with any of its obligations under the Plan or any agreement thereunder or, if the Company or any other person takes any action to declare the Plan void or unenforceable or institute any litigation or other legal action designed to deny, diminish or to

recover from any Participant the benefits intended to be provided, then subject to any applicable Section 409A requirements, the Company and the Participant's employer irrevocably authorize such Participant to retain counsel of his or her choice at the expense of the Company and the Participant's employer (who shall be jointly and severally liable) to represent such Participant in connection with the initiation or defense of any litigation or other legal action, whether by or against the Company, the Participant's employer or any director, officer, shareholder or other person affiliated with the Company, the Participant's employer or any successor thereto in any jurisdiction.

11.10 **Amendment.** This Plan may be amended or terminated by the Company at any time, without notice to or consent of any person, pursuant to resolutions adopted by the Company. Any such amendment or termination shall take effect as of the date specified therein and, to the extent permitted by law, may have retroactive effect. However, no such amendment or termination shall reduce (i) the amount then credited to the Participant's Account Balance under Section 4. If the Plan is terminated, benefits will be distributed in accordance with Section 6, as if the termination date were the Participant's Normal Retirement Date. Any other provision of this Plan to the contrary notwithstanding, the Plan may be amended by the Company at any time, and retroactively if required to the extent that, in the opinion of the Company, such amendment shall be necessary in order to ensure that the Plan will be characterized as a plan maintained for a select group of management or highly compensated employees, as described in sections 201(2), 301(a)(3) and 401(a)(1) of ERISA, or to conform the Plan to the requirements of any applicable law, including without limitation ERISA, Section 409A and any other provision of the Code. No such amendment shall be considered prejudicial to any interest of a Participant or Beneficiary hereunder.

11.11 **Notice.** Any notice, consent or demand required or permitted to be given under the provisions of this Plan shall be in writing, and shall be signed by the party giving or making the same. If such notice, consent or demand is

mailed, it shall be sent by United States certified mail, postage prepaid, addressed to: ABC Corporation, Street, City, State, Zip. The date of such mailing shall be deemed the date of notice consent or demand. Any person may change the address to which notice is to be sent by giving notice of the change of address in the manner aforesaid.

11.12 **Facility of Payment.** If a distribution is to be made to a minor, or to a person who is otherwise incompetent, then the Plan Administrator may, in its discretion, make such distribution (i) to the legal guardian, or if none, to a parent of a minor payee with whom the payee maintains his or her residence, or (ii) to the conservator or committee or, if none, to the person having custody of an incompetent payee. Any such distribution shall fully discharge the Plan Administrator, the Company and Plan from further liability on account thereof.

11.13 **Governing Law.** The Plan and the right and obligations of all persons hereunder shall be governed by and construed in accordance with the laws of the State of _____, other than its laws regarding choice of law, to the extent that such state law is not preempted by federal law.

IN WITNESS WHEREOF, the Company has executed this Plan as of the day and year above first written.

ATTEST:

ABC Corporation, Inc.

_____, Secretary

By: _____

Title: _____