

## NTMC BOARD OF DIRECTORS REGULAR MEETING

Wednesday, July 28, 2021 | 8:00 am

To be held by Video Conference

NOTICE IS HEREBY GIVEN that the members of the North Texas Mobility Corporation (NTMC) Board of Directors will hold a Regular Meeting via video conference using Zoom. The Regular Meeting will be made available to the public at the following web address: <https://zoom.us/j/97854440223>. You may also join via telephone by dialing the following number: +1-346-248-7799; Meeting ID: 978 5444 0223

### CALL TO ORDER

### PUBLIC COMMENT

This agenda item provides an opportunity for citizens to address the Board of Directors on any agenda item(s) or other matters relating to the NTMC. Each speaker will be given a total of three (3) minutes to address any item(s). Anyone wishing to speak shall be courteous and cordial. Any person who wishes to address the Board of Directors regarding any item(s) may do so by utilizing the "raise hand" function of the Zoom meeting at this time. Citizens that are not able to connect to the Zoom meeting must email his or her public comment to [kmorris-perkins@ntmc.com](mailto:kmorris-perkins@ntmc.com) no later than 12:00 pm on Tuesday, July 27, 2021 to ensure the comment will be read. The Board of Directors are not permitted to take action on any subject raised by a speaker during Citizen Comments. However, the Board of Directors may have the item placed on a future agenda for action; refer the item to the NTMC Officers for further study or action; briefly state existing NTMC policy; or provide a brief statement of factual information in response to the inquiry.

### 1. CONSENT AGENDA

- a. Consider Approval of Minutes: June 23, 2021 – NTMC Regular Board Meeting

### 2. INFORMATIONAL REPORTS

- a. Monthly Financial Statements: FY2021 Year to Date June 2021
- b. DCTA Bus Ridership Report June 2021

3. **REGULAR AGENDA**

- a. Discuss and consider NTMC Officer Positions

*Presenters:* NTMC Officers

*Backup Information:* N/A

- b. Discussion of DCTA Service Updates & Recent Inbound Communications

*Presenters:* Nicole Recker, NTMC President

RJ Garza, General Manager

*Backup Information:* Exhibit 1 - Amalgamated Transit Union: Open Employer Disaster Response Letter dated July 9, 2021

Exhibit 2 - Amalgamated Transit Union: Response to DCTA's proposed GoZone service

- c. Consider authorizing the North Texas Mobility Corporation (NTMC) President to execute and adopt the amended Amalgamated Transit Union (ATU) National 401(k) Pension Plan.

*Presenter(s):* RJ Garza, General Manager

*Backup Information:* Memo

Exhibit 1 – ATU National 401(k) Pension Plan

- d. Consider authorizing the North Texas Mobility Corporation (NTMC) President to execute the amended Non-Operator 401(k) Plan effective October 1, 2021, and further authorizing the President to execute other necessary documents for such 401(k) Plan.

*Presenter(s):* RJ Garza, General Manager

*Backup Information:* Memo

Exhibit 1 – Amended Non-Operator 401(k) Plan

Exhibit 2 – Adopting Resolution

Exhibit 3 – Hardship Amendment

Exhibit 4 – Loan Policy

Exhibit 5 – Qualified Domestic Relations Order (QDRO) Procedure

Exhibit 6 – Trust Agreement

- e. Consider authorizing the North Texas Mobility Corporation (NTMC) President to execute the agreement between NTMC and National Benefit Services, LLC (NBS) to provide a 401(k) Plan available for NTMC Operators effective October 1, 2021.

*Presenter:* RJ Garza, General Manager

*Backup Information:* Memo

Exhibit 1 – NBS Operator 401(k) Authorization Document and Service Agreement

- f. Consider authorizing the North Texas Mobility Corporation (NTMC) President to execute the BenefitScope contract for NTMC’s 2021 Affordable Care Act (ACA) Annual Data Collection and Internal Revenue Service Reporting.

*Presenter:* RJ Garza, General Manager

*Backup Information:* Memo

Exhibit 1 – BenefitScope ACA Compliance & Reporting Proposal

- g. Presentation of General Manager’s Monthly Report

*Presenter(s):* RJ Garza, General Manager

Louise Francois, Assistant General Manager

*Backup Information:* Exhibit 1 – General Manager Report

Exhibit 2 – June 2021 Staffing Roster Report

Exhibit 3 – June 2021 Deposit Report

Exhibit 4 – NTMC COVID-19 Policy Update

- h. NTMC Staff Spotlight – George Watson, Customer Service Team Member

*Presenter:* RJ Garza, General Manager

#### 4. CONVENE EXECUTIVE SESSION

The Board may convene the Regular Board Meeting into Closed Executive Session for the following:

- a. The Board reserves the right to go into closed executive session at any time during the meeting pursuant to the Texas Government Code § 551.071(2) to seek confidential legal advice from the Corporation’s attorneys regarding any agenda item listed hereon.

*No scheduled Executive Session for this agenda.*

#### 5. RECONVENE OPEN SESSION

Reconvene and Take Necessary Action on Items Discussed during Executive Session.

6. **FUTURE BOARD MEETINGS & AGENDA ITEMS**

NTMC Officers may discuss proposed future agenda items. Board members may discuss details of future meetings and request an item(s) to be added to the next Board meeting agenda.

7. **ADJOURN**

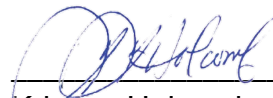
**BOARD MEMBERS:**

Dean Ueckert, Chair  
Richard Hayes, Vice Chair  
Don Combs, Sara Hensley, Raymond Suarez

**OFFICERS:**

Nicole Recker, NTMC President  
Vacant, NTMC Vice-President  
Marisa Perry, NTMC Treasurer  
Kristina Holcomb, NTMC Secretary

**CERTIFICATE** – I certify that the above agenda giving notice of meeting was posted on the bulletin board at the Corporation’s offices, which are also the offices of the Denton County Transportation Authority (DCTA), on Friday, July 23, 2021 by 5:00pm.



\_\_\_\_\_  
Kristina Holcomb  
NTMC Secretary

## NTMC BOARD OF DIRECTORS REGULAR MEETING MINUTES

Wednesday, June 23, 2021 | 8:00 am

To be held by Video Conference

### ATTENDANCE

#### **Board Members**

Chair Dean Ueckert

Vice-Chair Richard Hayes

Board Member Don Combs

Board Member Sara Hensley

Board Member Raymond Suarez

#### **Officers**

President Nicole Recker

Treasurer Marisa Perry

Secretary Kristina Holcomb

#### **Legal Counsel**

Joseph J. Gorfida, Jr.,

Nichols, Jackson, Dillard, Haggard, & Smith

### CALL TO ORDER

Chair Ueckert called the meeting to order at 8:12am. All Board Members were present constituting a quorum.

### PUBLIC COMMENT

There were no public comments received in advance via email or by utilizing the electronic “raise hand” function during this meeting.

#### 1. CONSENT AGENDA

- a. Consider Approval of Minutes: May 26, 2021 – NTMC Regular Board Meeting

*Motion by Board Member Hensley with a second by Vice-Chair Hayes to approve as presented.  
Motion passes 5-0.*

#### 2. INFORMATIONAL REPORTS

- a. Monthly Financial Statements: FY2021 Year to Date May 2021
- b. DCTA Bus Ridership Report May 2021

*No Board action required at this time.*

**3. REGULAR AGENDA**

a. Presentation of General Manager's Monthly Report

*Presenter(s):* RJ Garza, General Manager  
Louise Francois, Assistant General Manager

*Backup Information:* Exhibit 1 – General Manager Report  
Exhibit 2 – May 2021 Ticket Sales Report  
Exhibit 3 – May 2021 Staffing Roster Report

RJ Garza, General Manager and Louise Francois, Assistant General Manager, provided the Board with an overview of the General Manager's Report highlighting the following:

- Re-opening of the DDTTC Lobby area
- Overtime
- May 2021 Revenue
- 401K Plan Update (will be reviewed in detail during July's Board Meeting)
- "Run-Bids" for August and September 2021
- Staffing Roster
  - Lead Dispatcher (filled)
  - Scheduler (filled)
  - Parts Clerk/Coordinator (filled)
  - Safety Training Coordinator (open)
  - Operators (open)

*No Board action required at this time.*

b. Review and Discuss NTMC Proposed FY 2022 Budget

*Presenter(s):* RJ Garza, General Manager  
Marisa Perry, NTMC Treasurer

*Backup Information:* Exhibit 1 - FY 2022 NTMC Budget Presentation  
Exhibit 2 – Change in Net Position – Budget v. Actual History  
Exhibit 3 – NTMC Organizational Chart  
Exhibit 4 – NTMC Budget Detail by Department  
Exhibit 5 – NTMC Line Item Detail

The Board had a healthy discussion regarding the NTMC Proposed FY 2022 Budget specifically noting NTMC's request to the Denton County Transportation Authority (DCTA) to provide an official level of service so that NTMC may prepare a solid budget. It was also noted that until information is received from DCTA, changes in salaries, wages, benefits, and hours of service could be greatly impacted. Clarification was also received on the budget adoption date (September 2021).

***No Board action required at this time; however, the NTMC Board of Directors have requested the DCTA provide NTMC an official level of service requested.***

- c. Discuss and Consider Amendments to the North Texas Mobility Corporation (NTMC) Bylaws

*Presenter:* Joseph Gorfida, Legal Counsel

*Backup Information:* Exhibit 1 – Redlined Bylaws (Revision 2)  
Exhibit 2 – Modified NTMC Structure Flowchart  
(Updated May 2021)

Joe Gorfida, Legal Counsel, reviewed the redlined Bylaws specifically highlighting the following:

- Responsibilities of employment matters (i.e. employing and/or terminating) NTMC personnel:

It was the Board’s recommendation to have the General Manager position responsible for all employment matters following federal, state, and DCTA employment laws/guidelines. Any issues can be addressed directly through the General Manager’s contract. It was recommended by DCTA staff that NTMC consult directly with the NTMC Human Resources Department and Legal Counsel for personnel issues; however, in the spirit of full transparency, any appropriate situations that need the Board’s attention will be brought forth accordingly (i.e. tax situations). Note: The Organizational Chart will be updated (removal of the Vice President position) and included in the July Board Meeting packet.

***Motion by Vice-Chair Hayes with a second by Board Member Hensley to approve amendments in Section 3.02 and Section 6.01a. Motion passes 5-0.***

***Motion by Board Member Hayes and a second by Board Member Combs to adopt redline changes (additions and deletions) and submit to the DCTA Board of Directors for approval. Motion passes 5-0.***

- d. Review and Discuss the DCTA Board’s Confirmation of Requested Future Bus Service Hours

*Presenter:* Nicole Recker, NTMC President

*Backup Information:* DCTA Board Memo Included in the June 17, 2021 DCTA FY22 Board Workshop Seeking Approval & Confirmation of Bus Service Hours for FY22

***This agenda item will be moved to the July Board Meeting.***

e. NTMC Staff Spotlight – Gilbert Esposito, Bus Operator

*Presenter:* RJ Garza, General Manager

RJ Garza, General Manager, Board Member Suarez and Chair Uekert, gave thanks and appreciation to Gilbert Esposito for his outstanding work ethic, attitude and impressive driving record.

4. **CONVENE EXECUTIVE SESSION**

The NTMC Board of Directors did not convene into Executive Session.

5. **RECONVENE OPEN SESSION**

The NTMC Board of Directors did not convene into Executive Session; therefore, reconvening into Open Session is not applicable.

6. **FUTURE BOARD MEETINGS & AGENDA ITEMS**

NTMC Officers may discuss proposed future agenda items. Board members may discuss details of future meetings and request an item(s) to be added to the next Board meeting agenda.

It was confirmed that the Board will meet on the 4<sup>th</sup> Wednesdays at 8am with the following exception: Due to the holidays, the November and December 2021 Board meetings will be combined and held on December 8, 2021.

7. **ADJOURN**

Chair Ueckert adjourned the meeting at 8:57am.

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Dean Ueckert, NTMC Board Chair

ATTEST:

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Kristina Holcomb, NTMC Board Secretary





## NORTH TEXAS MOBILITY CORPORATION

### CHANGE IN NET POSITION

MONTH AND YEAR TO DATE AS OF JUNE 30, 2021

(UNAUDITED)

Description	Month Ended June 30, 2021			Year to Date June 30, 2021			Annual Budget
	Actual	Budget	Variance	Actual	Budget	Variance	
<b>Operating Expenses</b>							
Salary, Wages and Benefits	\$ 433,488	\$ 638,010	\$ 204,522	\$ 4,557,106	\$ 5,697,453	\$ 1,140,347	\$ 7,636,554
Outsourced Services and Charges	69,115	33,718	(35,397)	229,962	300,009	70,047	400,219
Materials and Supplies	-	291	291	250	2,483	2,233	3,293
Insurance	9,158	9,868	710	82,424	90,198	7,774	119,802
Employee Development	583	3,670	3,087	13,606	41,780	28,174	54,435
<b>Total Operating Expenses</b>	<u>512,345</u>	<u>685,557</u>	<u>173,212</u>	<u>4,883,349</u>	<u>6,131,923</u>	<u>1,248,574</u>	<u>8,214,303</u>
<b>Income (Loss) before Transfers</b>	(512,345)	(685,557)	173,212	(4,883,349)	(6,131,923)	1,248,574	(8,214,303)
Transfers In	512,345	685,557	(173,212)	4,883,349	6,131,923	(1,248,574)	8,214,303
<b>Total Transfers</b>	<u>512,345</u>	<u>685,557</u>	<u>(173,212)</u>	<u>4,883,349</u>	<u>6,131,923</u>	<u>(1,248,574)</u>	<u>8,214,303</u>
<b>Change in Net Position</b>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>



## NORTH TEXAS MOBILITY CORPORATION

### STATEMENT OF NET POSITION

AS OF JUNE 30, 2021

(UNAUDITED)

	June 30, 2021	May 31, 2021	Change
<b>Assets</b>			
Operating Cash & Cash Equivalents	\$ 384,307	\$ 286,834	\$ 97,473
Accounts & Notes Receivable	-	-	-
Prepaid Expenses	27,475	36,633	(9,158)
<b>Total Assets</b>	<b>411,781</b>	<b>323,467</b>	<b>88,314</b>
<b>Liabilities</b>			
Accounts Payable and Accrued Expenses	411,781	323,467	88,314
<b>Total Liabilities</b>	<b>411,781</b>	<b>323,467</b>	<b>88,314</b>
<b>Net Position</b>			
Change in Net Position	-	-	-
<b>Total Net Position</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

# FY19-FY21 Unlinked Passenger Trips – Bus



## FY19-FY21 Unlinked Passenger Trips BUS

	FY17	FY18	FY19	FY20	FY21
Oct	388,952	354,149	343,553	312,856	54,725
Nov	337,535	287,974	275,007	229,347	42,194
Dec	174,564	123,092	123,965	106,910	18,149
Jan	222,747	191,785	208,120	190,247	44,920
Feb	319,748	266,535	264,553	239,083	39,184
Mar	283,021	217,942	204,509	76,657	57,124
Apr	289,123	250,602	257,120	12,476	46,450
May	158,602	109,547	140,915	12,186	23,051
Jun	104,708	67,631	82,401	16,164	28,262
Jul	93,350	60,815	75,902	17,056	-
Aug	154,087	135,551	128,918	30,109	-
Sep	395,782	315,554	310,865	54,773	-

# FY19-FY21 Unlinked Passenger Trips – Demand Response\*

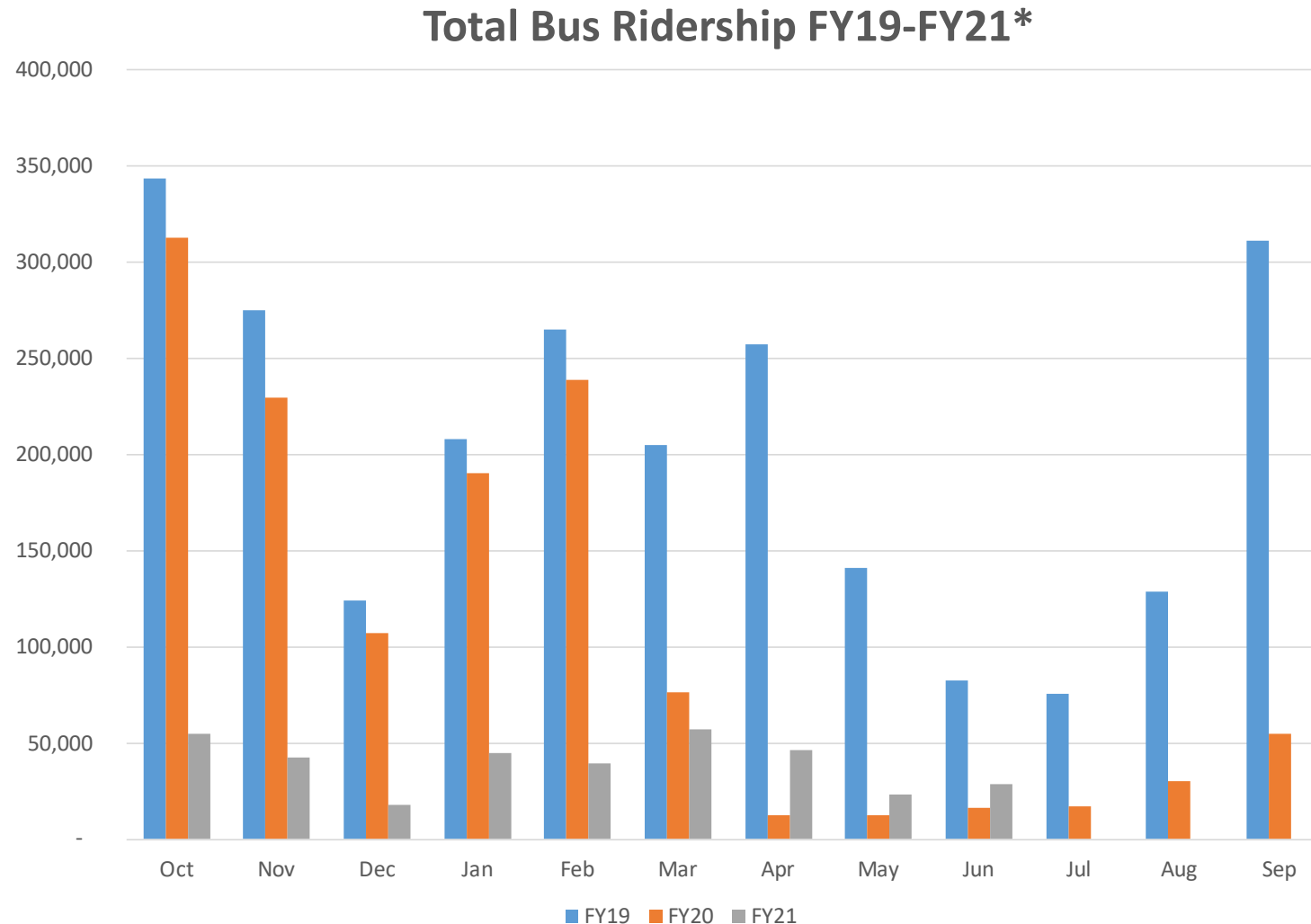


FY19-FY21 Demand Response Unlinked Passenger Trips

	Total Demand Response			Total Access*			Total On-Demand		
	FY19	FY20	FY21	FY19	FY20	FY21	FY19	FY20	FY21
Oct	3,511	4,996	1,921	2,717	2,871	1,214	794	2,125	707
Nov	2,948	4,138	1,581	2,311	2,382	1,041	637	1,756	640
Dec	2,702	3,763	1,750	2,109	2,221	1,166	593	1,542	584
Jan	3,727	4,312	1,700	2,483	2,481	1,148	1,244	1,831	552
Feb	4,089	4,001	1,458	2,468	2,224	1,023	1,621	1,777	435
Mar	4,306	2,913	2,273	2,526	1,637	1,617	1,780	1,276	656
Apr	4,425	1,847	2,207	2,661	839	1,541	1,764	1,008	666
May	4,654	1,660	2,123	2,697	911	1,398	1,957	749	725
Jun	4,075	1,935	2,184	2,299	1,193	1,435	1,776	742	749
Jul	4,412	1,923		2,450	1,134		1,962	789	
Aug	4,697	1,976		2,538	1,245		2,159	731	
Sep	4,330	1,892		2,455	1,229		1,875	663	

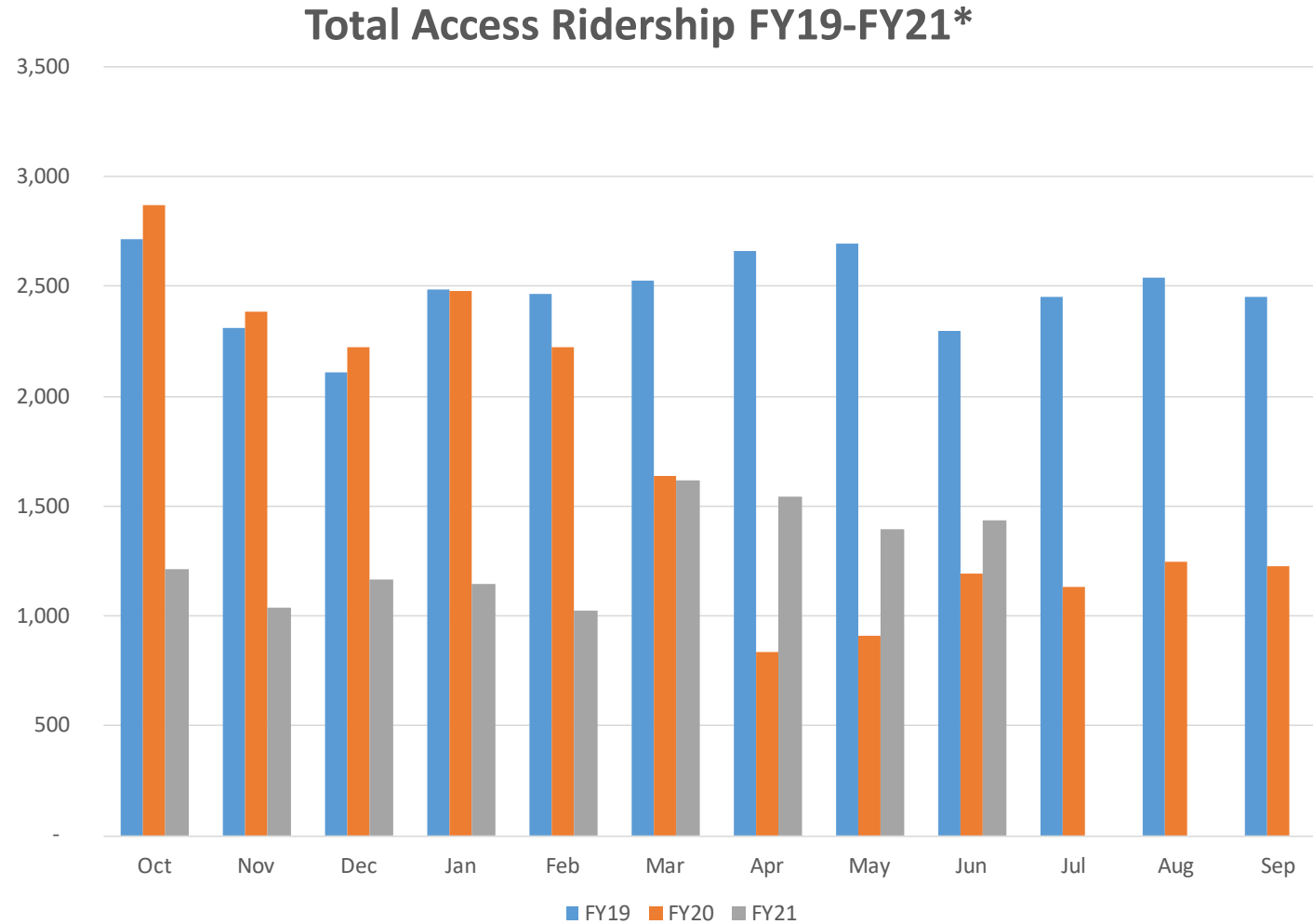
\*ADA & Non-ADA Service in Denton, Lewisville & Highland Village

# FY19-FY21 Total Monthly Ridership – Bus\*



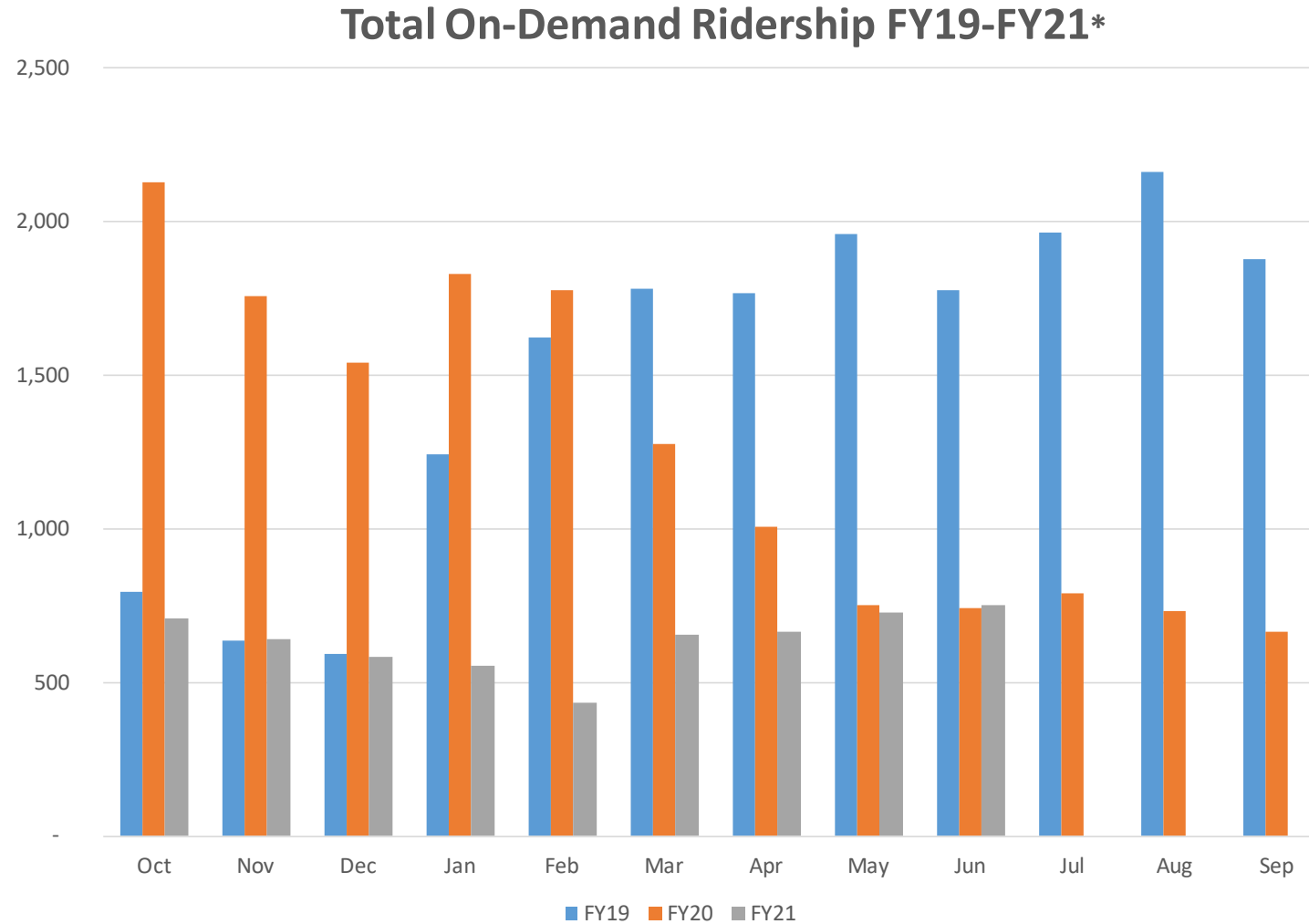
\*UNT, NCTC, Denton, Lewisville, and Highland Village Connect Service.

# FY19-FY21 Total Monthly Ridership – Access



\*ADA & Non-ADA Service in Denton, Lewisville & Highland Village

# FY19-FY21 Total Monthly Ridership – On-Demand



\*Frisco, Collin County Transit and Zoned Service In Denton & Highland Village <sup>15</sup>



# Amalgamated Transit Union

10000 New Hampshire Avenue, Silver Spring, MD 20903-1706  
 (301) 431-7100 Fax (301) 431-7117

Office of the International President

July 9, 2021

Dear ATU Transit Agencies and Providers:

I am writing regarding emergency preparedness at transit systems on behalf of the more than 200,000 members of the Amalgamated Transit Union who serve our communities every day. The tragic May 26, 2021, mass shooting at the Santa Clara Valley Transportation Authority in San Jose, California demonstrates the urgent need for the industry to develop emergency action plans to ensure that transit workers are able to protect themselves, their coworkers, and the riding public when emergencies strike.

Unfortunately, San Jose is not a completely unique tragedy. On April 6, 1999, a mass shooting occurred at OC Transpo in Ottawa, Ontario, leaving four dead and one injured. More recently, on February 3, 2020, a gunman killed one passenger and injured five others on a Greyhound Lines bus north of Los Angeles, California.

Our transit systems will continue to experience mass shootings, along with other acts of violence, civil disruptions, power outages, fires, and natural disasters. We will experience these emergencies acutely because transit services will continue to bring together large numbers of people. Transit workers will be expected to continue operations as emergencies occur and are ongoing. The same transit workers will also have a critical role in responding to many and all kinds of emergencies.

Despite the pressing need for the development of emergency action plans and the training of transit personnel, **a survey we conducted in the wake of the San Jose mass shooting revealed that only 7% of our local union presidents believed that their employers had an emergency action plan covering an active shooting situation.** It is clear that we need to do better at developing emergency action plans and training transit personnel on executing those plans.

**The ATU is calling on all transit agencies and providers to develop emergency preparedness programs that address the full scope of emergencies, including active shooter situations. Such programs must involve the development of emergency action plans, training of transit workers, periodic refreshers, and drills to ensure that workers can execute those plans under challenging circumstances.**

We must ensure, as an industry, that we are prepared for future emergencies. I look forward to the industry's renewed focus on emergency preparedness for the sake of transit personnel, our passengers, and the communities we serve.

Yours truly,

John A. Costa  
 International President

cc: Paul Skoutelas, American Public Transportation Association, President and CEO





# Amalgamated Transit Union

10000 New Hampshire Avenue, Silver Spring, MD 20903-1706  
(301) 431-7100 Fax (301) 431-7117

June 25, 2021

Via Email and U.S. Mail

Chris Watts  
Board Chair  
Denton County Transportation Authority  
P.O. Box 96  
Lewisville, TX 75067  
[cwatts@dcta.net](mailto:cwatts@dcta.net)

Raymond Suarez  
Chief Executive Officer  
Denton County Transportation Authority  
P.O. Box 96  
Lewisville, TX 75067  
[rsuarez@dcta.net](mailto:rsuarez@dcta.net)

Dear Mr. Watts and Mr. Suarez:

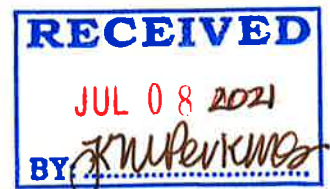
The undersigned writes on behalf of, and as special "Section 13(c)" counsel for, Amalgamated Transit Union Local 1338, in response to your proposed replacement of certain fixed routes with GoZone On-Demand Service provided by VIA.

As you are aware, as a condition of receiving federal transit funds, DCTA and its contractor(s) are bound to certain labor protections pursuant to Section 13(c) of the Federal Transit Act, now codified as 49 U.S.C. Section 5333(b). Among those employee protections are those terms and conditions included in the attached January 3, 2011, Unified Protective Arrangement ("UPA"). See, e.g., U.S. Department of Labor's January 29, 2021, certification addressing DCTA Grant (TX-2021-014).

Pursuant to Paragraph (5)(a) of the UPA, DCTA is required to "provide to all affected employees sixty (60) days' notice of intended actions which may result in displacements or dismissals or rearrangements of the working forces as a result of the Project."<sup>1</sup> After such notice has been issued, at either parties' request, the parties are to undertake implementing negotiations.

While it is our understanding that this on-demand service would not begin until September 7, because it would be in the parties' best interest to begin such negotiations immediately, we now

<sup>1</sup> It is clear that Go-Zone On Demand Service is to be provided using federal transit funding and federally funded equipment. Per VIA's response to DCTA's request for proposals, it "recommend[s] including DCTA's 9 available cutaways within the fleet to achieve additional operational efficiencies, and as a solution to ensure the service is fully wheelchair accessible." DCTA has received federal funding for less than 30-foot buses. Even if federally funded vehicles and facilities are not used by VIA, DCTA receives significant federal operating assistance which it appears likely to use to operate this service.



Chris Watts and Raymond Suarez  
Page 2 of 2  
June 25, 2021

request the information which would be included in DCTA's notice per Paragraph 5(a).<sup>2</sup> Pursuant to Paragraph 5(b), we further request negotiations with DCTA for the purpose of reaching an agreement with respect to the application of the terms and conditions of the UPA to the intended change. As a general matter, DCTA may not implement its proposed change until these negotiations are complete.

Among the applicable provisions in the UPA, we expect that any negotiations between DCTA and the union concerning the GoZone On-Demand Service will address monetary allowances that each dismissed employee would be entitled to for the length of each employee's protective period (up to six years) under the UPA and the continuation of bargaining rights. See, for example, Paragraphs 7(a) and 4.

Sincerely,

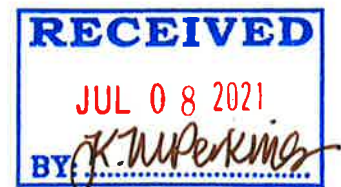


Katherine Andrews  
Associate General Counsel

c: John A. Costa, International President, ATU  
Ray Greaves, International Vice President, ATU  
Kenneth Day, President/Business Agent, ATU Local 1338

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<sup>2</sup> "The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21), available to be filled by such affected employees."



**UNIFIED PROTECTIVE ARRANGEMENT**

For Application to Capital and Operating Assistance Projects  
PURSUANT TO SECTION 5333(b) OF  
TITLE 49 OF THE U.S. CODE, CHAPTER 53  
*January 3, 2011*

The following language shall be made part of the Department of Transportation's contract of assistance with the Grantee, by reference;

The terms and conditions set forth below shall apply for the protection of the transportation related employees in the transportation service area of the Project. As a precondition of the release of assistance by the Grantee to any additional Recipient under the grant, the Grantee shall incorporate this arrangement into the contract of assistance between the Grantee and the Recipient, by reference, binding the Recipient to these arrangements.

These protective arrangements are intended for the benefit of transit employees in the service area of the project, who are considered as third-party beneficiaries to the employee protective arrangements incorporated by reference in the grant contract between the U.S. Department of Transportation and the Grantee, and the parties to the contract so signify by executing that contract. Transit employees are also third-party beneficiaries to the protective arrangements incorporated in subsequent contracts of assistance, pursuant to the Department's certification, between the Grantee and any Recipient. Employees may assert claims through their representative with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government.

The term "service area," as used herein, includes the geographic area over which the Project is operated and the area whose population is served by the Project, including adjacent areas affected by the Project. The term "Union," as used herein, refers to any labor organization representing employees providing public transportation services in the service area of a Project assisted under the grant, including both employees of the Recipient and employees of other public transportation providers. The term "Recipient," as used herein, shall refer to any employer(s) receiving transportation assistance under the grant. The term "Grantee," as used herein, shall refer to the applicant for assistance; a Grantee which receives assistance is also a Recipient.

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public transportation provider in the transportation service

area of the Project. It shall be an obligation of the Recipient to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights and interests of affected employees. The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project," shall, when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his/her position with regard to employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement.

(2) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective bargaining agreement applicable to such employees which is then in effect. This Arrangement does not create any collective bargaining relationship where one does not already exist or between any Recipient and the employees of another employer. Where the Recipient has no collective bargaining relationship with the Unions representing employees in the service area, the Recipient will not take any action which impairs or interferes with the rights, privileges, and benefits and/or the preservation or continuation of the collective bargaining rights of such employees.

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this arrangement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the Union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this arrangement shall be deemed to restrict any rights the

Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this arrangement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued. Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Recipient agrees that it will bargain collectively with the Union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreements with the Union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this arrangement the right to utilize any economic measures, nothing in this arrangement shall be deemed to foreclose the exercise of such right.

(5)(a) The Recipient shall provide to all affected employees sixty (60) days' notice of intended actions which may result in displacements or dismissals or rearrangements of the working forces as a result of the Project. In the case of employees represented by a Union, such notice shall be provided by certified mail through their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21), available to be filled by such affected employees.

(5)(b) The procedures of this subparagraph shall apply to cases where notices, provided under subparagraph 5(a), involve employees represented by a Union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees, negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the mass transportation employees who may be affected as a result of the Project, to establish which such employees shall be offered employment for which they are qualified or can be trained. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the

matter to dispute settlement procedures in accordance with paragraph (15) of this arrangement. Unless the parties otherwise mutually agree in writing, no change in operations, services, facilities or equipment within the purview of this paragraph (5) shall occur until after either: 1) an agreement with respect to the application of the terms and conditions of this arrangement to the intended change(s) is reached; 2) the decision has been rendered pursuant to the dispute resolution procedures in accordance with paragraph (15) of this arrangement; or 3) an arbitrator selected pursuant to Paragraph (15) of this arrangement determines that the intended change(s) may be instituted prior to the finalization of implementing arrangements.

(5)(c) In the event of a dispute as to whether an intended change within the purview of this paragraph (5) may be instituted at the end of the 60-day notice period and before an implementing agreement is reached or a final dispute resolution determination is rendered pursuant to subparagraph (b), any involved party may immediately submit that issue to the dispute resolution process under paragraph (15) of this arrangement. In any such dispute resolution procedure, the neutral shall rely upon the standards and criteria utilized by the Surface Transportation Board (and its predecessor agency, the Interstate Commerce Commission) to address the “preconsummation” issue in cases involving employee protections pursuant to 49 U.S.C. Section 11326 (or its predecessor, Section 5(2)(f) of the Interstate Commerce Act, as amended). If the Recipient demonstrates, as a threshold matter in any such dispute resolution process, that the intended action is a trackage rights, lease proceeding or similar transaction, and not a merger, acquisition, consolidation, or other similar transaction, the burden shall then shift to the involved labor organization(s) to prove that under the standards and criteria referenced above, the intended action should not be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. If the Recipient fails to demonstrate that the intended action is a trackage rights, lease proceeding, or similar transaction, it shall be the burden of the Recipient to prove that under the standards and criteria referenced above, the intended action should be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. For purposes of any such dispute resolution procedure, the time period within which the parties are to respond to the list of potential neutrals submitted by the American Arbitration Association shall be five (5) days, the notice of hearing may be given orally or by facsimile, the hearing will be held promptly, and the award of the neutral shall be rendered promptly and, unless otherwise agreed to by the parties, no later than fourteen (14) days from the date of closing the hearings, with five (5) additional days if post hearing briefs are submitted by either party. The intended change shall not be instituted during the pendency of any dispute resolution proceedings under this subparagraph (c).

(5)(d) If an intended change within the purview of this paragraph (5) is instituted before an implementing agreement is reached or a final decision is rendered pursuant to subparagraph (b), all employees affected shall be kept financially whole, as if the noticed and implemented action has not taken place, from the time they are affected until the effective date of an implementing agreement or final decision. This protection shall be in addition to the protective period defined in paragraph (14) of this arrangement, which period shall begin on the effective date of the implementing agreement or final dispute resolution determination rendered pursuant to subparagraph (b).

An employee selecting, bidding on, or hired to fill any position established as a result of a noticed and implemented action prior to the consummation of an implementing agreement or final dispute resolution determination shall accumulate no benefits under this arrangement as a result thereof during that period prior to the consummation of an implementing agreement or final decision pursuant to subparagraph (b).

(6)(a) Whenever an employee retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7)(e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, the employee shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid to each displaced employee during the protective period so long as the employee is unable, in the exercise of his/her seniority rights, to obtain a position producing compensation equal to or exceeding the compensation the employee received in the position from which the employee was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(6)(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his/her total time paid for during the last twelve (12) months in which the employee performed compensated service more than fifty per centum of each such months, based upon the employee's normal work schedule, immediately preceding the date of his/her displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his/her current position is less in any month

during his/her protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), the employee shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that the employee is not available for service equivalent to his/her average monthly time, but the employee shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his/her seniority rights to secure another position to which the employee is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which the employee elects to retain, the employee shall thereafter be treated, for the purposes of this paragraph, as occupying the position the employee elects to decline.

(6)(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his/her employment, the employee shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid to each dismissed employee on the thirtieth (30th) day following the day on which the employee is "dismissed" and shall continue during the protective period, as follow:

Employee's length of service <u>prior to adverse effect</u>	<u>Period of protection</u> equivalent period
1 day to 6 years	6 years
6 years or more	

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by the employee in the last twelve (12) months of his/her employment in which the employee performed compensation service more than fifty per centum of each such month based on the employee's normal work schedule to the date on which the employee was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.



(7)(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position the employee holds is abolished as a result of the Project, or when the position the employee holds is not abolished but the employee loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and the employee is unable to obtain another position, either by the exercise of the employee's seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his/her seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(7)(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his/her current address and the current name and address of any other person by whom the employee may be regularly employed, or if the employee is self-employed.

(7)(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when the employee is absent from service, the employee will be entitled to the dismissal allowance when the employee is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to the employee's previous status and will be given the protections of the agreement in said position, if any are due him/her.

(7)(e) An employee receiving a dismissal allowance shall be subject to call to return to service by the employee's former employer, after being notified in accordance with the terms of the then-existing collective bargaining agreement. Prior to such call to return to work by his/her employer, the employee may be required by the Recipient to accept reasonably comparable employment for which the employee is physically and mentally qualified, or for which the employee can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(7)(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while the employee is so reemployed, and the period of

time during which the employee is so reemployed shall be deducted from the total period for which the employee is entitled to receive a dismissal allowance. During the time of such reemployment, the employee shall be entitled to the protections of this arrangement to the extent they are applicable.

(7)(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that the employee's combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his/her dismissal allowance exceed the amount upon which the employee's dismissal allowance is based. Such employee, or his/her union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with the employee's former employer, including self-employment, and the benefits received.

(7)(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of the employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him/her for which the employee is physically and mentally qualified and does not require a change in the employee's place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of the employee's allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his/her representative, or by final and binding dispute resolution determination rendered in accordance with paragraph (15) of this arrangement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this arrangement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him/her and the employee shall be given additional service credits for each month in which the employee receives a dismissal or displacement allowance as if the employee were continuing to perform services in his/her former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a

position to which, at some future time, the employee could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during the employee's protected period, of any rights, privileges, or benefits attaching to his/her employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for the employee and the employee's family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which the employee may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11)(a) Any employee covered by this arrangement who is retained in the service of his/her employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his/her employment in order to retain or secure active employment with the Recipient in accordance with this arrangement, and who is required to move his/her place of residence, shall be reimbursed for all expenses of moving his/her household and other personal effects, for the traveling expenses for the employee and members of the employee's immediate family, including living expenses for the employee and the employee's immediate family, and for his/her own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or the employee's representatives.

(11)(b) If any such employee is laid off within three (3) years after changing his/her point of employment in accordance with paragraph (a) hereof, and elects to move his/her place of residence back to the original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

(11)(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within ninety (90) days after the date on which the expenses were incurred.

(11)(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which

are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his/her employment as a result of the Project, and is thereby required to move his/her place of residence.

If the employee owns his/her own home in the locality from which the employee is required to move, the employee shall, at the employee's option, be reimbursed by the Recipient for any loss suffered in the sale of the employee's home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his/her conventional fees and closing costs.

If the employee is under a contract to purchase his/her home, the Recipient shall protect the employee against loss under such contract, and in addition, shall relieve the employee from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied as the employee's home, the Recipient shall protect the employee from all loss and cost in securing the cancellation of said lease.

(12)(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within one year after the effective date of the change in residence.

(12)(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his/her union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the

valuation, shall endeavor by agreement with ten (10) days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State and local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(12)(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(e) "Change in residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from the employee's residence than was his/her former work location, or (B) is more than thirty (30) normal highway route miles from the employee's residence and also farther from his/her residence than was the employee's former work location.

(13)(a) A dismissed employee entitled to protection under this arrangement may, at the employee's option within twenty-one (21) days of his/her dismissal, resign and (in lieu of all other benefits and protections provided in this arrangement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

<u>Length of Service</u>		<u>Separation Allowance</u>	
1	year and less than 2 years	3	months' pay
2	" " " " 3 "	6	" "
3	" " " " 5 "	9	" "
5	" " " " 10 "	12	" "
10	" " " " 15 "	12	" "
15	" " over	12	" "

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the

employee in the position last occupied, for each month in which the employee performed service, will be paid as the lump sum.

Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this arrangement, the length of service of the employee shall be determined from the date the employee last acquired an employment status with the employing carrier and the employee shall be given credit for one month's service for each month in which the employee performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, the employee will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(13)(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of the employee's dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years therefrom, provided, however, that the protective period for any particular employee during which the employee is entitled to receive the benefits of these provisions shall not continue for a longer period following the date the employee was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his/her employment prior to the date of the employee's displacement or dismissal.

(15) Any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by paragraph 12(c) of this arrangement, the Labor-Management Relations Act, as amended, the Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient(s) and the Union(s), which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, may be submitted at the written request of the Recipient(s) or the Union(s) in accordance with a final and binding resolution

procedure mutually acceptable to the parties. Failing agreement within ten (10) days on the selection of such a procedure, any party to the dispute may request the American Arbitration Association to furnish an arbitrator and administer a final and binding arbitration under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding.

The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the Union(s) and Recipient(s), and all other expenses shall be paid by the party incurring them.

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be the employee's obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee (See Hodgson's Affidavit in Civil Action No. 825-71).

(16) The Recipient will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected, as a result of the project, may file a written claim through his/her Union representative with the Recipient within sixty (60) days of the date the employee is terminated or laid off as a result of the Project, or within eighteen (18) months of the date the employee's position with respect to his/her employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. No benefits shall be payable for any period prior to six (6) months from the date of the filing of any claim. Unless the claim is filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to the claims.

The Recipient will fully honor the claim, making appropriate payments, or will give written notice to the claimant and his/her representative of the basis for denying or modifying such claim, giving reasons therefore. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual materials as may be relevant. In the event the claim is

so rejected by the Recipient, the claim may be processed in accordance with the final and binding resolution procedures described in paragraph (15).

(17) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements or otherwise; provided that there shall be no duplication of benefits to any employee, and, provided further, that any benefit under this arrangement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit. This arrangement shall not be deemed a waiver of any rights derived from any other agreement or provision of federal, state or local law.

(18) During the employee's protective period, a dismissed employee shall, if the employee so requests, in writing, be granted priority of employment or reemployment to fill any vacant position within the jurisdiction and control of the Recipient reasonably comparable to that which the employee held when dismissed, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21) hereof, for which the employee is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements related thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which the employee may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which the employee held when dismissed for which the employee is qualified, or for which the employee has satisfactorily completed such training, the employee shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this arrangement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;



(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under the Federal Transit statute and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proper application, administration, and enforcement of this arrangement and to the proper determination of any claims arising thereunder.

(20) In the event the Project is approved for assistance under the statute, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Grantee and between the Grantee and any Recipient; provided, however, that this arrangement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his/her representative, in accordance with its terms, nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

(21) This arrangement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any person, enterprise, body, or agency, whether publicly or privately owned, which shall undertake the management, provision and/or operation of the Project services or the Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient, its successors or assigns, shall agree to be bound by the terms of this arrangement and accept the responsibility with the Recipient for full performance of these conditions. As a condition precedent to any such contractual arrangements, the Recipient shall require such person, enterprise, body or agency to so agree in writing. Transit employees in the service area of the

project are third-party beneficiaries to the terms of this protective arrangement, as incorporated by reference in the contractual agreement.

(22) In the event of the acquisition, assisted with Federal funds, of any transportation system or services, or any part or portion thereof, the employees of the acquired entity shall be assured employment, in comparable positions, within the jurisdiction and control of the acquiring entity, including positions in the employment of any entity bound by this arrangement pursuant to paragraph (21). All persons employed under the provisions of this paragraph shall be appointed to such comparable positions without examination, other than that required by applicable federal, state or local law or collective bargaining agreement, and shall be credited with their years of service for purposes of seniority, vacations, and pensions in accordance with the records of their former employer and/or any applicable collective bargaining agreements.

(23) The employees covered by this arrangement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(24) In the event any provision of this arrangement is held to be invalid, or otherwise unenforceable under federal, state, or local law, in the context of a particular Project, the remaining provisions of this arrangement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested Union representatives of the employees involved for purpose of adequate replacement under Section 5333(b). If such negotiation shall not result in mutually satisfactory agreement any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this arrangement only as applied to that Project, and any other appropriate action, remedy, or relief.

(25) If any employer of the employees covered by this arrangement shall have rearranged or adjusted its work force(s) in anticipation of the Project, with the effect of depriving an employee of benefits to which the employee should be entitled under this arrangement, the provisions of this arrangement shall apply to such employee as of the date when the employee was so affected.



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## MEMO

To: NTMC Board of Directors  
From: Robert J. Garza, General Manager, *RJ Garza*  
CC: NTMC Officers; Louise Francois, AGM, and John Hendrickson, HTG President  
Date: July 12, 2021  
Subject: Amalgamated Transit Union Local 1338 (ATU) 401K Pension Plan

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### **BACKGROUND:**

The ATU has amended its 401K Pension Plan to reflect the new Collective Bargaining Agreement negotiated between North Texas Mobility Corporation and the ATU in March 2021.

### **AMALGAMATED TRANSIT UNION LOCAL 1338 (ATU) 401K PENSION PLAN:**

The Amalgamated Transit Union Local 1338 has amended its 401(k) Pension Plan per the recently executed Collective Bargaining Agreement in March 2021, adding the employer match of .50 cents on each dollar contributed to the plan up to 3% of the Operator's pay and updating the company name from Transit Management of Denton County to North Texas Mobility Corporation.

### **FINANCIAL IMPACT:**

There is no financial impact

### **RECOMMENDATION:**

NTMC staff recommends authorizing the NTMC President to execute and adopt the amended Amalgamated Transit Union (ATU) National 401(k) Pension Plan.

If you should have any questions or concerns, please feel free to contact me.



***ATU National 401(k) Pension Plan  
Adoption Agreement  
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11. Employee Contributions

Voluntary Employee Pre-Tax Savings Contributions: Maximum 100% of Compensation (after required income and payroll tax withholding), but not to exceed the Plan's deferral limitations or a minimum of \$10.00 per payroll period or 1% of Compensation, whichever is less. The annual deferral limitation is \$19,500, as indexed (participants age 50 or above can elect additional withholdings up to \$6,500 annually).

Roth Contributions: Maximum 100% of Compensation (after required income and payroll tax withholding), but not to exceed the Plan's deferral limitations or a minimum of \$10.00 per payroll period or 1% of Compensation, whichever is less (not to exceed the lesser of 100% of Compensation or \$19,500 **when combined with Employee Pre-Tax Savings Contributions**).

12. Automatic Deferral Provision Confirmation (*mark one*)

\_\_\_\_\_ Automatic Deferral Provision language adopted and/or ratified in CBA (collective bargaining agreement) (*if selected must complete #13*).

\_\_\_\_\_ Automatic Deferral Provision language not adopted and/or ratified in CBA (collective bargaining agreement) (*if selected skip to #14*).

13. Automatic Deferral Provisions

Unless a Participant makes an Affirmative Election to defer compensation to the plan or to not participate in the plan the Employer will withhold \_\_\_\_\_% of Compensation each payroll period. (*Minimum of 3% up to a maximum of 10%, as stated in the CBA.*)

Participants Subject to the Automatic Deferral Provisions

a. New Employees (any employee eligible to participate in the plan and hired after start of current collective bargaining agreement) and all participants of a Newly Negotiated Plan Agreement.

b. Current Employees and participants of a revised Plan Agreement (*mark one*)

\_\_\_ The above stated percentage, except those who are deferring an amount which is at least equal to or greater than the Automatic Deferral Percentage.

\_\_\_ The above stated percentage, except those participants with a Salary Reduction Agreement in place.

Scheduled increases (*mark one*)

(i) \_\_\_ No scheduled increases.

(ii) \_\_\_ An initial percentage will increase by 1% of Compensation per year up to a maximum of 6% of Compensation.

**ATU National 401(k) Pension Plan  
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(iii) \_\_\_ In accordance with the following schedule:

1 – 2 years = 3%

3 years = 4%

4 years = 5%

5 years + = 6%.

14. Employer Contribution and Employer Matching Savings Contribution: Complete (i) if an Employer Matching Savings Contribution is to be made based on the Employee’s salary deferral (item no. 9 or 10) and/or (ii) if the Employer is making a mandatory Employer Contribution.

(i) Employer Matching Savings Contributions:

\_\_\_\_\_ % of the Employee’s Pre-Tax Savings and Roth Contribution up to \_\_\_\_\_ % of Compensation; and/or

\_\_\_\_\_ % of Employee’s Pre-Tax Savings and Roth Contributions up to the maximum of \$\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

(ii) Mandatory Employer Contribution is as follows:

\_\_\_\_\_  
\_\_\_\_\_

**THE TOTAL OF EMPLOYER AND EMPLOYEE CONTRIBUTIONS CANNOT EXCEED \$58,000, AS INDEXED, OR 100% OF COMPENSATION IN A CALENDAR YEAR.**

15. Does this Employer contribute to any other pension plan on behalf of Eligible Employees?

\_\_\_\_\_ Yes                      \_\_\_\_\_ No

Provide details: include amount of contributions (e.g. percentage or cents per hour) and type of plan (e.g. defined benefit or defined contribution).

\_\_\_\_\_  
\_\_\_\_\_

16. Employer’s Payroll is:

(a) \_\_\_ weekly

(c) \_\_\_ monthly

(b) \_\_\_ every two weeks

(d) \_\_\_ other: please specify \_\_\_\_\_

**ALL CONTRIBUTIONS ARE DUE TO THE FUND WITHIN 7 BUSINESS DAYS OF THE PAYROLL DATE.**

**ATU National 401(k) Pension Plan  
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17. This Agreement shall remain in effect during the term of any Collective Bargaining Agreement or other written agreements between the Employer and the ATU Local Union, during any extensions or renewals thereof, and during any period the Employer continues to make contributions and upon expiration of a Collective Bargaining Agreement if the Employer is under a duty to make such Contributions pursuant to an obligation arising under the National Labor Relations Act; provided that notice of any negotiated change in the Collective Bargaining Agreement requiring contributions to the Fund is made must be submitted to the Trustees. The Trustees, however, reserve the right to terminate the Employer’s participation in the Fund, the acceptance of Employer contributions to the Fund and this Participation Agreement:
- (a) if at any time the Employer’s Collective Bargaining Agreement is modified in a manner which affects the funding, financing, operation or administration of the Fund in a manner which is unacceptable to the Trustees in their sole discretion;
  - (b) on account of the Employer’s failure to make or remit any contributions to the Fund or the failure of any employee required to make or remit contributions to the Fund;
  - (c) as otherwise provided in the Trust Agreement; or
  - (d) for any other reason determined by the Trustees in their sole and final discretion, upon sixty (60) days’ notice to the business address of the Employer by certified mail.

Upon the execution of this instrument the Employer hereby adopts the Amalgamated Transit Union National 401(k) Pension Plan and its governing trust agreement.

BY: \_\_\_\_\_  
Employer

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
ATU Local Union

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Board of Trustees – John Costa

DATED: \_\_\_\_\_



## MEMO

To: NTMC Board of Directors  
From: Robert J. Garza, General Manager, *RJ Garza*  
CC: NTMC Officers; Louise Francois, AGM, and John Hendrickson, HTG President  
Date: July 12, 2021  
Subject: North Texas Mobility Corporation (NTMC) Non-Operator 401(k) Plan Amendment

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### **BACKGROUND:**

The NTMC has an adopted 401(k) Plan available for non-operator staff.

### **AMENDED NTMC NON-OPERATOR 401(k) PLAN:**

NTMC has amended the Non-Operator 401(k) Plan to update the trustee. Ms. Cameron Springer, NTMC Senior HR Specialist will administer the plan on behalf of the Company.

### **FINANCIAL IMPACT:**

There are no cost implications with this amendment

### **RECOMMENDATION:**

NTMC staff recommends authorizing the NTMC President to execute the amended Non-Operator 401(k) Plan effective October 1, 2021, and further authorizing the President to execute other necessary documents for such 401(k) Plan.

If you should have any questions or concerns, please feel free to contact me.



## Non-Standardized Defined Contribution

**ADOPTION AGREEMENT FOR  
NATIONAL BENEFIT SERVICES, LLC  
NON-STANDARDIZED  
DEFINED CONTRIBUTION PRE-APPROVED PLAN**

**CAUTION:** Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

**EMPLOYER INFORMATION**

(An amendment to the Adoption Agreement is not needed solely to reflect a change in this Employer Information Section.)

## 1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER, TIN AND FISCAL YEAR

Name: North Texas Mobility Corporation (NTMC)

Address: 1955 Lakeway Drive, Suite 260

Street

Lewisville Texas 75067

City

State

Zip

Telephone: (940) 218-1613

Taxpayer Identification Number (TIN): 83-4362684

Employer's Fiscal Year ends: September 30

## 2. TYPE OF ENTITY

- a.  Corporation (including tax-exempt or non-profit Corporation)  
 b.  Professional Service Corporation  
 c.  S Corporation  
 d.  Limited Liability Company that is taxed as:  
     1.  a partnership or sole proprietorship  
     2.  a Corporation  
     3.  an S Corporation  
 e.  Sole Proprietorship  
 f.  Partnership (including limited liability)  
 g.  Other: \_\_\_\_\_ (must be a legal entity recognized under federal income tax laws)

## 3. AFFILIATED EMPLOYERS/PARTICIPATING EMPLOYERS (Plan Sections 1.7 and 1.61). Is the Employer an Affiliated Employer (i.e., a member of a controlled group or an affiliated service group (within the meaning of Code §414(b), (c), (m) or (o)))?

- a.  No  
 b.  Yes, the Employer is a member of (select one or both of 1. - 2. AND select one of 3. - 4. below):  
     1.  A controlled group  
     2.  An affiliated service group

**AND**, will any of the Affiliated Employers adopt the Plan as Participating Employers?

3.  Yes (Complete a participation agreement for each Participating Employer.)  
 4.  No (The Plan could fail to satisfy the Code §410(b) coverage rules.)

MULTIPLE EMPLOYER PLAN (Plan Article XIV). Will any Employers who are not Affiliated Employers adopt this Plan as part of a multiple employer plan (MEP) arrangement?

- c.  No  
 d.  Yes (Complete a participation agreement for each Participating Employer.)

**PLAN INFORMATION**

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9 through 10.)

## 4. PLAN NAME:

NTMC 401(k) Plan

## 5. PLAN STATUS

- a.  New Plan  
 b.  Amendment and restatement of existing Plan  
     **CYCLE 3 RESTATEMENT** (leave blank if not applicable)  
     1.  This is an amendment and restatement to bring a plan into compliance with the legislative and regulatory changes set forth in IRS Notice 2017-37 (i.e., the 6-year pre-approved plan restatement cycle).

**Non-Standardized Defined Contribution**

6. EFFECTIVE DATE (Plan Section 1.25) (complete a. if new plan; complete a. AND b. if an amendment and restatement)  
**Initial Effective Date of Plan** (except for restatements, cannot be earlier than the first day of the current Plan Year)  
 a. October 1, 2008 (enter month day, year) (hereinafter called the "Effective Date" unless 6.b. is entered below. NOTE: If the Effective Date of deferrals in the Plan is a different date than what is provided in this Section 6.a., Section 25.D.i. must also be completed. The Effective Date of 25.D.i. must be concurrent with or after the Effective Date in 6.a.)

**Restatement Effective Date.** If this is an amendment and restatement, the effective date of the restatement (hereinafter called the "Effective Date") is:

- b. October 1, 2021 (enter month day, year. NOTE: The restatement date may not be prior to the first day of the current Plan Year. Plan contains appropriate retroactive effective dates with respect to provisions for appropriate laws.)

7. PLAN YEAR (Plan Section 1.65) means, except as otherwise provided in d. below:  
 a.  the calendar year  
 b.  the twelve-month period ending on September 30 (e.g., June 30th)  
 c.  other: \_\_\_\_\_ (e.g., a 52/53 week year ending on the date nearest the last Friday in December).

SHORT PLAN YEAR (Plan Section 1.76). Select below if there is a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 15) (leave blank if not applicable):

- d.  beginning on \_\_ (enter month day, year; e.g., July 1, 2020) and ending on \_\_ (enter month day, year).

8. VALUATION DATE (Plan Section 1.86) means:  
 a.  every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation)  
 b.  the last day of each Plan Year  
 c.  the last day of each Plan Year half (semi-annual)  
 d.  the last day of each Plan Year quarter  
 e.  other (specify day or days): \_\_\_\_\_ (must be at least once each Plan Year)

**NOTE:** The Plan always permits interim valuations.

9. PLAN NUMBER (3-digit number for Form 5500 reporting)  
 a.  001  
 b.  002  
 c.  Other: \_\_\_\_\_

10. ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER  
 (If none is named, the Employer will be the Administrator (Plan Section 1.5).)

- a.  Employer (use Employer address and telephone number)  
 b.  The Committee appointed by the Employer (use Employer address and telephone number)  
 c.  Other:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
 Street

\_\_\_\_\_ City State Zip

Telephone: \_\_\_\_\_

11. TYPE OF PLAN (select one)  
 a.  401(k) Plan.  
 b.  Profit Sharing Plan. (under Current Contributions, may only elect 12.e., and/or 12.f.)  
 c.  Money Purchase Pension Plan. (under Current Contributions, may only elect 12.e., and/or 12.f.)

12. CONTRIBUTION TYPES  
 The selections made below must correspond with the selections made under the Contributions and Allocations Section of this Adoption Agreement.

**FROZEN PLAN OR CONTRIBUTIONS HAVE BEEN SUSPENDED** (Plan Section 4.1(c)) (optional)

- a.  This is a frozen Plan (i.e., all contributions cease) (if this is a temporary suspension, select a.2):  
 1.  All contributions ceased as of, or prior to, the effective date of this amendment and restatement and the prior Plan provisions are not reflected in this Adoption Agreement (may enter effective date at 3. below and/or select prior contributions at i. - p. below (optional), skip questions 13-19 and 23-33)  
 2.  All contributions ceased or were suspended and the prior Plan provisions are reflected in this Adoption Agreement (must enter effective date at 3. below and select contributions at b. - h.)

**Non-Standardized Defined Contribution**

**Effective date**

3.  as of \_\_\_\_\_ (effective date is optional unless a.2. has been selected above or this is the amendment or restatement to freeze the Plan).

**CURRENT CONTRIBUTIONS**

The Plan permits the following contributions (select one or more):

- b.  **Elective Deferrals** (Question 25). Also select below if Roth Elective Deferrals are permitted.
  - 1.  Roth Elective Deferrals (Plan Section 1.73)
    - a.  Special Effective Date for Roth Elective Deferrals (choose if applicable) \_  
\_(select if Roth deferrals added in addition to and after Elective Deferrals)
- c.  **401(k) "ADP test safe harbor contributions"** (Question 28)
  - 1.  **401(k) "ADP test safe harbor contributions"** (other than QACA "ADP test safe harbor contributions") (Match, Nonelective)
  - 2.  **QACA "ADP test safe harbor contributions"**
- d.  **Employer matching contributions** (Question 29)
- e.  **Employer Nonelective Contributions** (includes Employer Profit Sharing contributions, Money Purchase Pension Plan contributions and/or "prevailing wage contributions") (Questions 30-31)
- f.  **Rollover contributions** (Question 43)
- g.  **After-tax voluntary Employee contributions** (Question 44)
- h.  **SIMPLE 401(k) contributions** (Plan Section 13.1) (may not be selected with 12.c., 12.d., 12.e., or 12.g.)

**PRIOR CONTRIBUTIONS**

The Plan used to permit, but no longer does, the following contributions (choose all that apply, if any):

- i.  **Pre-tax Elective Deferrals**
- j.  **Roth Elective Deferrals**
- k.  **401(k) "ADP test safe harbor contributions"**
- l.  **Employer matching contributions**
- m.  **Employer Nonelective Contributions** (includes Employer Profit Sharing contributions, Money Purchase Pension Plan contributions)
- n.  **Rollover contributions**
- o.  **After-tax voluntary Employee contributions**
- p.  **SIMPLE 401(k) contributions**

**ELIGIBILITY REQUIREMENTS**

13. ELIGIBLE EMPLOYEES (Plan Section 1.28) means all Employees (including Leased Employees) EXCEPT those Employees who are excluded below or elsewhere in the Plan:

- a.  **No excluded Employees.** There are no additional excluded Employees under the Plan (skip to Question 14).
- b.  **Exclusions - same for all contribution types.** The following Employees are not Eligible Employees for all contribution types (select one or more of e. – p. below):
- c.  **Exclusions - different exclusions apply.** The following Employees are not Eligible Employees for the designated contribution types (select one or more of d. – p. below; also select column 1. OR all that apply of columns 2. - 4. for each exclusion selected at d. – n.) (may only be selected with 401(k) Plans):

**NOTE: For 401(k) Plans** - Unless otherwise specified in this Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and rollover contributions; Matching includes QMACs; and Nonelective includes QNECs. **"ADP test safe harbor contributions" (SH) (including those made pursuant to a QACA) and SIMPLE 401(k) contributions are subject to the exclusions for Elective Deferrals except as provided in Question 28.**

Exclusions	1. All Contributions	2. Elective Deferrals/SH	3. Matching	4. Nonelective
d. <input type="checkbox"/> No exclusions	N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input checked="" type="checkbox"/> Union Employees (Plan Section 1.28(d))	<input type="checkbox"/> OR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f. <input type="checkbox"/> Nonresident aliens (Plan Section 1.28(e))	<input type="checkbox"/> OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. <input type="checkbox"/> Highly Compensated Employees (Plan Section 1.41)	<input type="checkbox"/> OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. <input type="checkbox"/> Leased Employees (Plan Section 1.49)	<input type="checkbox"/> OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. <input type="checkbox"/> Residents of Puerto Rico	<input type="checkbox"/> OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. <input type="checkbox"/> Interns (Plan Section 1.28(g))	<input type="checkbox"/> OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Non-Standardized Defined Contribution**

- k.  Part-time Employees (Plan Section 1.28(f))  **OR**     
 A part-time Employee is an Employee whose regularly scheduled service is less than          Hours of Service in the relevant eligibility computation period. See Note below.
- l.  Temporary Employees (Plan Section 1.28(f))  **OR**     
 A temporary Employee is an Employee who is categorized as a temporary Employee on the Employer's payroll records. See Note below.
- m.  Seasonal Employees (Plan Section 1.28(f))  **OR**     
 A seasonal Employee is an Employee who is categorized as a seasonal Employee on the Employer's payroll records. See Note below.
- n.  Other:  **OR**

(must (1) be definitely determinable and may not be based on age or length of service (except in a manner consistent with k., l., and m. above) or level of Compensation, (2) be nondiscriminatory under Code §401(a)(4) and the regulations thereunder and, (3) if using the average benefits test to satisfy Code §410(b) coverage testing, must be a reasonable classification within the meaning of Regulation §1.410(b)-4(b)).

- o.  Other: \_\_\_\_\_ (must (1) specify contributions to which exclusions apply, (2) be definitely determinable and not based on age or length of service (except in a manner consistent with k., l., and m. above) or level of Compensation, (3) be nondiscriminatory under Code §401(a)(4) and the regulations thereunder, and (4) if using the average benefits test to satisfy Code §410(b) coverage testing, be a reasonable classification within the meaning of Regulation §1.410(b)-4(b)).
- p.  **Code §410(b)(6)(C) inclusion.** The Code §410(b)(6)(C) exclusion set forth in Plan Section 1.28 will not apply with respect to the following (such Employees must still satisfy any applicable eligibility conditions) (select one):
  - 1.  All Employees.
  - 2.  Only the following Employees \_\_\_\_\_ (e.g., those who became Employees due to the acquisition of the assets of ABC Company)

**NOTE:** If option k. – m. (part-time, temporary and/or seasonal exclusions) is selected, then any such excluded Employee actually completes 1 Year of Service, then such Employee will no longer be part of this excluded class. For this purpose, the Hours of Service method will be used for the 1 Year of Service override regardless of any contrary selection at Question 17.

14. **CONDITIONS OF ELIGIBILITY (Plan Section 3.1)**

- a.  **No age and service required.** No age and service required for all contribution types (skip to Question 15).
- b.  **Eligibility - same for all contribution types.** An Eligible Employee will be eligible to participate in the Plan for all contribution types upon satisfaction of the following (select one or more of e. - n. below):
- c.  **Eligibility - different conditions apply.** An Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following either for all contribution types or to the designated contribution type (select one or more of d. - n. below; also select column 1. OR all that apply of columns 2. - 4. for each condition selected at d. - m.) (may only be selected with 401(k) Plans):

**NOTE: For 401(k) Plans** - Unless otherwise specified in this Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and rollover contributions (unless otherwise selected at Question 43); Matching includes QMACs; and Nonelective includes QNECs. **"ADP test safe harbor contributions" (SH) (including those made pursuant to a QACA) and SIMPLE 401(k) contributions are subject to the conditions for Elective Deferrals except as provided in Question 28.**

<b>Eligibility Conditions</b>	<b>1. All Contributions</b>	<b>2. Elective Deferrals/SH</b>	<b>3. Matching</b>	<b>4. Nonelective</b>
d. <input type="checkbox"/> No age and service required	N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Age 20 1/2	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Age 21	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. <input type="checkbox"/> Age _____ (may not exceed 21)	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. <input checked="" type="checkbox"/> <u>6</u> (not to exceed 12) months of service (elapsed time)	<input checked="" type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. <input type="checkbox"/> 1 Year of Service	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Non-Standardized Defined Contribution**

- j.  2 Years of Service  **OR**
- k.  \_\_\_\_\_ (not to exceed 12) consecutive month period from the Eligible Employee's employment commencement date and during which at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service are completed. If an Eligible Employee does not complete the stated Hours of Service during the specified time period, the Employee is subject to the 1 Year of Service requirement in i. above.  **OR**
- l.  \_\_\_\_\_ (not to exceed 12) consecutive months of employment from the Eligible Employee's employment commencement date. If an Eligible Employee does not complete the stated number of months, the Employee is subject to the 1 Year of Service requirement in i. above.  **OR**
- m.  Other:  **OR**

\_\_\_\_\_  
(e.g., date on which 1,000 Hours of Service is completed within the computation period) (must satisfy the Notes below)

- n.  Other: \_\_\_\_\_ (e.g., date on which 1,000 Hours of Service is completed within the computation period) (must specify contributions to which conditions apply and satisfy the Notes below)

**NOTE:** If m. or n. is selected, the condition must be an age or service requirement that is definitely determinable and may not exceed age 21 and for Elective Deferrals, 1 Year of Service; for Employer matching and/or Nonelective Contributions, may not exceed 2 Years of Service. If more than 1 Year of Service is required for Employer matching and/or Nonelective Contributions, 100% immediate vesting is required.

**NOTE:** If the service requirement is or includes a fractional year, then, except in a manner consistent with k., an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year. If expressed in months of service, then an Employee will not be required to complete any specified number of Hours of Service in a particular month, unless selected in k. above. In both cases, the Hours of Service method will be used for the 1 Year of Service override (e.g., options k. and l.) regardless of any contrary selection at Question 17.

**NOTE:** Year of Service means Period of Service if the elapsed time method is chosen.

**Waiver of conditions.** The service and/or age requirements specified above will be waived in accordance with the following (leave blank if there are no waivers of conditions):

Requirements waived	1. All Contributions	2. Elective Deferrals/SH	3. Matching	4. Nonelective
o. <input type="checkbox"/> If employed on _____ the following requirements, and the entry date requirement, will be waived. (select a. and/or b. AND c. and/or d. if applicable) (for 401(k) plans, also select column 1. OR all that apply of columns 2. - 4.):	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>
a. <input type="checkbox"/> service requirement (may let part-time Eligible Employees into the Plan)				
b. <input type="checkbox"/> age requirement				
The waiver applies to any Eligible Employee unless c. selected below.				
c. <input type="checkbox"/> waiver is for: _____ (e.g., Employees of a specific division or Employees covered by a Code §410(b)(6)(C) acquisition)				
Such Employees will enter the Plan as of the above date unless d. selected below				
d. <input type="checkbox"/> _____ (specify a date)				
p. <input type="checkbox"/> If employed on _____ the following requirements, and the entry date requirement, will be waived. (select a. and/or b. AND c. and/or d. if applicable) (for 401(k)	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>

**Non-Standardized Defined Contribution**

plans, also select column 1. OR all that apply of columns 2. - 4.):

- a.  service requirement (may let part-time Eligible Employees into the Plan)
- b.  age requirement

The waiver applies to any Eligible Employee unless c. selected below.

- c.  waiver is for: \_\_\_\_\_  
(e.g., Employees of a specific division or Employees covered by a Code §410(b)(6)(C) acquisition)

Such Employees will enter the Plan as of the above date unless d. selected below

- d.  \_\_\_\_\_ (specify a date)

**Amendment or restatement to change eligibility requirements**

q.  This amendment or restatement (or a prior amendment or restatement) modified the eligibility and/or entry date requirements and the prior eligibility and/or entry date conditions continue to apply to the Eligible Employees specified below. If this option is NOT selected, then all Eligible Employees must satisfy the eligibility and entry date conditions set forth above.

- 1.  The modified eligibility and entry date conditions above only apply to Eligible Employees who were not Participants as of the effective date of the modification.
- 2.  The modified eligibility and entry date conditions above only apply to individuals who were hired on or after the effective date of the modification.

15. **EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)**

a.  **Entry date same for all contribution types.** An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan for all contribution types as of the entry date selected below (select one of c. - k.) (for 401(k) plans, h. and i. are not permitted for all contribution types):

b.  **Entry date - different dates apply.** An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan for the designated contribution type as of the entry dates selected below (select one or more of c. - k. below; also select all that apply of columns 2. - 4. for each entry date selected at c. - j.) (may only be selected with 401(k) Plans)

**NOTE: For 401(k) Plans** - Option g. below can only be selected when eligibility for Elective Deferral purposes is six months of service or less and age is 20 1/2 or less. Options g.3. and g.4. may be selected when eligibility is 1 1/2 Years of Service or less and age is 20 1/2 or less and the Plan provides for 100% vesting.

**NOTE: For 401(k) Plans** - Unless otherwise specified in this Section or any other Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and rollover contributions (unless otherwise selected at Question 43); Matching includes QMACs; and Nonelective includes QNECs. **"ADP test safe harbor contributions" (SH) (including those made pursuant to a QACA) and SIMPLE 401(k) contributions are subject to the provisions for Elective Deferrals except as provided in Question 28.**

Entry Date	1. All Contributions	2. Elective Deferrals/SH	3. Matching	4. Nonelective
c. <input type="checkbox"/> Date requirements met	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> First day of the month coinciding with or next following date requirements met	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input checked="" type="checkbox"/> First day of the Plan Year quarter coinciding with or next following date requirements met	<input checked="" type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> First day of Plan Year or first day of 7th month of Plan Year coinciding with or next following date requirements met	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>
g. <input type="checkbox"/> First day of Plan Year coinciding with or next following date requirements met	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>
h. <input type="checkbox"/> First day of Plan Year in which requirements met	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>
i. <input type="checkbox"/> First day of Plan Year nearest date requirements met	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>
j. <input type="checkbox"/> Other:	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>

\_\_\_\_\_  
(must be definitely determinable and satisfy Note below)

**Non-Standardized Defined Contribution**

k.  Other: \_\_\_\_\_ (must specify contributions to which the conditions apply, must be definitely determinable, and must satisfy the Note below)

**NOTE:** If j. or k. above is selected, then it must be completed in a manner that ensures an Eligible Employee who has satisfied the maximum age (21) and service requirements (1 Year (or Period) of Service (or more than 1 year if full and immediate vesting)) and who is otherwise entitled to participate, will become a Participant not later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

**SERVICE**

16. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Sections 1.62 and 1.88)

a.  No service with other employers is recognized except as otherwise required by law (e.g., the Plan already provides for the recognition of service with Employers who have adopted this Plan as well as service with Affiliated Employers and predecessor Employers who maintained this Plan; skip to Question 17).

b.  Service with the designated employers is recognized as follows (select c. - f. and one or more of columns 1. - 3.; choose other options as applicable) (if more than 3 employers, attach an addendum to the Adoption Agreement or complete option k. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)):

	1. Eligibility	2. Vesting	3. Contribution Allocation
<b>Other Employer</b>			
c. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. <input type="checkbox"/> Any entity or business the Employer acquires whether by asset or stock purchase, but only with respect to individuals who are employees of the acquired entity at the time of the acquisition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Limitations**

g.  The following provisions or limitations apply with respect to the recognition of service with other employers: \_\_\_\_\_ (e.g., credit service with X only on/following 1/1/19 or credit all service with entities the Employer acquires after 12/31/18)

h.  The following provisions or limitations apply with respect to the recognition of service with other employers: \_\_\_\_\_ (e.g., credit service with X only on/following 1/1/19 or credit all service with entities the Employer acquires after 12/31/18)

**NOTE:** If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.62 and 1.88 regardless of any selections above.

17. SERVICE CREDITING METHOD (Plan Sections 1.62 and 1.88)

**NOTE:** If any Plan provision is based on a Year of Service, then the provisions set forth in the definition of Year of Service in Plan Section 1.88 will apply, including the following defaults, except as otherwise elected below:

1. A Year of Service means completion of at least 1,000 Hours of Service during the applicable computation period.
2. Hours of Service (Plan Section 1.43) will be based on actual Hours of Service except that for Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees) the monthly equivalency method will be used).
3. For eligibility purposes, the computation period will be as defined in Plan Section 1.88 (i.e., shift to the Plan Year if the eligibility condition is 1 Year of Service or less).
4. For vesting, allocation, and distribution purposes, the computation period will be the Plan Year.
5. The one-year hold-out rule after a 1-Year Break in Service will not be used.

a.  **Elapsed time method.** (Period of Service applies instead of Year of Service) Instead of Hours of Service, elapsed time will be used for:

1.  all purposes (skip to Question 18)
2.  the following purposes (select one or more):
  - a.  eligibility to participate
  - b.  vesting
  - c.  allocations, distributions and contributions

**Non-Standardized Defined Contribution**

- b.  **Alternative definitions for the Hours of Service method.** Instead of the defaults, the following alternatives will apply for the Hours of Service method (select one or more):
1.  **Eligibility computation period.** Instead of shifting to the Plan Year, the eligibility computation period after the initial eligibility computation period will be based on each anniversary of the date the Employee first completes an Hour of Service.
  2.  **Vesting computation period.** Instead of the Plan Year, the vesting computation period will be the date an Employee first performs an Hour of Service and each anniversary thereof.
  3.  **Equivalency method.** Instead of using actual Hours of Service, an equivalency method will be used to determine Hours of Service for:
    - a.  all purposes
    - b.  the following purposes (select one or more):
      1.  eligibility to participate
      2.  vesting
      3.  allocations, distributions and contributions

Such method will apply to:

    - c.  all Employees
    - d.  Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried Employees)
    - e.  other: \_\_\_\_\_ (e.g., per-diem Employees only)

Hours of Service will be determined on the basis of:

    - f.  days worked (10 hours per day)
    - g.  weeks worked (45 hours per week)
    - h.  semi-monthly payroll periods worked (95 hours per semi-monthly pay period)
    - i.  months worked (190 hours per month)
    - j.  bi-weekly payroll periods worked (90 hours per bi-weekly pay period)
    - k.  other: \_\_\_\_\_ (e.g., option f. is used for per-diem Employees and option g. is used for on-call Employees)
4.  **Number of Hours of Service required.** Instead of 1,000 Hours of Service, Year of Service means the applicable computation period during which an Employee has completed at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service for:
- a.  all purposes
  - b.  the following purposes (select one or more):
    1.  eligibility to participate
    2.  vesting
    3.  allocations, distributions and contributions
- c.  **Other service crediting provisions:** \_\_\_\_\_ (must be definitely determinable and nondiscriminatory; e.g., for vesting a Year of Service is based on 1,000 Hours of Service but for eligibility a Year of Service is based on 900 Hours of Service. NOTE: Must not list more than 1,000 hours in this Section.) This servicing credit provision will be used for:
1.  All purposes
  2.  The following purposes (select one or more):
    - a.  eligibility to participate
    - b.  vesting
    - c.  allocations, distributions and contributions

**VESTING**

18. VESTING OF PARTICIPANT'S INTEREST (Plan Section 6.4(b))
- a.  N/A (no Employer Nonelective Contributions (other than "prevailing wage contributions")) (for 401(k) plans, also no matching contributions or QACA "ADP test safe harbor contributions") (skip to Question 20)
  - b.  The vesting provisions selected below apply to all Participants unless otherwise selected below. In addition, option I. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) can be used to specify any exceptions to the provisions below.  
**Vesting waiver.** Employees who were employed on the date(s) indicated below and were Participants as of such date are 100% Vested. For Participants who enter the Plan after such date, the vesting provisions selected below apply (leave blank if no waiver applies):
    1.  For all contributions. The vesting waiver applies to all contributions if employed on \_\_\_\_\_ (enter date)
    2.  For designated contributions. The vesting waiver applies to (select one or more) (may only be selected with 401(k) Plans):
      - a.  Employer Nonelective Contributions if employed on \_\_\_\_\_
      - b.  Employer matching contributions if employed on \_\_\_\_\_
      - c.  QACA "ADP test safe harbor contributions" if employed on \_\_\_\_\_



**Non-Standardized Defined Contribution**

**Vesting for Employer Nonelective Contributions**

- c.  N/A (no Employer Nonelective Contributions (other than "prevailing wage contributions"); skip to f.) (may only be selected with 401(k) Plans)
- d.  100% vesting. Participants are 100% Vested in Employer Nonelective Contributions upon entering Plan (required if eligibility requirement is greater than 1 Year (or Period) of Service).
- e.  The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer Nonelective Contributions:
  - 1.  6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
  - 2.  4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
  - 3.  5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
  - 4.  3 Year Cliff: 0-2 years-0%; 3 years-100%
  - 5.  Other - Must be at least as liberal as either 1. or 4. above in each year without switching between the two schedules:

Years (or Periods) of Service	Percentage
1	0%
2	25%
3	50%
4	75%
5	100%

**Vesting for Employer matching contributions (may only be selected with 401(k) Plans)**

- f.  N/A (there are no Employer matching contributions that can be subject to a vesting schedule; skip to j.)
- g.  The schedule above will also apply to Employer matching contributions.
- h.  100% vesting. Participants are 100% Vested in Employer matching contributions upon entering Plan. (required if eligibility requirement is greater than 1 Year (or Period) of Service)
- i.  The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to Employer matching contributions:
  - 1.  6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
  - 2.  4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
  - 3.  5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
  - 4.  3 Year Cliff: 0-2 years-0%; 3 years-100%
  - 5.  Other - must be at least as liberal as either 1. or 4. above in each year without switching between the two schedules:

Years (or Periods) of Service	Percentage
1	0%
2	25%
3	50%
4	75%
5	100%

**Vesting for QACA safe harbor contributions (may only be selected with 401(k) Plans)**

- j.  N/A (no QACA "ADP test safe harbor contributions"; skip to Question 19)
- k.  100% vesting. Participants are 100% Vested in QACA "ADP test safe harbor contributions" upon entering Plan (skip to Question 19).
- l.  The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the elapsed time method is selected), applies to the Participant's Qualified Automatic Contribution Safe Harbor Account:
  - 1.  100% after two years: 0-1 year-0%; 2 years-100%
  - 2.  Other - Must be at least as liberal as 1. above in each year:

Years (or Periods) of Service	Percentage
Less than 1	_____ %
1	_____ %
2	100%

19. VESTING OPTIONS

**Excluded vesting service.** The following Years of Service will be disregarded for vesting purposes (select all that apply; leave blank if none apply):

- a.  Service prior to the initial Effective Date of the Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))
- b.  Service prior to the computation period in which an Employee has attained age 18

**Vesting for death, Total And Permanent Disability and Early Retirement Date.** Regardless of the vesting schedule, a Participant will become fully Vested upon (select all that apply; leave blank if none apply):

- c.  Death
- d.  Total and Permanent Disability
- e.  Early Retirement Date

**Non-Standardized Defined Contribution**

**NOTE:** Unless otherwise elected at option v. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the options above apply to QACA "ADP test safe harbor contributions," if any, as well as to Employer Nonelective Contributions and matching contributions.

**RETIREMENT AGES**

20. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.55) means:
- Specific age.** The date a Participant attains age 65 (see Note below).
  - Age/participation.** The later of the date a Participant attains age \_\_\_\_\_ (see Note below) or the \_\_\_\_\_ (not to exceed 5th) anniversary of the first day of the Plan Year in which participation in the Plan commenced.
- NOTE:** A Participant's age specified above may not exceed 65 and, if this Plan is a Money Purchase Pension Plan or includes transferred pension assets, a Participant's age may not be less than age 62 unless the Employer has evidence that the representative typical retirement age for the adopting Employer's industry is a lower age, but may be no less than age 55. If an age between 55 and less than 62 is inserted, no reliance will be afforded on the Opinion Letter issued to the Plan that such age is reasonably representative of the typical retirement age for the industry in which the Participants work.
21. NORMAL RETIREMENT DATE (Plan Section 1.56) means, with respect to any Participant, the:
- date on which the Participant attains "NRA"
  - first day of the month coinciding with or next following the Participant's "NRA"
  - first day of the month nearest the Participant's "NRA"
  - Anniversary Date coinciding with or next following the Participant's "NRA"
  - Anniversary Date nearest the Participant's "NRA"
  - Other: \_\_\_\_\_ (e.g., first day of the month following the Participant's "NRA")
22. EARLY RETIREMENT DATE (Plan Section 1.23)
- N/A (no early retirement provision provided)
  - Early Retirement Date means the:
    - date on which a Participant satisfies the early retirement requirements
    - first day of the month coinciding with or next following the date on which a Participant satisfies the early retirement requirements
    - Anniversary Date coinciding with or next following the date on which a Participant satisfies the early retirement requirements
- Early retirement requirements**
- Participant attains age \_\_\_\_\_  
**AND**, completes.... (leave blank if not applicable)
    - at least \_\_\_\_\_ Years (or Periods) of Service for vesting purposes
    - at least \_\_\_\_\_ Years (or Periods) of Service for eligibility purposes

**COMPENSATION**

23. COMPENSATION with respect to any Participant is defined as follows (Plan Sections 1.18 and 1.40).
- Base definition**
- Wages, tips and other compensation on Form W-2
  - Code §3401(a) wages (wages for withholding purposes)
  - 415 safe harbor compensation
- NOTE:** Plan Sections 1.18(d) and 1.40 provide that the base definition of Compensation includes deferrals that are not included in income due to Code §§401(k), 125, 132(f)(4), 403(b), 402(h)(1)(B)(SEP), 414(h)(2), & 457.
- Determination period.** Compensation will be based on the following "determination period" (this will also be the Limitation Year unless otherwise elected at option h. under Section B of Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections)):
- the Plan Year
  - the Fiscal Year coinciding with or ending within the Plan Year
  - the calendar year coinciding with or ending within the Plan Year
- Adjustments to Compensation** (for Plan Section 1.18). Compensation will be adjusted by:
- No adjustments.** No adjustments to Compensation for all contribution types (skip to Question 24).
  - Adjustments - same for all contribution types.** The following Compensation adjustments apply to all contribution types (select one or more of i. – v. below) (k. may also be selected for Profit Sharing Plans or Money Purchase Pension Plans):
  - Adjustments - different adjustments apply.** The following Compensation adjustments for the designated contribution type (select one or more of k. – v. below; also select column 1. OR all that apply of columns 2. - 5. for each adjustment selected at j. – u.) (may only be selected with 401(k) Plans):
- NOTE:** For 401(k) Plans - Elective Deferrals include Roth Elective Deferrals, Matching includes QMACs and matching "ADP test safe harbor contributions" (including those made pursuant to a QACA), and Nonelective includes Profit Sharing contributions, Money Purchase Pension Plan contributions and QNECs unless specified otherwise. ADP

**Non-Standardized Defined Contribution**

Safe Harbor Nonelective includes nonelective "ADP test safe harbor contributions" (including those made pursuant to a QACA).

	<b>1. All Contributions</b>	<b>2. Elective Deferrals</b>	<b>3. Matching</b>	<b>4. Nonelective</b>	<b>5. ADP Safe Harbor Nonelective</b>
<b>Adjustments</b>					
j. <input type="checkbox"/> no Adjustments	N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. <input type="checkbox"/> excluding salary reductions (401(k), 125, 132(f)(4), 403(b), SEP, 414(h)(2) pickup, & 457)	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>
l. <input type="checkbox"/> excluding reimbursements or other expense, allowances, fringe benefits (cash or non-cash) (see IRS Publication 15-B), moving expenses, deferred compensation (other than deferrals specified in k. above) and welfare benefits.	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. <input checked="" type="checkbox"/> excluding Compensation paid during the "determination period" while not a Participant in the component of the Plan for which the definition applies.	<input checked="" type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n. <input type="checkbox"/> excluding Compensation paid during the "determination period" while not a Participant in <i>any</i> component of the Plan for which the definition applies.	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
o. <input type="checkbox"/> excluding Military Differential Pay	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p. <input type="checkbox"/> excluding amounts in excess of \$ _____	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. <input type="checkbox"/> limited to HCEs (must be selected for ADP Safe Harbor Plans)					

The following adjustments will require annual nondiscrimination testing.

q. <input type="checkbox"/> excluding overtime	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r. <input type="checkbox"/> excluding bonuses	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s. <input type="checkbox"/> excluding commissions	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
t. <input type="checkbox"/> excluding Compensation paid by an Affiliated Employer that has not adopted this Plan	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
u. <input type="checkbox"/> other:	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay))

v.  other: \_\_\_\_\_ (e.g., describe Compensation from the elections available above or a combination thereof as to a contribution source and Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay))

**NOTE:** If q., r., s., t., u., or v. is selected, the definition of Compensation could violate the nondiscrimination rules.

**NOTE:** For 401(k) Plans – q., r., s., t., u., or v. are not recommended if the Plan is using the ADP/ACP safe harbor provisions.

**Non-Standardized Defined Contribution**

24. **POST-SEVERANCE COMPENSATION (415 REGULATIONS)**  
**415 Compensation (post-severance compensation adjustments)** (select all that apply at a. - b.; leave blank if none apply)

**NOTE:** Unless otherwise elected under a. below, the following defaults apply: 415 Compensation will **include** (to the extent provided in Plan Section 1.40), post-severance regular pay, leave cash-outs and payments from nonqualified unfunded deferred compensation plans.

- a.  The defaults listed above apply except for the following (select one or more):
  - 1.  Leave cash-outs will be **excluded**
  - 2.  Nonqualified unfunded deferred compensation will be **excluded**
  - 3.  Disability continuation payments will be **included** for:
    - a.  Nonhighly Compensated Employees only
    - b.  all Participants and the salary continuation will continue for the following fixed or determinable period: \_\_\_\_\_
  - 4.  Other: \_\_\_\_\_ (must be definitely determinable and nondiscriminatory in accordance with Code §401(a)(4) and the regulations thereunder)
- b.  The last paycheck ("administrative delay") rule will be applied (amounts paid in the first few weeks of a Limitation Year due to administrative delay relate back to the prior Limitation Year).

**Plan Compensation (post-severance compensation adjustments)**

- c.  **Defaults apply.** For all contribution types, Compensation will **include** (to the extent provided in Plan Section 1.18 and to the extent such amounts would be included in Compensation if paid prior to severance of employment) post-severance regular pay, leave cash-outs, and payments from nonqualified unfunded deferred compensation plans (skip to Question 25).
- d.  **Exclude all post-severance compensation.** Exclude all post-severance compensation for all contribution types (may violate the nondiscrimination requirements) (skip to Question 25).
- e.  **Post-severance adjustments - same for all contribution types.** The defaults listed at c. apply except for the following for all contribution types (select one or more of i. - l. below):
- f.  **Post-severance adjustments - different adjustments apply.** The defaults listed at c. apply except for the following for the designated contribution type (select one or more of g. - l. below; also select column 1. OR all that apply of columns 2. - 5. for each adjustment selected at g. - l.) (may only be selected with 401(k) Plans):

	1. All Contributions	2. Elective Deferrals	3. Matching	4. Nonelective	5. ADP Safe Harbor Nonelective
<b>Adjustments</b>					
g. <input type="checkbox"/> Defaults apply	N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. <input type="checkbox"/> Exclude all post-severance compensation (may violate the nondiscrimination requirements)	N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i. <input type="checkbox"/> Regular pay will be <b>excluded</b> (may violate the nondiscrimination requirements)	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j. <input type="checkbox"/> Leave cash-outs will be <b>excluded</b>	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. <input type="checkbox"/> Nonqualified unfunded deferred compensation will be <b>excluded</b>	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. <input type="checkbox"/> Disability continuation payments will be <b>included</b> for: <ul style="list-style-type: none"> <li>a. <input type="checkbox"/> NHCEs only</li> <li>b. <input type="checkbox"/> all Participants and the salary continuation will continue for the following fixed or determinable period: _____</li> </ul>	<input type="checkbox"/>	<b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m. <input type="checkbox"/> Other: _____ (must be definitely determinable and nondiscriminatory in accordance with Code §401(a)(4) and the regulations thereunder.)					

**CONTRIBUTIONS AND ALLOCATIONS**

25. **SALARY DEFERRAL ARRANGEMENT - ELECTIVE DEFERRALS** (Plan Section 12.2) (skip if Elective Deferrals NOT selected at Question 12.b.) (Roth Elective Deferrals are permitted if selected at Question 12.b.1)

A. **Elective Deferral limit.** Each Participant may elect to have Compensation deferred by:

- a.  up to (select one):
  - 1.  \_\_\_\_\_% of Compensation
  - 2.  \$\_\_\_\_\_
- b.  from (select one):
  - 1.  \_\_\_\_\_% to \_\_\_\_\_% of Compensation
  - 2.  \$\_\_\_\_\_ to \$\_\_\_\_\_
- c.  up to the maximum amount allowed by law (i.e., Code §§402(g) and 415)

**Non-Standardized Defined Contribution**

d.  **Minimum deferral amount.** A Participant's Elective Deferrals may not be less than: \_\_\_\_\_ (specify dollar amount (not greater than \$10,000) and/or percentage of Compensation (not greater than 10%)).

B. **Additional Elective Deferral limits.** Regardless of the above limits (if any), the following apply (select all that apply; leave blank if none apply):

e.  If a. or b. above is selected, a Participant may make a separate election to defer with respect to irregular pay (e.g., bonus)

1.  For purposes of the separate election, a Participant may elect to defer up to \_\_\_\_\_% of irregular pay (regardless of the limitation in a. or b. above)

f.  For Participants who are HCEs determined as of the beginning of a Plan Year, then instead of 25.A. applying, the Elective Deferral limit is (must be equal to or lower than limit selected in 25.A.; may not be selected if HCEs are excluded at 13.g.1 or 13.g.2) (select one):

1.  \_\_\_\_\_% of Compensation

2.  other: \_\_\_\_\_ (e.g., must be a specific limit that only applies to some or all HCEs)

C. **Catch-Up Contributions** (Plan Section 1.15). May eligible Participants make Catch-Up Contributions?

g.  No (skip to D. below)

h.  Yes, and the following provisions apply:

**Matching Catch-Up Contributions.** Catch-Up Contributions will be taken into account in applying any matching contribution under the Plan unless selected below.

1.  Matching contributions will not be made for amounts attributable to Catch-Up Contributions (may not be selected if this Plan provides for matching "ADP test safe harbor contributions," "ACP test safe harbor matching contributions," or SIMPLE Plans)

**Special effective date** (choose if applicable)

2.  The effective date of the Catch-Up Contribution provisions is \_\_\_\_\_ (Enter special effective date. The special effective date of the CODA cannot be prior to the Effective Date of the Plan (6.a) or, if applicable, the Effective Date of the Restatement (6.b).)

D. **Elective Deferral special effective date** (choose if applicable)

i.  The effective date of the Elective Deferral component of the Plan, which is also the first Entry Date for the Elective Deferral component of the Plan, is \_\_\_\_\_ (enter month day, year) Note: The date chosen may not be earlier than the date on which the Employer first adopts the Elective Deferral component of the Plan and the Employer must operationally begin taking deferrals from Compensation as soon as administratively feasible thereafter.

26. **AUTOMATIC CONTRIBUTION ARRANGEMENT** (Plan Section 12.2 and 12.9) (skip if Elective Deferrals are NOT selected at Question 12.b.)

A. **Automatic Deferral provisions.** Will the Plan include Automatic Deferral provisions?

a.  No (skip to Question 28)

b.  Yes, this Plan includes (select one):

1.  A traditional Automatic Contribution Arrangement (not an Eligible Automatic Contribution Arrangement (EACA) or a Qualified Automatic Contribution Arrangement (QACA))

2.  An Eligible Automatic Contribution Arrangement (EACA) but not a Qualified Automatic Contribution Arrangement (QACA)

3.  A Qualified Automatic Contribution Arrangement (QACA) (a QACA, by definition, satisfies the requirements of an Eligible Automatic Contribution Arrangement (EACA)) (must be selected if QACA safe harbor contributions is selected at 12.c.2.)

B. **Participants subject to the Automatic Deferral provisions.** The Automatic Deferral provisions apply to Employees who become Participants on or after the effective date of these Automatic Deferral provisions, except as otherwise provided herein.

**Application to existing Eligible Employees.** If the effective date of these Automatic Deferral provisions is later than the date Elective Deferrals were first permitted under this Plan, then the following rules apply to Eligible Employees who were Participants immediately prior to the effective date of these Automatic Deferral provisions (if an EACA and not a QACA, see the Note below; select c. or d. and/or e.):

c.  The Automatic Deferral provisions are either already an ongoing arrangement or will be implemented prospectively on a limited basis (if selected, do not select d.)

1.  **No existing Eligible Employees.** These Automatic Deferral provisions have applied since the date Elective Deferrals were first permitted under this Plan.

2.  **No application to existing Participants.** These Automatic Deferral provisions do not apply to Employees who were Participants immediately prior to the effective date of these Automatic Deferral provisions. (may not be selected with QACA).

3.  **New hires only (not applicable to QACA).** These Automatic Deferral provisions only apply to Employees whose employment commencement date (or reemployment commencement date) is on or following the effective date of these Automatic Deferral provisions or the following date:

**Other effective date.** (optional; specify a date)

a.  \_\_\_\_\_

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- d.  These Automatic Deferral provisions apply to existing Participants in accordance with the following (select one):
  - 1.  **All Participants.** All existing Participants, regardless of any prior Salary Deferral Agreement.
  - 2.  **Affirmative Election of at least Automatic Deferral amount.** All existing Participants, except those who have an Affirmative Election in effect on the effective date of these Automatic Deferral provisions that is at least equal to the Automatic Deferral amount.
  - 3.  **No existing Affirmative Election.** All existing Participants, except those who have an Affirmative Election in effect on the effective date of these Automatic Deferral provisions.
- e.  Other (may not be used if a QACA): \_\_\_\_\_ (must be definitely determinable in accordance with Regulation §1.401-1(b)(1)(ii))

**NOTE:** Option B.e. may be used to exclude other Participants from the Automatic Deferral provisions.

**NOTE:** If an EACA and not a QACA and c. is selected (i.e., EACA does not apply to existing Participants), then the six-month period for relief from the excise tax under Code §4979(f)(1) will not apply. In addition, the six-month period for relief from the excise tax will only apply if all HCEs and NHCEs are covered Employees under the EACA for the entire Plan Year (or for the portion of the Plan Year that such Employees are Eligible Employees under the Plan within the meaning of Code §410(b)).

**C. Automatic Deferral amount.** Unless a Participant makes an Affirmative Election, the Employer will withhold the following Automatic Deferral amount (select one):

- f.  \_\_\_\_\_% of Compensation for each payroll period (if a QACA, must not be more than 10% and may not be less than 3% if escalation provisions used in h.1. below or 6% if no escalation provisions are selected)
- g.  \$\_\_\_\_\_ for each payroll period (may not be selected if a QACA or EACA)
- h.  **QACA statutory minimum schedule** (may select even if Plan is not a QACA). Unless a modified QACA statutory schedule is selected below, the Employer will withhold from a Participant's Compensation each payroll period the percentage of Compensation set forth in the following, which is based on the Plan Year of application to a Participant: 1-2 years-3%; 3 years-4%; 4 years-5%; 5 or more-6%. (if selected, skip D.)
  - 1.  The following modified QACA statutory schedule will apply (the limitations in the parentheses below only applies to QACAs):

<u>Plan Year of application to a Participant</u>	<u>Automatic Deferral Percentage</u>
1	_____ % (not less than 3)
2	_____ % (not less than 3)
3	_____ % (not less than 4)
4	_____ % (not less than 5)
5	_____ % (not less than 6 and not more than 10)
6	_____ % (not less than 6 and not more than 10)
7	_____ % (not less than 6 and not more than 10)
8	_____ % (not less than 6 and not more than 10)
9	_____ % (not less than 6 and not more than 10)
10 and thereafter	_____ % (not less than 6 and not more than 10)

- i.  **Other:** \_\_\_\_\_ (in order to satisfy the QACA requirements (if applicable), an alternative Automatic Deferral amount schedule (i) must be uniform based on the number of years, or portions of years, since the beginning of the initial period for a Participant, (ii) must satisfy the minimum percentage requirement in h. above throughout the Plan Year, and (iii) must not exceed 10% of Compensation)

**D. Escalation of Automatic Deferral amount** (may not be selected with 26.h.)

- j.  No escalation or Plan is a QACA (any escalation for a QACA must be set forth above)
- k.  **Scheduled increases.** The initial Automatic Deferral amount will increase as selected below (may not be selected with h. above):
  - 1.  by \_\_\_\_\_% point(s) of Compensation (choose a. below if applicable)
    - a.  up to a maximum of \_\_\_\_\_% of Compensation
  - 2.  by \$\_\_\_\_\_ (may not be selected if an EACA; choose a. below if applicable)
    - a.  up to a maximum of \$\_\_\_\_\_
  - 3.  other: \_\_\_\_\_ (in order to satisfy the QACA requirements (if applicable), an alternative Automatic Deferral amount schedule (i) must be uniform based on the number of years, or portions of years, since the beginning of the initial period for a Participant, (ii) must satisfy the minimum percentage requirement in h. above throughout the Plan Year, and (iii) must not exceed 10% of Compensation)

**Change Date**

- 4.  N/A (entry at k.3. includes timing provision)
- 5.  The escalation provision above will apply as of:
  - a.  each anniversary of the Participant's date of hire
  - b.  each anniversary of the Participant's Entry Date
  - c.  the first day of each Plan Year
  - d.  the first day of each calendar year
  - e.  other: \_\_\_\_\_ (must be a specified date that occurs at least annually after the Plan Year in which the Participant is first subject to the Automatic Contribution Arrangement)

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**First change date of application.** Unless selected below, the escalation provision above will apply as of the first change date specified above that begins after the period in which the Participant first has contributions made pursuant to a default election.

f.  The escalation provision will apply as of the second change date period after the Participant first has contributions made pursuant to a default election.

**E. Other Automatic Deferral elections** (leave blank if none apply)

i.  **Optional elections** (select one or more)

**Type of Elective Deferral.** The Automatic Deferral is a Pre-Tax Elective Deferral unless selected below (may only be selected if Roth Elective Deferrals are selected at 12.b.1.):

1.  the Automatic Deferral is a Roth Elective Deferral

2.  other: \_\_\_\_\_ (e.g., 50% Pre-Tax and 50% Roth Elective Deferrals)

**Special effective dates** (optional; may choose one or both)

3.  The Automatic Deferral provisions set forth above are effective as of \_\_\_\_\_

4.  Other: \_\_\_\_\_ (If there are multiple retroactive special effective dates, complete this Question 26 based on the current Plan provisions and, if desired, duplicate this Question 26 and attach as an Appendix to indicate other special effective dates and the provisions that applied.)

**F. EACA elections** (skip if NOT a QACA or EACA)

**Permissible withdrawals.** Does the Plan permit Participant permissible withdrawals (as described in Plan Section 12.2(b)(4)) within 90 days (or less) of first Automatic Deferral?

m.  No

n.  Yes, within 90 days of first Automatic Deferral

o.  Yes, within: \_\_\_\_\_ days (may not be less than 30 nor more than 90 days)

**Affirmative Election.** Will Participants who are eligible to defer (even if they have made an Affirmative Election) continue to be covered by the EACA provisions (i.e., their Affirmative Election will remain intact but they must receive an annual notice)? (skip if a QACA)

p.  Yes (if selected, then the annual notice must be provided to Participants)

q.  No (if selected, then the Plan cannot use the six-month period for relief from the excise tax of Code §4979(f)(1))

**27. AUTOMATIC ESCALATION OF PARTICIPANTS WITH AFFIRMATIVE ELECTIONS**

The following Automatic Escalation provisions apply to Participants who have made an Affirmative Election (see Question 26 for Automatic Deferral provisions that apply to Participants who have made no Affirmative Election). (skip if Elective Deferrals are NOT selected at Question 12.b.)

**A. Automatic Escalation of Affirmative Elections.** Will the Plan automatically escalate Participants with an Affirmative Election?

a.  No (skip to Question 28)

b.  Yes. If Automatic Escalation applies to a Participant, this constitutes a provision that the Participant's affirmative election will expire annually.

Under a 401(k) plan, the plan may provide that an affirmative election expires annually. If a participant fails to complete a new affirmative election subsequent to their prior election expiring, the participant becomes subject to the default deferral percentage as outlined in this Election 27 and in Plan Section 12.2(l)(1). Each year, the participant can always complete a new affirmative election and designate a new deferral percentage.

**B. Participants affected.** The Automatic Escalation provisions apply to the following Participants with Affirmative Elections (select one of c., d., or e.):

c.  **All Deferring Participants.** All Participants who have a Salary Reduction Agreement in effect as of the effective date of these automatic deferral provisions to defer at least \_\_\_\_\_% of Compensation.

d.  **New Deferral Elections.** All Participants who file a Salary Reduction Agreement after the effective date of these provisions to defer at least \_\_\_\_\_% of Compensation.

e.  **Describe affected Participants:** \_\_\_\_\_ (the group of Participants must be definitely determinable and if an EACA (including a QACA) as elected in Question 26, must be uniform)

**C. Automatic Increases.** Affirmative Elections of Participants covered by this Question 27 will be increased as follows (select one):

f.  **Same as Automatic Enrollment escalation.** The same escalation provisions selected in Question 26 apply to Participants covered by this Question 27 (if selected, skip the remaining Questions).

g.  **Scheduled increases.** The Affirmative Election amount will increase as selected below

1.  by \_\_\_\_\_% point(s) of Compensation (choose a. below if applicable)

a.  up to a maximum of \_\_\_\_\_% of Compensation

2.  by \$\_\_\_\_\_ (may not be selected if an EACA; choose a. below if applicable)

a.  up to a maximum of \$\_\_\_\_\_

3.  other: \_\_\_\_\_ (must be uniform if an EACA)

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4.  N/A (entry at g.3. includes timing provision)
5.  The escalation provision above will apply as of:
- each anniversary of the Participant's date of hire
  - each anniversary of the Participant's Entry Date
  - the first day of each Plan Year
  - the first day of each calendar year
  - other: \_\_\_\_\_

**First change date.** Unless selected below, the escalation provision above will apply as of the first change date specified above that begins after the period in which the Participant first has an Affirmative Election subject to these provisions.

- f.  The escalation provision will apply as of the second change date after the Participant first has an Affirmative Election subject to these provisions.

D. **Other Automatic Escalation provisions** (leave blank if none apply)

h.  **Optional elections** (select one or more)

**Type of Elective Deferral.** The Automatic Escalation will be the same, or proportionate, type of Elective Deferral (i.e., Pre-Tax Elective Deferral or Roth Elective Deferral) as elected by the Participant in the Affirmative Election unless selected below (may only be selected if Roth Elective Deferrals are selected at 12.b.1.):

- the Automatic Escalation is a Roth Elective Deferral
- other: \_\_\_\_\_ (e.g., 50% Pre-Tax and 50% Roth Elective Deferrals)

**Special effective dates** (optional; may choose one or both)

- The Automatic Escalation provisions set forth above are effective on and after \_\_\_\_\_
- Other: \_\_\_\_\_ (If there are multiple retroactive special effective dates, complete this Question 27 based on the current Plan provisions and, if desired, duplicate this Question 27 and attach as an Appendix to indicate other special effective dates and the provisions that applied.)

28. 401(k) ADP TEST SAFE HARBOR PROVISIONS (Plan Sections 12.8 and 12.9) (skip if "ADP test safe harbor contributions" are NOT selected at Question 12.c.)

**NOTE:** If the Employer wants the discretion to determine whether the provisions will apply on a year-by-year basis, then the Employer may select 28.a. or b. and 28.d.3.

**NOTE:** If the Employer will make the safe harbor contribution to another plan, complete this Question 28 and mark 28.e. to specify the name of the plan to which the safe harbor contribution will be deposited.

A. **ADP and ACP test safe harbor.** For any Plan Year in which any type of matching contribution is made, will the "ADP and ACP test safe harbor" provisions be used?

- No. Only the "ADP (and NOT the ACP) test safe harbor" provisions will be used.
- Yes. Both the "ADP and ACP test safe harbor" provisions will be used for any Plan Year in which any type of matching contribution is made. (If selected, complete the provisions of the Adoption Agreement relating to Employer matching contributions (i.e., Question 29) that will apply, if any, in addition to any selections made in c. below. Also, no allocation conditions may be imposed at 29.E. unless no HCEs are eligible to receive the matching contribution)

B. **Safe harbor contribution.** The Employer will make the following "ADP test safe harbor contribution" for the Plan Year:

**NOTE:** The "ACP test safe harbor" is automatically satisfied if the only matching contribution made to the Plan is either, as described below, (1) a basic matching contribution (traditional or QACA) or (2) an enhanced matching contribution (traditional or QACA) that does not provide a match on Elective Deferrals in excess of 6% of Compensation.

c.  **Safe harbor matching contribution** (select one of 1. - 4. **AND** one of 5. - 9.). The Employer will make matching "ADP test safe harbor contributions" to the Account of each "eligible Participant" as elected below.

- Traditional basic matching contribution** (may not be selected if a QACA). The Employer will contribute an amount equal to the sum of 100% of the amount of the Participant's Elective Deferrals that do not exceed 3% of the Participant's Compensation, plus 50% of the amount of the Participant's Elective Deferrals that exceed 3% of the Participant's Compensation but do not exceed 5% of the Participant's Compensation.
- Traditional enhanced matching contribution** (may not be selected if a QACA). The Employer will contribute an amount equal to the sum of:
  - \_\_\_\_\_% (may not be less than 100%) of the Participant's Elective Deferrals that do not exceed \_\_\_\_\_% (may not be less than 3% or may be less than 3% provided the rate of match will result in a matching contribution of at least 100% on Elective Deferrals up to 3%; if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
  - \_\_\_\_\_% of the Participant's Elective Deferrals that exceed \_\_\_\_\_% (must be the same % entered at a.) of the Participant's Compensation but do not exceed \_\_\_\_\_% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
  - \_\_\_\_\_% of the Participant's Elective Deferrals that exceed \_\_\_\_\_% (must be the same % entered at b.) of the Participant's Compensation but do not exceed \_\_\_\_\_% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation.



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**NOTE:** a., b. and c. must be completed so that, at any rate of Elective Deferrals, the matching contribution is at least equal to what the matching contribution would be if the Employer were making basic matching contributions (as defined in 28.c.1. above), but the rate of match cannot increase as Elective Deferrals increase. For example, if a. is completed to provide a matching contribution equal to 100% of Elective Deferrals up to 4% of Compensation, then b. and c. need not be completed.

3.  **QACA basic matching contribution.** The Employer will contribute an amount equal to the sum of 100% of a Participant's Elective Deferrals that do not exceed 1% of Participant's Compensation, plus 50% of the Participant's Elective Deferrals that exceed 1% of the Participant's Compensation but do not exceed 6% of the Participant's Compensation.
4.  **QACA enhanced matching contribution.** The Employer will contribute an amount equal to the sum of:
- a.  \_\_\_\_\_% (may not be less than 100%) of the Participant's Elective Deferrals that do not exceed \_\_\_\_\_% (may not be less than 1%; if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
- b.  \_\_\_\_\_% of the Participant's Elective Deferrals that exceed \_\_\_\_\_% (must be the same % entered at a.) of the Participant's Compensation but do not exceed \_\_\_\_\_% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus
- c.  \_\_\_\_\_% of the Participant's Elective Deferrals that exceed \_\_\_\_\_% (must be the same % entered at b.) of the Participant's Compensation but do not exceed \_\_\_\_\_% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation.

**NOTE:** a., b. and c. must be completed so that, at any rate of Elective Deferrals, the matching contribution is at least equal to what the matching contribution would be if the Employer were making QACA basic matching contributions (as defined in 28.c.3. above), but the rate of match cannot increase as Elective Deferrals increase. For example, if a. is completed to provide a matching contribution equal to 100% of Elective Deferrals up to 4% of Compensation, then b. and c. need not be completed.

**Determination period.** The matching "ADP test safe harbor contribution" above will be applied on the following basis (and Elective Deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period):

5.  the Plan Year (potential annual true-up required)
6.  each payroll period (no true-up)
7.  all payroll periods ending within each month (potential monthly true-up contribution required)
8.  all payroll periods ending within each Plan Year quarter (potential quarterly true-up required)
9.  each payroll unit (e.g., hour) (no true-up)

d.  **Safe harbor nonelective contributions** (select one)

1.  **3% contribution.** The Employer will make a nonelective "ADP test safe harbor contribution" for the Plan Year to the Account of each "eligible Participant" in an amount equal to 3% of each Participant's Compensation.
2.  **Stated contribution.** The Employer will make a nonelective "ADP test safe harbor contribution" to the Account of each "eligible Participant" in an amount equal to \_\_\_\_\_% (may not be less than 3%) of each Participant's Compensation.
3.  **"Maybe" election.** The Employer may elect to make a nonelective "ADP test safe harbor contribution" after a Plan Year has commenced in accordance with the provisions of Plan Section 12.8(h). If this option d.3. is selected, the nonelective "ADP test safe harbor contribution" will be required only for a Plan Year for which the Plan is amended to provide for such contribution and the appropriate supplemental notice is provided to Participants.

e.  **Safe harbor contribution to another Plan.** The Employer will make a nonelective or matching "ADP test safe harbor contribution" to another defined contribution plan maintained by the Employer (specify the name of the other plan):

\_\_\_\_\_

C. **Excluded Participants.** For purposes of the "ADP test safe harbor contribution," the term "eligible Participant" means any Participant who is eligible to make Elective Deferrals unless otherwise excluded below (leave blank if no exclusions):

f.  Exclusions (select one or more):

1.  Highly Compensated Employees (HCEs). The Employer may, however, make a discretionary "ADP test safe harbor contribution" and/or "ACP test safe harbor contribution" for any or all HCEs in a percentage that does not exceed the amount (or in the case of a matching "ADP test safe harbor contribution," the rate) provided to the NHCEs.
2.  Employees who have not satisfied the greatest minimum age and service conditions permitted under Code §410(a) (i.e., age 21 and 1 Year of Service), with the following deemed effective date of participation (if selected, the top-heavy exemption in Plan Section 12.8(f) will not apply):
- a.  the earlier of the first day of the first month or the first day of the seventh month of the Plan Year immediately following the date such conditions are satisfied
- b.  the first day of the Plan Year in which the requirements are met

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c.  other: \_\_\_\_\_ (not later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied)

3.  Union Employees (as defined in Plan Section 1.28)

4.  Other: \_\_\_\_\_ (must be an HCE or an Employee who can be excluded under the permissive or mandatory disaggregation rules of Regulations §§1.401(k)-1(b)(4) and 1.401(m)-1(b)(4); e.g., Employees who have not completed 6 months of service)

D. **Special effective dates** (may be left blank if no special effective dates need to be specified in this Plan) (select all that apply)

g.  **Safe harbor provisions (other than QACA).** The "ADP and ACP test safe harbor" provisions are effective as of: \_\_\_\_\_ (enter the date the provisions are effective and, if necessary, enter any other special effective dates that apply with respect to the provisions; generally must be the first day of a Plan Year or the date Elective Deferrals are first permitted).

h.  **QACA provisions.** The QACA provisions are effective as of: \_\_\_\_\_ (enter the date the provisions are effective and, if necessary, enter any other special effective dates that apply with respect to the provisions; generally must be the first day of a Plan Year or the date Elective Deferrals are first permitted)

i.  **Other:** \_\_\_\_\_ (If there are multiple retroactive special effective dates, complete this Question 28 based on the current Plan provisions and then duplicate this Question 28 and attach as an Appendix to indicate the special retroactive effective dates and provisions that applied.)

E. **Elective Deferrals considered for matching contribution.** If a matching contribution is selected above, then the Plan will disregard a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant unless otherwise elected below.

j.  The Plan will include a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant.

29. **EMPLOYER MATCHING CONTRIBUTIONS** (Plan Section 12.1(a)(2) and Plan Section 12.12) (skip if matching contributions are NOT selected at Question 12.d.)

If the "ACP test safe harbor" provisions are being used (i.e., Question 28.b. is selected), then the Plan will only take into account Elective Deferrals up to 6% of Compensation in applying the matching contribution set forth below and the maximum discretionary matching contribution that may be made on behalf of any Participant is 4% of Compensation.

A. **Matching formula.**

a.  Employer matching contribution as follows (select 1. or 2.):

1.  **Flexible Discretionary Match.** A "Flexible Discretionary Match" means a Matching Contribution which the Employer in its sole discretion elects to make to the Plan. Except as specified below, the Employer retains discretion over the formula or formulas for allocating the Flexible Discretionary Match, including the Discretionary Matching Contribution rate or amount, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants or categories of Participants who will receive the allocation, and the time period applicable to any matching formula(s) (collectively, the "Flexible Discretionary Matching Formula"), except as the Employer otherwise elects in its Adoption Agreement. Such contributions will be subject to the Instructions and Notice requirement of Section 12.12, reproduced below, unless the Employer elects to use a "Rigid Discretionary Match" in Election 29.A.a.1.a. below.

The discretionary matching contribution under this Question 29.A.a. is a "Flexible Discretionary Match" unless the Employer elects to use a "Rigid Discretionary Match." (Choose a. if applicable.)

a.  **Rigid Discretionary Match.** A "Rigid Discretionary Match" means a Matching Contribution which the Employer in its sole discretion elects to make to the Plan. Such discretion will only pertain to the amount of the annual contribution. The Employer must select the allocation method for this Contribution by selecting among those Adoption Agreement options which confer no Employer Discretion regarding the allocation of such discretionary amount, for example, the limit(s) on Elective Deferrals or Employee Contributions subject to match, the per Participant match allocation limit(s), the Participants who will receive the allocation, and the time period applicable to any matching formula(s). This "Rigid Discretionary Match" is not subject to the Instructions and Notice requirement of Section 12.12.

Section 12.12 provides: INSTRUCTIONS TO ADMINISTRATOR AND NOTIFICATION TO PARTICIPANTS. For Plan Years beginning after the end of the Plan Year in which this document is first adopted, if a "Flexible Discretionary Match" contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to *allocate* a matching contribution to Participants) and the Employer makes a "Flexible Discretionary Match" to the Plan, the Employer must provide the Plan Administrator or Trustee written instructions describing (1) how the "Flexible Discretionary Match" formula will be allocated to Participants (e.g., a uniform percentage of Elective Deferrals or a flat dollar amount), (2) the computation period(s) to which the "Flexible Discretionary Match" formula applies, and (3) if applicable, a description of each business location or business classification subject to separate "Flexible

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Discretionary Match" allocation formulas. Such instructions must be provided no later than the date on which the "Flexible Discretionary Match" is made to the Plan. A summary of these instructions must be communicated to Participants who receive an allocation of the "Flexible Discretionary Match" no later than 60 days following the date on which the last "Flexible Discretionary Match" is made to the Plan for the Plan Year.

- 2.  **Fixed - uniform rate/amount.** The Employer will make matching contributions equal to 50 % (e.g., 50) of the Participant's Elective Deferrals, plus (select a. or leave blank if not applicable):
  - a.  an additional matching contribution of a discretionary percentage determined by the Employer,
    - 1.  but not to exceed \_\_\_\_\_% of Compensation (leave blank if not applicable). Such contribution is subject to the Instructions and Notice requirement of Section 12.12.

**Matching limit on Elective Deferrals.** In determining the Employer matching contribution above, only the following will be matched. Elective Deferrals up to (select 3. OR 4.; leave blank if not applicable):

- 3.  the percentage or dollar amount specified below (select one or both)
  - a.  6 % of a Participant's Compensation.
  - b.  \$\_\_\_\_\_.
- 4.  a discretionary percentage of a Participant's Compensation or a discretionary dollar amount, the percentage or dollar amount to be determined by the Employer on a uniform basis for all Participants. Such contribution is subject to the Instructions and Notice requirement of Section 12.12.

- b.  **Discretionary - tiered.** The Employer may make matching contributions equal to a discretionary percentage of a Participant's Elective Deferrals, to be determined by the Employer, of each tier, to be determined by the Employer. The tiers may be based on the rate of a Participant's Elective Deferrals or Years of Service. Such contribution is subject to the Instructions and Notice requirement of Section 12.12.
- c.  **Fixed - tiered.** The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's Elective Deferrals, determined as follows:

**NOTE:** Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	_____ %
Next _____	_____ %
Next _____	_____ %
Next _____	_____ %

- d.  **Fixed - Years of Service.** The Employer will make matching contributions equal to a uniform percentage of each Participant's Elective Deferrals based on the Participant's Years of Service (or Periods of Service if the elapsed time method is selected), determined as follows (add additional tiers if necessary):

Years (or Periods) of Service	Matching Percentage
_____	_____ %
_____	_____ %
_____	_____ %

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

- 1.  vesting purposes
- 2.  eligibility purposes

In determining the Employer matching contribution above, only Elective Deferrals up to the percentage or dollar amount specified below will be matched (select all that apply; leave blank if not applicable):

- 3.  \_\_\_\_\_% of a Participant's Compensation.
- 4.  \$\_\_\_\_\_.

- e.  Other: \_\_\_\_\_ (the formula described must satisfy the definitely determinable requirement under Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.) Such contribution is subject to the Instructions and Notice requirement of Section 12.12.

**NOTE:** If a.1., b., c., d., or e. above is selected, the Plan may violate the Code §401(a)(4) nondiscrimination requirements if the rate of matching contributions increases as a Participant's Elective Deferrals or Years (or Periods) of Service increase.

**Maximum matching contribution.** (leave blank if not applicable)

- f.  The matching contribution made on behalf of any Participant for any Plan Year will not exceed (select 1. or 2.):
  - 1.  \$\_\_\_\_\_.
  - 2.  \_\_\_\_\_% of Compensation.

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- B. **Date of Elective Deferrals considered for matching contribution.** The Plan will disregard a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant unless otherwise elected below.
- g.  The Plan will include a Participant's Elective Deferrals that are made prior to the date the matching contribution component of the Plan is effective with respect to such Participant.
- C. **Computation period.** Any matching contribution other than a "Flexible Discretionary Match" will be applied on the following basis (and Elective Deferrals and any Compensation or dollar limitation used in determining the matching contribution will be based on the applicable period. *Skip if the only Matching Contribution is a Flexible Discretionary Match.*):
- h.  the Plan Year (potential annual true-up required)
- i.  each payroll period (no true-up)
- j.  all payroll periods ending within each month (potential monthly true-up required)
- k.  all payroll periods ending within each Plan Year quarter (potential quarterly true-up required)
- l.  each payroll unit (e.g., hour) (no true-up)
- m.  Other (specify): \_\_\_\_\_ The time period described must be definitely determinable under Treas. Reg. §1.401-1(b). This line may be used to apply different options to different matching contributions (e.g., Discretionary matching contributions will be allocated on a Plan Year period while fixed matching contributions will be allocated on each payroll period.) Such contribution period is subject to the Instructions and Notice requirement of Section 12.12.
- D. **QMACs** (Plan Section 1.69). The matching contributions will NOT be Qualified Matching Contributions (QMACs) unless otherwise selected below (leave blank if not applicable).
- n.  The matching contributions will be QMACs (fully Vested and subject to restrictions on withdrawals as set forth in the Plan). Such contributions may be used in either the ADP or ACP test.
- E. **Allocation conditions** (Plan Section 12.3). Select o. OR p. and all that apply of q. – w. (**Note:** If the "ACP test safe harbor" provisions are being used (Question 28.b.), option o. below (no conditions) must be selected, unless no HCEs are eligible to receive the matching contribution.)
- o.  **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip p. – w.).
- p.  **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)
- Conditions for Participants NOT employed on the last day of the Plan Year.**
1.  Required Service During the Plan Year:  
A Participant must complete at least \_\_\_\_\_ (not to exceed 1,000; if more than 501 is entered then the Plan could violate coverage requirements under Code §410(b)) Hours of Service if the actual hours/equivalency method is selected.  
A Participant must complete at least \_\_\_\_\_ (not to exceed 6; if more than 3 is entered then the Plan could violate coverage requirements under Code §410(b)) months of service if the elapsed time method is selected.
2.  A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected). (could cause the Plan to violate coverage requirements under Code §410(b))
3.  Participants will NOT share in the allocations, regardless of service. (could cause the Plan to violate coverage requirements under Code §410(b))
4.  Participants will share in the allocations, regardless of service.
5.  Other: \_\_\_\_\_ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected). The exclusions entered into the blank/fill-in cannot result in the group of NHCEs participating under the plan being only those NHCEs with the lowest amount of compensation and/ or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under Code §410(b)).
- Conditions for Participants employed on the last day of the Plan Year** (options 7., 8. and 9. could cause the Plan to violate coverage requirements under Code §410(b))
6.  No service requirement.
7.  A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).
8.  A Participant must complete at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service during the Plan Year.
9.  Other: \_\_\_\_\_ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected). The exclusions entered into the blank/fill-in cannot result in the group of NHCEs participating under the plan being only those NHCEs with the lowest amount of compensation and/ or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under Code §410(b)).
- Waiver of conditions for Participants NOT employed on the last day of the Plan Year.** If p.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):
- q.  Death

**Non-Standardized Defined Contribution**

- r.  Total and Permanent Disability  
 s.  Termination of employment on or after Normal Retirement Age  
 1.  or Early Retirement Date

**Code §410(b) fail-safe.** If p.1., 2., 3., 5. and/or p.7., 8. or 9. is selected, the Code §410(b) ratio percentage fail-safe provisions (Plan Section 12.3(f)) will NOT apply unless selected below (leave blank if not applicable or fail-safe will not be used and the employer will utilize the corrective amendment procedure of 1.401(a)(4)-11(g) when necessary):

- t.  The Plan will use the Code §410(b) fail-safe provisions and must satisfy the "ratio percentage test" of Code §410(b).

**Conditions based on period other than Plan Year.** The allocation conditions above will be applied based on the Plan Year unless otherwise selected below. If selected, the above provisions will be applied by substituting the term Plan Year with the specified period (e.g., if Plan Year quarter is selected below and the allocation condition is 250 Hours of Service per quarter, enter 250 hours (not 1000) at p.8. above). (may not be selected with p.2. or p.7.)

- u.  The Plan Year quarter.  
 v.  Payroll period.  
 w.  Other: \_\_\_\_\_ (must be definitely determinable and not subject to Employer discretion and may not be longer than a twelve-month period)

F. **Additional matching contributions.** No additional matching contribution may be made unless otherwise selected below (leave blank if not applicable).

- x.  Additional matching contributions may be made (e.g., a matching contribution made on a periodic basis as well as a matching contribution based on the end of the Plan Year). Specify the additional matching contribution by attaching an addendum to the Adoption Agreement that duplicates this entire Question 29. If selected, the additional matching contribution applies to all Participants eligible to share in matching contributions except as otherwise specified in the addendum or below. Such contribution is subject to the Instructions and Notice requirement of Section 12.12 if the Employer chooses to retain discretion over any aspect of the allocation of such contribution.

1.  The additional matching contribution only applies to the following Participants: \_\_\_\_\_ (must be definitely determinable). (If the additional matching contribution is in lieu of the matching contribution set forth in 29A - E above then use Eligible Employee question to exclude these Participants from such matching contribution.)

30. EMPLOYER NONELECTIVE CONTRIBUTIONS (Plan Section 12.1(a)(3)) (includes Profit Sharing contributions, Money Purchase Pension Plan contributions and/or Prevailing Wage contributions) (skip Questions 30 and 31 if Employer Nonelective Contributions are NOT selected at Question 12.e.)

A. **Formula** (select one or more)

- a.  **Discretionary.** Discretionary contribution, to be determined by the Employer. (may not be elected if this Plan is a Money Purchase Pension Plan)

1.  **Discretionary based on business units or location.** The Employer may determine a separate discretionary contribution for Participants working in different business units or locations.

- b.  **Fixed.** (select one or more)

1.  **Fixed percentage.** Fixed contribution equal to \_\_\_\_\_% of Compensation of Participants eligible to share in allocations.

2.  **Fixed dollar amount.** \$\_\_\_\_\_ per Participant.

3.  **Fixed dollar amount/hour.** \$\_\_\_\_\_ per Hour of Service worked while an Eligible Employee.

4.  **Collectively Bargained Employees.** Contributions will be made pursuant to the terms of a collective bargaining agreement related to the Employees of the Employer and enumerated in this Adoption Agreement.

5.  **Fixed Integrated contribution.** Subject to the "overall permitted disparity limits," the Employer will contribute an amount equal to (complete a. and b.)

- a. \_\_\_\_\_% (base percentage) of each Participant's TOTAL Compensation, plus

- b. \_\_\_\_\_% (excess contribution percentage (see Note below)) of such Compensation in excess of the following:

**Integration level:** (select one)

- c.  the Taxable Wage Base.

- d.  \_\_\_\_\_% (not to exceed 100%) of the Taxable Wage Base. (see Note below)

- e.  80% of the Taxable Wage Base plus \$1.00.

- f.  \$\_\_\_\_\_ (not greater than the Taxable Wage Base). (see Note below)

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**NOTE:** The excess contribution percentage specified in b. above may not exceed the lesser of the following limits and shall be adjusted each year as appropriate: (1) the base percentage specified in a. above; (2) 5.7%; (3) 4.3% if d. or f. above is more than 20% and less than or equal to 80% of Taxable Wage Base; (4) 5.4% if e. is selected or if d. or f. above is more than 80% of Taxable Wage Base. However, in the case of any Participant who has exceeded the "cumulative permitted disparity limit," the Employer will contribute an amount equal to the base plus excess contribution percentages, multiplied by the Participant's total Compensation.

6.  **Non-safe harbor contribution and allocation** (annual nondiscrimination testing under Code §401(a)(4) will be required). The Employer will contribute an amount equal to \_\_\_\_\_% (base percentage) of each Participant's total Compensation, plus (complete a. and b.):
- a.  \_\_\_\_\_% of such Compensation  
b.  in excess of \$\_\_\_\_\_.
7.  **Other:** \_\_\_\_\_ (must be definitely determinable, nondiscriminatory, and not subject to Employer discretion)
- c.  **Prevailing wage contribution.** The Employer will make a "prevailing wage contribution" on behalf of each Participant who performs services subject to the Service Contract Act, Davis-Bacon Act or similar federal, state, or municipal prevailing wage statutes. The "prevailing wage contribution" will be an amount equal to the remaining balance of the prevailing wage defined bona-fide fringe benefit amount, based on the Participant's employment classification as designated on the appropriate prevailing wage determination, after the application of other prevailing wage defined bona-fide fringe payments. Specify the "prevailing wage contribution" by attaching an appendix to the Adoption Agreement that indicates the contribution rate(s) applicable to the prevailing wage employment/job classification(s). The "prevailing wage contribution" will not be subject to any age or service requirements set forth in Question 14, entry date provisions at Question 15, nor to any service or employment conditions set forth in Question 31 and will be 100% Vested.

**Additional "prevailing wage contribution" provisions** (select all that apply; leave blank if none apply)

1.  **Offset.** The "prevailing wage contribution" made on behalf of a Participant for a Plan Year will reduce (offset) other Employer contributions allocated or contributed on behalf of such Participant for the Plan.
2.  **Exclude Highly Compensated Employees.** Highly Compensated Employees will be excluded from receiving a "prevailing wage contribution."
3.  **QNEC.** The "prevailing wage contribution" is considered a Qualified Nonelective Contribution (QNEC).
4.  **Discretionary.** The prevailing wage contribution is discretionary and the Employer may contribute on behalf of each Participant up to the amount set forth in the Appendix (may not be elected if this Plan is a Money Purchase Pension Plan).
- d.  **Other:** \_\_\_\_\_ (the formula described must satisfy the definitely determinable requirement under Reg. §1.401-1(b). If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

B. **Contribution allocations.** The Employer Nonelective Contribution for a Plan Year will be allocated as follows: (skip if the only selection above is c.) (select one or more):

- e.  **INCORPORATION OF CONTRIBUTION FORMULA.** In accordance with the contribution formula specified above (may not be selected if a., d., or b.7 are the only selections above; if both a fixed and discretionary contribution are selected above, then this option e. applies to the fixed contribution).

f.  **NON-INTEGRATED ALLOCATION**

1.  in the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants
2.  in the same dollar amount to all Participants (per capita)
3.  in the same dollar amount per Hour of Service completed by each Participant
4.  in the same proportion that each Participant's points bears to the total of such points of all Participants. A Participant's points with respect to any Plan Year will be computed as follows (select all that apply):
- a.  \_\_\_\_\_ point(s) will be allocated for each Year of Service (or Period of Service).  
However, the maximum Years (or Periods if elapsed time method is selected) of Service taken into account will not exceed:
1.  \_\_\_\_\_ (leave blank if no limit on service applies).  
Year of Service (or Period of Service if applicable), means:
2.  service for eligibility purposes  
3.  service for vesting purposes
- b.  \_\_\_\_\_ point(s) will be allocated for each full \$\_\_\_\_\_ (may not exceed \$200) of Compensation  
c.  \_\_\_\_\_ point(s) will be allocated for each year of age as of the last day of the Plan Year

g.  **INTEGRATED (PERMITTED DISPARITY) ALLOCATION**

In accordance with Plan Section 4.3(b)(2) based on a Participant's Compensation in excess of:

1.  the Taxable Wage Base  
2.  \_\_\_\_\_% (not to exceed 100%) of the Taxable Wage Base (see Note below)  
3.  80% of the Taxable Wage Base plus \$1.00  
4.  \$\_\_\_\_\_ (not greater than the Taxable Wage Base) (see Note below)

**Non-Standardized Defined Contribution**

**NOTE:** The integration percentage of 5.7% will be reduced to: (1) 4.3% if 2. or 4. above is more than 20% and less than or equal to 80% of the Taxable Wage Base; or (2) 5.4% if 3. is selected or if 2. or 4. above is more than 80% of the Taxable Wage Base.

h.  **NON-SAFE HARBOR ALLOCATION METHODS** (may not be elected if this Plan is a Money Purchase Pension Plan). The language of any formula created in this Section 30.B.h. must require the Employer to notify the Trustee in writing of the amount of the Employer contribution being given to each group.

1.  **Grouping method.** Pursuant to Plan Section 4.3(b)(3)(vi), the classifications are (select a. or b.):

- a.  Each Participant constitutes a separate classification.
- b.  Participants will be divided into the following classifications with the allocation methods indicated under each classification.

**Definition of classifications.** Define each classification and specify the method of allocating the contribution among members of each classification. Classifications specified below must be clearly defined in a manner that will not violate the definitely determinable allocation requirement of Regulation §1.401-1(b)(1)(ii). The design of the groups cannot be such that the only NHCEs benefiting under the Plan are those with the lowest amount of Compensation and/or the shortest periods of service and who may represent the minimum number of these Employees necessary to satisfy coverage under Code §410(b).

Classification A will consist of \_\_\_\_\_  
 The allocation method will be:  pro rata based on Compensation  
 equal dollar amounts (per capita)

Classification B will consist of \_\_\_\_\_  
 The allocation method will be:  pro rata based on Compensation  
 equal dollar amounts (per capita)

Classification C will consist of \_\_\_\_\_  
 The allocation method will be:  pro rata based on Compensation  
 equal dollar amounts (per capita)

Classification D will consist of \_\_\_\_\_  
 The allocation method will be:  pro rata based on Compensation  
 equal dollar amounts (per capita)

Additional classifications: \_\_\_\_\_ (specify the classifications and which of the above allocation methods (pro rata or per capita) will be used for each classification).

**NOTE:** In the case of Self-Employed Individuals (i.e., sole proprietors or partners), the requirements or Regulation §1.401(k)-1(a)(6) continue to apply and the allocation method should not be such that a cash or deferred election is created for a Self-Employed Individual as a result of application of the allocation method.

**NOTE:** If more than four (4) classifications, the additional classifications and allocation methods may be attached as an addendum to the Adoption Agreement or may be entered under Additional Classifications above.

**Determination of applicable group.** If a Participant shifts from one classification to another during a Plan Year, then unless selected below, the Participant is in a classification based on the Participant's status as of the last day of the Plan Year, or if earlier, the date of termination of employment. If selected below, the Administrator will apportion the Participant's allocation during a Plan Year based on the following:

- 1.  Beginning of Plan Year. The classification will be based on the Participant's status as of the beginning of the Plan Year.
- 2.  Months in each classification. Pro rata based on the number of months the Participant spent in each classification.
- 3.  Days in each classification. Pro rata based on the number of days the Participant spent in each classification.
- 4.  One classification only. The Employer in a nondiscriminatory manner will direct the Administrator to place the Participant in only one classification for the entire Plan Year during which the shift occurs.

2.  **Age-weighted method.** The Schedule of Age-Weighted Allocation Factors is set forth in attached Exhibit A (which is hereby incorporated by reference and made a part of the Plan) and will be based on the following interest rate (select one; if no selection is made, c. will be deemed to have been selected):

- a.  7.5% interest
- b.  8.0% interest
- c.  8.5% interest

i.  **OTHER** \_\_\_\_\_ **NOTE:** Under Question 30.B.i., the Employer will describe the allocation of Nonelective Contributions from the elections available under Question 30.B. and/or a combination thereof as to a Participant group or contribution type (e.g., pro rata allocation applies to Collective Bargaining Employees; contributions to other Employees will be allocated in accordance with the classifications allocation provisions of Plan Section 4.3(b)(3) with each Participant constituting a separate classification). (The following four

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parameters must be met to utilize this section: 1. The formula described must satisfy the definitely determinable requirement under Reg. §1.401-1(b)(1)(ii). 2. The groups cannot be designed in such a manner to where the only NHCEs participating are those NHCEs with the lowest amounts of compensation and/or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under IRC §410(b). 3. The language of the formula must require the employer to notify the trustee in writing of the amount of the employer contribution being given to each group. 4. In the case of self-employed individuals (i.e., sole proprietorships or partnerships), the requirements of Regs. §1.401(k)-1(a)(6) continue to apply and the allocation method should not be such that a cash or deferred election is created for a self-employed individual as a result of the application of the allocation method unless such election has been created for all eligible employees & the full 401(k) requirements have been provided. If the formula is non-uniform, it is not a design-based safe harbor for nondiscrimination purposes.)

**NOTE:** Multiple Employer Plan provisions for adopters other than the lead employer must be noted in the Participating Employer's Agreement. Only the lead Employer's provisions may be noted in this Question 30.B.i.

31. ALLOCATION CONDITIONS (Plan Section 12.3). Requirements to share in allocations of Employer Nonelective Contributions and QNECs (as permitted by Plan Section 12.1(a)(4)) (select a. OR b. and all that apply of c. – f.)

a.  **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status on the last day of the Plan Year (skip to Question 32).

b.  **Allocation conditions apply** (select one of 1. - 5. AND one of 6. - 9. below)  
**Conditions for Participants NOT employed on the last day of the Plan Year**

1.  Required Service During the Plan Year:

A Participant must complete at least 500 (not to exceed 1,000; if more than 501 is entered then the Plan could violate coverage requirements under Code §410(b)) Hours of Service if the actual hours/equivalency method is selected.

A Participant must complete at least \_\_\_\_\_ (not to exceed 6; if more than 3 is entered then the Plan could violate coverage requirements under Code §410(b)) months of service if the elapsed time method is selected.

2.  A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected). (could cause the Plan to violate coverage requirements under Code §410(b))

3.  Participants will NOT share in the allocations, regardless of service. (could cause the Plan to violate coverage requirements under Code §410(b))

4.  Participants will share in the allocations, regardless of service.

5.  Other: \_\_\_\_\_ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected). Allocation formulas that are not uniform may not be considered a design-based safe harbor under Code §401(a)(4). The exclusions entered into the blank/fill-in cannot result in the group of NHCEs participating under the plan being only those NHCEs with the lowest amount of compensation and/ or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under Code §410(b)).

**Conditions for Participants employed on the last day of the Plan Year** (options 7., 8. and 9. could cause the Plan to violate coverage requirements under Code §410(b))

6.  No service requirement.

7.  A Participant must complete a Year of Service (or Period of Service if the elapsed time method is selected).

8.  A Participant must complete at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service during the Plan Year.

9.  Other: \_\_\_\_\_ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the elapsed time method is selected). Allocation formulas that are not uniform may not be considered a design-based safe harbor under Code §401(a)(4). The exclusions entered into the blank/fill-in cannot result in the group of NHCEs participating under the plan being only those NHCEs with the lowest amount of compensation and/ or the shortest periods of service and who may represent the minimum number of these employees necessary to satisfy coverage under Code §410(b)).

**Waiver of conditions for Participants NOT employed on the last day of the Plan Year.** If b.1., 2., 3., or 5. is selected, Participants who are not employed on the last day of the Plan Year in which one of the following events occur will be eligible to share in the allocations regardless of the above conditions (select all that apply; leave blank if none apply):

c.  Death

d.  Total and Permanent Disability

e.  Termination of employment on or after Normal Retirement Age

1.  or Early Retirement Date

**Code §410(b) fail-safe.** If b.1., 2., 3., 5. and/or b.7., 8. or 9. is selected, the Code §410(b) ratio percentage fail-safe provisions will NOT apply (Plan Section 4.3(m)) unless selected below (leave blank if not applicable or fail-safe will not be used and the employer will utilize the corrective amendment procedure of 1.401(a)(4)-11(g) when necessary):

f.  The Plan will use the Code §410(b) fail-safe provisions and must satisfy the ratio percentage test of Code §410(b).



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## 32. FORFEITURES (Plan Sections 1.37 and 4.3(e))

**Timing of Forfeitures.** Except as provided in Plan Section 1.37, a Forfeiture will occur:

- a.  N/A (may only be selected if all contributions are fully Vested (default provisions at Plan Section 4.3(e) apply))
- b.  As of the earlier of (1) the last day of the Plan Year in which the former Participant incurs five (5) consecutive 1-Year Breaks in Service, or (2) the distribution of the entire Vested portion of the Participant's Account.
- c.  As of the last day of the Plan Year in which the former Participant incurs five (5) consecutive 1-Year Breaks in Service.

**Use of Forfeitures.** (skip if this is NOT a Money Purchase Pension Plan; for Profit Sharing Plans and 401(k) Plans, Forfeitures are disposed of in accordance with Employer direction that is consistent with Section 4.3(e)).

Forfeitures will be (select one):

- d.  added to the Employer contribution and allocated in the same manner
- e.  used to reduce any Employer contribution
- f.  allocated to all Participants eligible to share in the allocations of Employer contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year
- g.  other: \_\_\_\_\_ (describe the treatment of Forfeitures in a manner that is definitely determinable, that satisfies the nondiscrimination requirements of Regulation §1.401(a)(4)-4 and that is not subject to Employer discretion)

## 33. TOP-HEAVY MINIMUM ALLOCATION

The minimum allocation requirements for any Top-Heavy Plan Year will be applied only to Non-Key Employee Participants unless selected below:

- a.  The Top-Heavy minimum will be provided to both Key and Non-Key Employee Participants.

**DISTRIBUTIONS**

## 34. FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)

Distributions under the Plan may be made in (select all that apply; must select at least one from a. - e. unless g. is selected below)

- a.  lump-sums
- b.  substantially equal installments
- c.  partial withdrawals, provided the minimum withdrawal is \$\_\_\_\_\_ (leave blank if no minimum)
- d.  partial withdrawals or installments are only permitted for Participants or Beneficiaries who must receive required minimum distributions under Code §401(a)(9) except for the following (leave blank if no exceptions):
  - 1.  Only Participants (and not Beneficiaries) may elect partial withdrawals or installments
  - 2.  Other: \_\_\_\_\_ (e.g., partial withdrawals are not permitted for death benefits. Must be definitely determinable and not subject to Employer discretion.)
- e.  other: \_\_\_\_\_ (must be definitely determinable and not subject to Employer discretion)

**NOTE:** Regardless of the above, a Participant is not required to request a withdrawal of his or her total Account for an in-service distribution, a hardship distribution, or a distribution from the Participant's Rollover Account.

**Annuities.** Annuities are permitted if selected below (select f. or g. if this is a Profit Sharing Plan or a 401(k) Plan; if this is a Money Purchase Pension Plan then g. below must be selected; if this Plan includes transferred pension assets, then f.1. or g. below must be selected

- f.  **Annuities are not allowed or are not the normal form of distribution** (except as indicated below). Plan Section 6.13(b) will apply and the joint and survivor rules of Code §§401(a)(11) and 417 will not apply to the Plan.

**Special rules.** An annuity form of distribution is available to certain Participants and/or with respect to only a portion of the Plan assets according to the following: (select all that apply)

- 1.  **Pension assets.** Annuities are the normal form of distribution for assets that are transferred pension assets (Plan Section 6.13(a)).
- 2.  **Annuity selected by Participant.** Plan Section 6.13(c) will apply and the joint and survivor rules of Code §§401(a)(11) and 417 will apply only if an annuity form of distribution is selected by a Participant.

However, the Participant may only select an annuity distribution according to the following (choose a. and/or b. if applicable):

- a.  \_\_\_\_\_
- b.  A Participant may elect a QLAC (as defined in Plan Section 6.8(e)(4)) or any alternative form of annuity permitted pursuant to a QLAC in which the Participant's account has been invested.

- g.  **Annuities are the normal form of distribution.** The qualified Joint and Survivor Annuity and Qualified Pre-Retirement Survivor Annuity provisions apply (Plan Section 6.13 will not apply and the joint and survivor rules of Code §§401(a)(11) and 417 will automatically apply).

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The following limitations or provisions apply (choose 1. and/or 2. if applicable):

1.  \_\_\_\_\_ (must comply with the joint and survivor rules of Code §§401(a)(11) and 417)
2.  A Participant may elect a QLAC (as defined in Plan Section 6.8(e)(4)) or any alternative form of annuity permitted pursuant to a QLAC in which the Participant's Account has been invested.

**Pre-Retirement Survivor Annuity**

If the Plan permits an annuity form of payment under option f.1. or g. above, the Pre-Retirement Survivor Annuity (minimum Spouse's death benefit) will be equal to 50% of a Participant's interest in the Plan unless a different percentage is selected below (leave blank if default applies)

- h.  100% of a Participant's interest in the Plan.
- i.  \_\_\_\_\_% (may not be less than 50%) of a Participant's interest in the Plan.

**Cash or property.** Distributions may be made in:

- j.  cash only, except for (select all that apply; leave blank if none apply):
  1.  insurance Contracts
  2.  annuity Contracts
  3.  Participant loans
  4.  all investments in an open brokerage window or similar arrangement
- k.  cash or property, except that the following limitation(s) apply: (leave blank if there are no limitations on property distributions):
  1.  \_\_\_\_\_ (e.g., Employer Securities or real property may not be a source of available funds. Must be definitely determinable, properly valued at fair market value and not subject to Employer discretion.)

35. **CONDITIONS FOR DISTRIBUTIONS UPON SEVERANCE OF EMPLOYMENT.** Distributions upon severance of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

**A. Accounts in excess of \$5,000**

- a.  Distributions may be made as soon as administratively feasible following severance of employment.
- b.  Distributions may be made as soon as administratively feasible after the Participant has incurred \_\_\_\_\_ 1-Year Break(s) in Service (or Period(s) of Severance if the elapsed time method is selected).
- c.  Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- d.  Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following severance of employment.
- e.  Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following severance of employment.
- f.  Distributions may be made as soon as administratively feasible after \_\_\_\_\_ months have elapsed following severance of employment.
- g.  No distributions may be made until a Participant has reached Early or Normal Retirement Date.
- h.  Other: \_\_\_\_\_ (must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation §1.411(d)-4 and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

**B. Accounts of \$5,000 or less**

- i.  Same as above
- j.  Distributions may be made as soon as administratively feasible following severance of employment.
- k.  Distributions may be made as soon as administratively feasible after the Participant has incurred \_\_\_\_\_ 1-Year Break(s) in Service (or Period(s) of Severance if the elapsed time method is selected).
- l.  Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following severance of employment.
- m.  Other: \_\_\_\_\_ (must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation §1.411(d)-4 and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

**C. Timing after initial distributable event.** If a distribution is not made in accordance with the above provisions upon the occurrence of the distributable event, then a Participant may elect a subsequent distribution at any time after the time the amount was first distributable (assuming the amount is still distributable), unless otherwise selected below (may not be selected with 35.g. and 35.i.):

- n.  Other: \_\_\_\_\_ (e.g., a subsequent distribution request may only be made in accordance with l. above (i.e., the last day of another Plan Year); must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation §1.411(d)-4 and may not exceed the limits of Code §401(a)(14) as set forth in Plan Section 6.7)

**Non-Standardized Defined Contribution**

- D. **Participant consent (i.e., involuntary cash-outs).** Should Vested Account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

**NOTE:** The Plan provides that distributions of amounts of \$5,000 or less do not require spousal consent and are only paid as lump-sums.

- o.  No, Participant consent is required for all distributions.  
 p.  Yes, Participant consent is required only if the distribution is over:  
 1.  \$5,000  
 2.  \$1,000  
 3.  \$\_\_\_\_\_ (less than \$1,000)

**NOTE:** If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

**Automatic IRA rollover.** With respect to mandatory distributions of amounts that are \$1,000 or less, if a Participant makes no election, the amount will be distributed as a lump-sum unless selected below.

4.  If a Participant makes no election, then the amount will be automatically rolled over to an IRA provided the amount is at least \$\_\_\_\_\_ (e.g., \$200).

- E. **Rollovers in determination of \$5,000 threshold.** Unless otherwise elected below, amounts attributable to rollover contributions (if any) will be **included** in determining the \$5,000 threshold for timing of distributions, form of distributions or consent rules.

- q.  Exclude rollovers (rollover contributions will be **excluded** in determining the \$5,000 threshold)

**NOTE:** Regardless of the above election, if the Participant consent threshold is \$1,000 or less, then the Administrator must include amounts attributable to rollovers for such purpose. In such case, an election to exclude rollovers above will apply for purposes of the timing and form of distributions.

- F. **Mandatory distribution at Normal Retirement Age.** Regardless of the above elections other than any mandatory distributions provided for in p. above, unless otherwise selected below, a Participant who has severed employment may elect to delay a distribution beyond the later of age 62 or the Participant's Normal Retirement Age (subject to Plan Section 6.8).

- r.  A Participant who has severed employment may not elect to delay a distribution beyond the later of age 62 or the Participant's Normal Retirement Age.

36. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))

Distributions upon the death of a Participant prior to the "required beginning date" will:

- a.  be made pursuant to the election of the Participant or "designated Beneficiary"  
 b.  begin within 1 year of death for a "designated Beneficiary" and be payable over the life (or over a period not exceeding the "life expectancy") of such Beneficiary, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2  
 c.  be made within 5 (or if lesser \_\_\_\_\_) years of death for all Beneficiaries  
 d.  be made within 5 (or if lesser \_\_\_\_\_) years of death for all Beneficiaries, except that if the "designated Beneficiary" is the Participant's Spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the "life expectancy") of such "surviving Spouse"

**NOTE:** The elections above must be coordinated with the Form of distributions (e.g., if the Plan only permits lump-sum distributions, then options a., b. and d. would not be applicable).

37. HARDSHIP DISTRIBUTIONS (Plan Sections 6.12 and/or 12.10) (may not be selected if this is a Money Purchase Pension Plan)

- a.  Hardship distributions are NOT permitted (skip to Question 38).  
 b.  Hardship distributions are permitted from the following Participant Accounts:  
 1.  all Accounts  
 2.  only from the following Accounts (select one or more):  
 a.  Pre-Tax Elective Deferral Account (may only be selected with 401(k) Plans)  
 b.  Roth Elective Deferral Account (may only be selected with 401(k) Plans)  
 c.  Account(s) attributable to Employer matching contributions (may only be selected with 401(k) Plans)  
 d.  Account attributable to Employer Nonelective Contributions  
 e.  Rollover Account (if not available at any time under Question 43)  
 f.  Transfer Account (other than amounts attributable to a money purchase pension plan)  
 g.  Other: \_\_\_\_\_ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

**NOTE:** Distributions from a Participant's Elective Deferral Account are limited to the portion of such Account attributable to such Participant's Elective Deferrals (and earnings attributable thereto up to December 31, 1988). Hardship distributions are NOT permitted from a Participant's Qualified Nonelective Contribution Account, Qualified Matching Contribution Account, Accounts attributable to "ADP test safe harbor contributions" or Transfer Account attributable to pension assets (e.g., from a money purchase pension plan).

**Additional limitations.** The following limitations apply to hardship distributions:

3.  N/A (no additional limitations)

**Non-Standardized Defined Contribution**

4.  Additional limitations (select one or more):
- The minimum amount of a distribution is \$ \_\_\_\_\_ (may not exceed \$1,000).
  - No more than \_\_\_\_\_ distribution(s) may be made to a Participant during a Plan Year.
  - Distributions may only be made from Accounts which are fully Vested.
  - A Participant does not include a Former Employee at the time of the hardship distribution.
  - Hardship distributions from the Roth Elective Deferral Account may only be made if the distribution is a "qualified distribution." (may only be selected with 401(k) Plans)
  - Hardship distributions may be made subject to the following provisions:  
\_\_\_\_\_ (must be definitely determinable and not subject to Employer discretion).

**Beneficiary Hardship.** Hardship distributions for Beneficiary expenses are NOT allowed unless otherwise selected below.

5.  Hardship distributions for expenses of Beneficiaries are allowed  
**Special effective date** (may be left blank if effective date is same as the Plan or Restatement Effective Date; select a. and, if applicable, b.)
- effective as of \_\_\_\_\_
  - eliminated effective as of \_\_\_\_\_.

**Safe harbor hardship rules.** Will the safe harbor hardship rules of Plan Section 12.10 apply to hardship distributions from all Accounts?

- Yes. The provisions of Plan Section 12.10 apply to all hardship distributions.
- No. The provisions of Plan Section 6.12 apply to hardship distributions from all Accounts other than a Participant's Elective Deferral Account. (may only be selected with 401(k) Plans)
- No. The provisions of Plan Section 6.12 apply to all hardship distributions.

38. **IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)**

- In-service distributions are NOT permitted (except as otherwise selected for Hardship Distributions).
- In-service distributions may be made to a Participant who has not separated from service provided any of the following conditions have been satisfied (select one or more) (options 2. - 5. may only be selected with 401(k) or Profit Sharing Plans):
  - Age
    - the Participant has attained age \_\_\_\_\_ (See Note below)
    - the Participant has reached Normal Retirement Age
  - the Participant has been a Participant in the Plan for at least \_\_\_\_\_ years (may not be less than five (5))
  - the amounts being distributed have accumulated in the Plan for at least 2 years
  - other: \_\_\_\_\_ (must satisfy the definitely determinable requirement under Regulations §401-1(b); may not be subject to Employer discretion; must be nondiscriminatory; and must be limited to a combination of items b.1. – b.3. or a Participant's disability)

**More than one condition.** If more than one condition is selected above, then a Participant only needs to satisfy one of the conditions, unless selected below:

5.  A Participant must satisfy each condition

**NOTE:** Regardless of any elections above: (1) for 401(k) plans, in-service distributions from a Participant's Elective Deferral Account, Qualified Matching Contribution Account, Qualified Nonelective Contribution Account and Accounts attributable to "ADP test safe harbor contributions" are subject to restrictions and generally may not be distributed prior to age 59 1/2 ; and (2) for Money Purchase Pension Plans and a Transfer Account attributable to a Money Purchase Pension Plan, in-service distributions are not permitted prior to age 62.

**Account restrictions.** In-service distributions are permitted from the following Participant Accounts:

- all Accounts
- only from the following Accounts (select one or more):
  - Pre-Tax Elective Deferral Account (may only be selected with 401(k) Plans)
  - Roth Elective Deferral Account (may only be selected with 401(k) Plans)
  - Account(s) attributable to Employer matching contributions (includes matching "ADP test safe harbor contributions") (may only be selected with 401(k) Plans)
  - Account attributable to Employer Nonelective Contributions
  - Qualified Nonelective Contribution Account (for 401(k) plans, includes nonelective "ADP test safe harbor contributions")
  - Rollover Account (if not available at any time under Question 43)
  - Transfer Account attributable to (select one or both; may only be selected with 401(k) or Profit Sharing Plans):
    - non-pension assets
    - pension assets (e.g., from a money purchase pension plan)
  - Other: \_\_\_\_\_ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

**Limitations.** The following limitations apply to in-service distributions:

8.  N/A (no additional limitations)

**Non-Standardized Defined Contribution**

9.  Additional limitations (select one or more):
- a.  The minimum amount of a distribution is \$ \_\_\_\_\_ (may not exceed \$1,000).
  - b.  No more than \_\_\_\_\_ distribution(s) may be made to a Participant during a Plan Year.
  - c.  Distributions may only be made from Accounts which are fully Vested.
  - d.  Distributions from the Roth Elective Deferral Account (38.b.6. or 38.b.7.b. selected), may only be made if the distribution is a "qualified distribution." (may only be selected with 401(k) Plans)
  - e.  In-service distributions may be made subject to the following provisions:  
 \_\_\_\_\_ (must be definitely determinable and not subject to discretion)

39. **IN-PLAN ROTH ROLLOVER CONTRIBUTIONS (Plan Section 12.11) (skip if Roth Elective Deferrals NOT selected at Question 12.b.1.)**

- a.  In-Plan Roth rollover contributions are NOT permitted (skip to Question 40).
- b.  In-Plan Roth rollover contributions are permitted according to the following provisions.
  - 1.  **IRR** (in-Plan Roth rollover contribution). This provision is effective with regard to IRRs the later of September 28, 2010, or the Plan or Restatement Effective Date unless other date entered below.
    - a.  \_\_\_\_\_ (enter later effective date if applicable)
  - 2.  **IRT** (in-Plan Roth rollover transfer). This provision is effective with regard to IRTs the later of January 1, 2013, or the Plan or Restatement Effective Date unless other date entered below.
    - a.  \_\_\_\_\_ (enter later effective date if applicable)

**Limitations.** The following restrictions apply to In-Plan Roth Rollovers (choose one or more of c. - h. below if applicable; also select one or both of columns 1. - 2. for each limitation selected at c. -g.)

	<b>1.</b>	<b>2.</b>
	<b>IRR</b>	<b>IRT</b>
c. <input type="checkbox"/> <b>In-Plan Roth Rollovers limited to In-Service only.</b> Only Participants who are Employees may elect to make an In-Plan Roth Rollover Contribution.	[ ]	[ ]
d. <input type="checkbox"/> <b>Vested In-Plan Roth Rollovers.</b> In-Plan Roth Rollovers may only be made from accounts which are fully Vested.	[ ]	[ ]
e. <input type="checkbox"/> <b>No transfer of loans.</b> Loans may not be distributed as part of an In-Plan Roth Rollover Contribution.	[ ]	[ ]
f. <input type="checkbox"/> <b>Minimum amount.</b> The minimum amount that may be rolled over is _____ (may not exceed \$1,000).	[ ]	[ ]
g. <input type="checkbox"/> <b>Number of Transfers.</b> No more than _____ transfer(s) may be made during a Plan Year.[ ]	[ ]	[ ]
h. <input type="checkbox"/> <b>Describe transfer provisions.</b> Transfers may be made subject to the following provisions: _____ (must be definitely determinable and not subject to Employer or Administrator discretion; specify different provisions for IRR and IRT if desired).		

<b>Source of In-Plan Roth Rollover Contributions (Select one of i. or j.):</b>	<b>1.</b>	<b>2.</b>
i. <input checked="" type="checkbox"/> <b>All Sources.</b> (select one or both of columns 1. - 2.)	[X]	[ ]
j. <input type="checkbox"/> <b>Limited Sources.</b> The Plan permits an In-Plan Roth Rollover only from the following qualifying sources (select one or more of a. - h. below; also select one or both of columns 1. - 2. for each account selected at a. - g.):		

	<b>1.</b>	<b>2.</b>
	<b>IRR</b>	<b>IRT</b>
a. <input type="checkbox"/> Pre-Tax Elective Deferral Account	[ ]	[ ]
b. <input type="checkbox"/> Account(s) attributable to Employer matching contributions (includes any matching "ADP test safe harbor contributions")	[ ]	[ ]
c. <input type="checkbox"/> Account attributable to Employer Nonelective Contributions	[ ]	[ ]
d. <input type="checkbox"/> Qualified Nonelective Contribution Account (includes any nonelective "ADP test safe harbor contributions")	[ ]	[ ]
e. <input type="checkbox"/> Rollover Account	[ ]	[ ]
f. <input type="checkbox"/> Transfer Account	[ ]	[ ]
g. <input type="checkbox"/> After-tax Account	[ ]	[ ]
h. <input type="checkbox"/> Other: _____ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion; specify different sources for IRR and IRT if desired)		

**Non-Standardized Defined Contribution**

**Limited in-service distribution provisions for IRRs** (may only be selected if IRRs are selected at b.1. above) (leave blank if not applicable)

k  The Plan permits IRRs and the Employer elects to permit in-service distributions as follows solely for purposes of making IRRs (select one or more):

1.  the Participant has attained age \_\_\_\_\_
2.  the Participant has \_\_\_\_\_ months of participation (specify minimum of 60 months)
3.  the amounts being distributed have accumulated in the Plan for at least \_\_\_\_\_ years (at least 2)
4.  other (describe): \_\_\_\_\_ (must satisfy the definitely determinable requirement under Regulations §401-1(b); may not be subject to Employer discretion; must be nondiscriminatory; and must be limited to a combination of items k.1. – k.3. or a Participant's disability)

**More than one condition.** If more than one condition is selected above, then a Participant only needs to satisfy one of the conditions, unless selected below:

5.  A Participant must satisfy each condition

**NOTE:** Regardless of any election above to the contrary, in-Plan Roth rollover contributions are not permitted from a Participant's Elective Deferral Account, Qualified Matching Contribution Account, Qualified Nonelective Contribution Account and Accounts attributable to "ADP test safe harbor contributions" prior to age 59 1/2. Distributions from a Transfer Account attributable to a money purchase pension plan are not permitted prior to age 62.

**NONDISCRIMINATION TESTING**

40. HIGHLY COMPENSATED EMPLOYEE (Plan Section 1.41)

Top-Paid Group election and calendar year data election are not used unless selected below (the selections made for the latest year will continue to apply to subsequent Plan Years unless the Plan is amended) (select all that apply; leave blank if none apply):

- a.  **Top-Paid Group election** will be used.
- b.  **Calendar year data election** will be used (only applicable to non-calendar year Plan Year).

41. ADP AND ACP TESTS (Plan Sections 12.4, 12.5, and 12.6)

**NOTE:** The selections made below for the latest year will continue to apply to subsequent Plan Years unless the Plan is amended. Also, if the Employer uses the discretionary nonelective "ADP test safe harbor contribution" described in Plan Section 12.8(h) or if the Plan is amended during a Plan Year to eliminate an "ADP test safe harbor contribution" then the current Plan Year method will be used.

**ADP test.** If applicable, the ADP ratio for NHCEs will be based on the current year ratio unless prior year testing method is selected below (leave blank if current year testing method is being used):

- a.  **Prior year testing method.** The prior year ratio will be used. If this selection is made for the first year the Code §401(k) feature is added to this Plan (unless this Plan is a successor plan), then for the first Plan Year only, the amount taken into account as the ADP of NHCEs for the preceding Plan Year will be the greater of 3% or the actual percentage for the initial Plan Year.

**ACP test.** If applicable, the ACP ratio for NHCEs will be based on the current year ratio unless prior year testing method is selected below (leave blank if current year testing method is being used):

- b.  **Prior year testing method.** The prior year ratio will be used. If this selection is made for the first year the Code §401(m) feature is added to this Plan (unless this Plan is a successor plan), then for the first Plan Year only, the amount taken into account as the ACP of NHCEs for the preceding Plan Year will be the greater of 3% or the actual percentage for the initial Plan Year.

**Effective dates.** (optional)

c.  **Current year testing method.** If the current year testing method is currently being used, enter the date it was first effective (used for purposes of applying the five year restriction on amending to the prior year testing method):

1.  ADP test: \_\_\_\_\_ (may not be selected with 41.a.)
2.  ACP test: \_\_\_\_\_ (may not be selected with 41.b.)

**ADP Corrective Contributions.** If applicable, the Employer shall make the following corrective contribution for purposes of corrective contributions in Sections 12.5 (must select either d. or e.. If e. is selected, must select 1. or 2. and must complete 3. - 5. as applicable.)

- d.  Flexible formula (recorded and transmitted in writing)
- e.  Fixed formula

1.  **A QNEC** contribution to NHCEs, allocated as follows: (select one)
  - a.  pro-rata on compensation
  - b.  using the bottom-up ("targeted") procedure
  - c.  per capita

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2.  **A QMAC** contribution to NHCEs, allocated as follows: (select one)
- pro-rata on deferrals
  - using the bottom-up ("targeted") procedure
  - per capita

**AND** such contributions will be allocated to: (select one)

- all NHCEs in the test
- those NHCEs employed on the last day of the plan year
- all NHCEs employed on the last day of the plan year, as well as terminated employees who have completed at least 501 hours of service

**ACP Corrective Contributions.** If applicable, the Employer shall make the following corrective contribution for purposes of corrective contributions in Sections 12.7 (must select either f. or g. If g. is selected, must select 1., 2., or 3. and 4.-6. as applicable.)

- Flexible formula (recorded and transmitted in writing)
- Fixed formula

1.  **A QNEC** contribution to NHCEs, allocated as follows: (select one)

- pro-rata on compensation
- using the bottom-up ("targeted") procedure
- per capita

2.  **A QMAC** contribution to NHCEs, allocated as follows: (select one)

- pro-rata on deferrals
- using the bottom-up ("targeted") procedure
- per capita

3.  A "regular" (non-QMAC) matching contribution to NHCEs, allocated as follows: (select one)

- pro-rata on deferrals
- using the bottom-up ("targeted") procedure

**AND** such contributions will be allocated to: (select one)

- all NHCEs in the test
- those NHCEs employed on the last day of the plan year
- all NHCEs employed on the last day of the plan year, as well as terminated employees who have completed at least 501 hours of service

**NOTE:** For the flexible formula, a definitely determinable allocation formula must be written and communicated to the trustee for each plan year.

**MISCELLANEOUS**

42. LOANS TO PARTICIPANTS (Plan Section 7.4)

- New loans are NOT permitted.
- New loans are permitted.

**NOTE:** Regardless of whether new loans are permitted, if the Plan permits rollovers and/or plan-to-plan transfers, then the Administrator may, in a uniform and nondiscriminatory manner, accept rollovers and/or plan-to-plan transfers of loans into this Plan.

43. ROLLOVERS (Plan Section 4.6) (skip if rollover contributions are NOT selected at 12.f.)

**Eligibility.** Rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply; leave blank if not applicable):

- Any Eligible Employee, even prior to meeting eligibility conditions to be a Participant
- Participants who are Former Employees

**Distributions.** When may distributions be made from a Participant's Rollover Account?

- At any time
- Only when the Participant is otherwise entitled to any distribution under the Plan

44. AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8) (skip if after-tax voluntary Employee contributions NOT selected at Question 12.g.)

**Matching after-tax voluntary Employee contributions.** There are no Employer matching contributions on after-tax voluntary Employee contributions unless elected below.

- After-tax voluntary Employee contributions are aggregated with Elective Deferrals for purposes of applying any matching contributions under the Plan (may only be selected with 401(k) plans).

**NOTE:** After-tax voluntary contributions may be distributed at any time.

45. QUALIFIED RESERVIST DISTRIBUTIONS AND HEART ACT (Plan Section 4.12) (select one or more)

- HEART Act Continued benefit accruals.** Continued benefit accruals will apply.
- Distributions for deemed severance of employment.** The Plan permits distributions for deemed severance of employment.
- Qualified reservist distributions.** Qualified reservist distributions are permitted. (may only be selected for 401(k) plans)

**Non-Standardized Defined Contribution**

**Reliance on Provider Opinion Letter.** The Provider has obtained from the IRS an Opinion Letter specifying the form of this document satisfies Code §401 as of the date of the Opinion Letter. An adopting Employer may rely on the Provider's IRS Opinion Letter *only* to the extent provided in Rev. Proc. 2017-41 or subsequent guidance. The Employer may not rely on the Opinion Letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the Opinion Letter and in Rev. Proc. 2017-41 or subsequent guidance. In order to have reliance in such circumstances or with respect to such qualification requirements, the Employer must apply for a determination letter to Employee Plans Determinations of the IRS.

An Employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in Code §419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in Code §419A(d)(3), or an individual medical account, as defined in Code §415(l)(2)) in addition to this Plan may not rely on the Opinion Letter issued by the Internal Revenue Service with respect to the requirements of Code §§ 415 and 416.

This Adoption Agreement may be used only in conjunction with basic plan document #01. This Adoption Agreement and the basic Plan document will together be known as National Benefit Services, LLC Defined Contribution Pre-Approved Plan #001.

The adoption of this Plan, its qualification by the IRS, and the related tax consequences are the responsibility of the Employer and its independent tax and legal advisors.

**Execution for Page Substitution Amendment Only.** If this paragraph is completed, this Execution Page documents an amendment to Adoption Agreement Election(s) \_\_\_\_\_ effective \_\_\_\_\_, by substitute Adoption Agreement page number(s) \_\_\_\_\_. The Employer should retain all Adoption Agreement Execution Pages and amended pages. (*Note: The Effective Date may be retroactive or may be prospective.*)

The Provider, National Benefit Services, LLC, will notify all adopting Employers of any amendment to this Pre-approved Plan or of any abandonment or discontinuance by the Provider of its maintenance of this Pre-approved Plan. In addition, this Plan is provided to the Employer either in connection with investment in a product or pursuant to a contract or other arrangement for products and/or services. Upon cessation of such investment in a product or cessation of such contract or arrangement, as applicable, the Employer is no longer considered to be an adopter of this Plan and the Provider no longer has any obligations to the Employer that relate to the adoption of this Plan. For inquiries regarding the adoption of the Pre-approved Plan, the Provider's intended meaning of any Plan provisions or the effect of the Opinion Letter issued to the Provider, please contact the Provider or the Provider's representative:

Provider Name: National Benefit Services, LLC

Address: 8523 South Redwood Road

West Jordan Utah 84088

Telephone Number: 801-532-4000

Email address (optional): \_\_\_\_\_

The Employer, by executing below, hereby adopts this Plan (add additional signature lines as needed). NOTE: If more than one Plan type is adopted, the Plan Provider must provide multiple plan documents for Employer signature.

EMPLOYER: North Texas Mobility Corporation (NTMC)

By: \_\_\_\_\_

\_\_\_\_\_  
DATE SIGNED



**Non-Standardized Defined Contribution**

**APPENDIX A  
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS**

- A. **Special effective dates/spin-offs/mergers** (the following elections are optional):
- a.  **Employer matching contributions.** The Employer matching contribution provisions under Question 28. are effective: \_\_\_\_\_. (may only be selected with 401(k) plans)
  - b.  **Employer Nonelective Contributions.** The Employer Nonelective Contribution provisions under Questions 30. and 31. are effective: \_\_\_\_\_.
  - c.  **Distribution elections.** The distribution elections under Questions \_\_\_\_\_ (Choose 34. – 39. as applicable) are effective: \_\_\_\_\_.
  - d.  **Other special effective date(s):** \_\_\_\_\_. For periods prior to the specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law. (The Employer has reliance on the IRS Opinion Letter only if the features described in the preceding sentence constitute protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder, and only if such features are permissible in a "Cycle 3" preapproved plan, i.e., the features are not specifically prohibited by Revenue Procedure 2017-41 (or any superseding guidance)).
  - e.  **Spin-off.** The Plan was a spin-off from the \_\_\_\_\_ (enter name of plan), which was originally effective \_\_\_\_\_ (enter effective date of original plan) (The Employer has reliance on the IRS Opinion Letter only if the features described in the preceding sentence constitute protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder, and only if such features are permissible in a "Cycle 3" preapproved plan, i.e., the features are not specifically prohibited by Revenue Procedure 2017-41 (or any superseding guidance)).
  - f.  **Merged plans.** The following plan(s) are merged into this Plan (enter applicable information; attach addendum if more than 4 merged plans. (The Employer has reliance on the IRS Opinion Letter only if the features described in the preceding sentence constitute protected benefits within the meaning of Code Section 411(d)(6) and the regulations thereunder, and only if such features are permissible in a "Cycle 3" preapproved plan, i.e., the features are not specifically prohibited by Revenue Procedure 2017-41 (or any superseding guidance). Limited to those provisions which have been the subject of a prior determination letter, opinion letter, or advisory letter):

	Name of merged plan	Merger date	Original effective date of merged plan
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

- B. **Other permitted elections** (the following elections are optional):
- a.  **No other permitted elections**  
**The following elections apply** (select one or more):
  - b.  **Deemed 125 compensation** (Plan Section 1.40). Deemed 125 compensation will be included in Compensation and 415 Compensation.
  - c.  **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions)** (Plan Section 3.5(d)). The "rule of parity" provisions in Plan Section 3.5(d) will not apply for (select one or both):
    - 1.  eligibility purposes
    - 2.  vesting purposes
  - d.  **The "one-year hold-out" rule** described in Plan Section 3.5(e) will apply to (select one or both):
    - 1.  determine eligibility (for all contributions types except Elective Deferrals)
    - 2.  determine vesting
  - e.  **Normal form of annuity.** If the Plan permits an annuity form of payment (e.g., if 34.f.1., f.2. or g. is selected), instead of a joint and 50% survivor annuity, the normal form of the qualified Joint and Survivor Annuity will be:
    - 1.  joint and 100% survivor annuity
    - 2.  joint and 75% survivor annuity
    - 3.  joint and 66 2/3% survivor annuity
  - f.  **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(e)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(e), the following order of priority will be used: \_\_\_\_\_ (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children).
  - g.  **"Section 411(d)(6) protected benefits"** (Plan Section 8.1(b)). The following are Code §411(d)(6) protected benefits that are preserved under this Plan: \_\_\_\_\_ (specify the protected benefits and the accrued benefits that are subject to the protected benefits. In addition, list additional information such as the source name and the former plan sponsor. The Employer has reliance on the IRS Opinion Letter only if the features described in the preceding sentence constitute protected benefits within the meaning of

**Non-Standardized Defined Contribution**

Code Section 411(d)(6) and the regulations thereunder, and only if such features are permissible in a "Cycle 3" preapproved plan, i.e., the features are not specifically prohibited by Revenue Procedure 2017-41 (or any superseding guidance)).

- h.  **Limitation Year** (Plan Section 1.50). The Limitation Year for Code §415 purposes will be \_\_\_\_\_ (must be a consecutive twelve-month period) instead of the "determination period" for Compensation.
- i.  **415 Limits when 2 or more defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer or an Affiliated Employer, or if the Employer or an Affiliated Employer maintains a welfare benefit fund, as defined in Code §419(e), or an individual medical account, as defined in Code §415(l)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply unless otherwise specified below:
1.  Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts":  
\_\_\_\_\_
- j.  **Top-heavy duplications** (select one or more)
1.  **Top-heavy duplications when 2 or more defined contribution plans are maintained** (Plan Section 4.3(f)). When a Non-Key Employee is a Participant in this Plan and another defined contribution plan maintained by the Employer that is subject to the top-heavy rules then the top-heavy minimum benefits in this Plan are reduced in accordance with Plan Section 4.3(f) unless otherwise elected below (select one):
- a.  The full top-heavy minimum will be provided in each plan.
- b.  A minimum, non-integrated contribution of 3% of each Non-Key Employee's 415 Compensation will be provided in the Money Purchase Plan (or other plan subject to Code §412).
- c.  Specify the method under which the plans will provide top-heavy minimum benefits for Non-Key Employees that will preclude Employer discretion and avoid inadvertent omissions, including any adjustments required under Code §415: \_\_\_\_\_.
- NOTE:** If b. or c. is selected then (1) an Employer may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code §416, and (2), if the plans do not benefit the same Participants, the uniformity requirement of the Regulations under Code §401(a)(4) may be violated.
2.  **Top-heavy duplications when a defined benefit plan is maintained** (Plan Section 4.3(i)). When a Non-Key Employee is a Participant in this Plan for a Plan Year and also accrues a benefit for the same Plan Year in a defined benefit plan maintained by the Employer that is subject to the top-heavy rules, indicate which method will be utilized to avoid duplication of top-heavy minimum benefits: (select one of a. - d. AND complete e. or select f.)
- a.  The full top-heavy minimum will be provided in each plan (if selected, Plan Section 4.3(i) will not apply).
- b.  5% defined contribution minimum
- c.  2% defined benefit minimum will be made in the \_\_\_\_\_ (enter the name of the other plan)
- d.  Specify the method under which the plans will provide top-heavy minimum benefits for Non-Key Employees:  
\_\_\_\_\_  
(Must be nondiscriminatory, preclude Employer discretion, and avoid inadvertent omissions).
- NOTE:** If b., c., or d. is selected then (1) an Employer may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Code §416, and (2), if the plans do not benefit the same Participants, the uniformity requirement of the Regulations under Code §401(a)(4) may be violated.
- AND**, the "present value" (Plan Section 9.2) for top-heavy purposes will be based on:
- e.  Interest Rate: \_\_\_\_\_
- Mortality Table: \_\_\_\_\_
- f.  The interest rate and mortality table specified to determine "present value" for top-heavy purposes in the defined benefit plan.
- AND**, a Participant must be employed on the last day of the Plan Year in order to receive the top-heavy minimum (Plan Section 4.3(h)) unless elected below.
- g.  A Participant is not required to be employed by the Employer on the last day of the Plan Year.

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3.  If the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Code §401(k)(12) and matching contributions with respect to which the requirements of Code §401(m)(11) apply), the Employer must specify the name of the other plan, the minimum benefit that will be provided under such other plan, and the Employees who will receive the minimum benefit under such other plan: \_\_\_\_\_
- k.  **Recognition of Service with other employers** (Plan Sections 1.62 and 1.88). Service with the following employers (in addition to those specified at Question 16) will be recognized as follows (select one or more; if more than 6 employers, attach an addendum to the Adoption Agreement):

	<b>Eligibility</b>	<b>Vesting</b>	<b>Contribution Allocation</b>
1. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>
2. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>
3. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>
4. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>
5. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>
6. <input type="checkbox"/> Employer name: _____	a. <input type="checkbox"/>	b. <input type="checkbox"/>	c. <input type="checkbox"/>

**Limitations**

7.  The following provisions or limitations apply with respect to the recognition of service: \_\_\_\_\_ (e.g., credit service with X only on/following 1/1/19 or credit all service with entities the Employer acquires after 12/31/18) a.  b.  c.
- i.  **Other vesting provisions.** The following vesting provisions apply to the Plan (select one or more):
1.  **Special vesting provisions.** The following special provisions apply to the vesting provisions of the Plan: \_\_\_\_\_ (must be definitely determinable, non-discriminatory under Code §401(a)(4) and otherwise satisfy the parameters set forth in Questions 18 and 19 and Plan Section 6.4.; e.g., rather than the schedule specified at Question 18, the 5-year graded schedule applies to amounts merged into the Plan from the XYZ Plan.)
2.  **Pre-amendment vesting schedule.** (Plan Section 6.4). If the vesting schedule has been amended and a different vesting schedule other than the schedule at Question 18 applies to any Participants, then the following provisions apply (must select one of a. - d.):
- Applicable Participants.** The vesting schedules in Question 18 only apply to:
- a.  Participants who are Employees as of \_\_\_\_\_ (enter date).
- b.  Participants in the Plan who have an Hour of Service on or after \_\_\_\_\_ (enter date).
- c.  Participants (even if not an Employee) in the Plan on or after \_\_\_\_\_ (enter date).
- d.  Other: \_\_\_\_\_ (e.g., Participants in division A)
- m.  **Top-heavy vesting schedule** (Plan Section 6.4(c)).

Instead of any other vesting schedules set forth in the Plan, if this Plan becomes a Top-Heavy Plan, the following vesting schedule, based on number of Years of Service (or Periods of Service if the elapsed time method is selected) will apply:

1.  6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80%; 6 years-100%
2.  3 Year Cliff: 0-2 years-0%; 3 years-100%
3.  Other - Must be at least as liberal as either 1. or 2. above in each year without switching between the two schedules. (if a different top-heavy schedule applies to different contribution sources, attach an addendum specifying the schedule that applies to each source):

Years (or Periods) of Service	Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

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**NOTE:** This Section does not apply to the Account balance of any Participant who does not have an Hour of Service after the Plan has initially become top-heavy. Such Participant's Vested Account balance will be determined without regard to this Section.

- n.  **Leased Employees** (Plan Section 1.49)
1.  **Offset of contributions to leasing organization plan.** The Employer will reduce allocations to this Plan for any Leased Employee to the extent that the leasing organization contributes to or provides benefits under a leasing organization plan to or for the Leased Employee and which are attributable to the Leased Employee's services for the Employer.
  2.  **Disregard one year requirement.** The definition of Leased Employee shall be applied by disregarding the requirement of performing services for at least one year, for the following contributions (select a. or all that apply of b.1. - b.3.) (Elective Deferrals include Roth Elective Deferrals, "ADP test safe harbor contributions" (including those made pursuant to a QACA) and SIMPLE 401(k) contributions, after-tax voluntary Employee contributions, and rollover contributions; Matching includes QMACs; and Nonelective Contributions include QNECs):
    - a.  All contributions
    - b.  The following contributions (select all that apply)
      1.  Elective Deferrals
      2.  Matching contributions
      3.  Nonelective Contributions
- o.  **Minimum distribution transitional rules** (Plan Section 6.8(e)(5))
- NOTE:** This Section does not apply to (1) a new Plan, (2) an amendment or restatement of an existing Plan that never contained the provisions of Code §401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA), or (3) a Plan where the transition rules below do not affect any current Participants.
- The "required beginning date" for a Participant who is not a "five percent (5%) owner" is:
1.  April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (pre-SBJPA rules continue to apply)
  2.  April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both; leave blank if both applied effective as of January 1, 1996):
    - a.  A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of \_\_\_\_\_ (may not be earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
      1.  N/A (annuity distributions are not permitted)
      2.  Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
      3.  Upon the recommencement of distributions, a new Annuity Starting Date is created.
    - b.  A Participant who had not begun receiving required minimum distributions as of \_\_\_\_\_ (may not be earlier than January 1, 1996) may elect to defer commencement of distributions until retirement. The option to defer the commencement of distributions (i.e., to elect to receive in-service distributions upon attainment of age 70 1/2) applies to all such Participants unless selected below:
      1.  The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December 31, 1998, or (2) the adoption date of the restatement to bring the Plan into compliance with the SBJPA.
- p.  **Other spousal provisions** (select one or more)
1.  **One-year marriage rule.** For purposes of the Plan, other than for purposes of determining eligible hardship distribution expenses, an individual is treated as Spouse only if such individual was married throughout the one year period ending on the earlier of the Annuity Starting Date or the date of the Participant's death.
  2.  **Definition of Spouse.** The term Spouse includes a spouse under federal law as well as the following: \_\_\_\_\_ (Note: This definition shall apply for all Plan purposes OTHER than those mandated by Code §401(a) such as the required minimum distribution provides and qualified joint and survivor annuity provisions. For example, the selected definition will apply to the determination of default beneficiary provisions.)
  3.  **Automatic revocation of spousal designation** (Plan Section 6.2(f)). The automatic revocation of a spousal Beneficiary designation in the case of divorce does not apply.
  4.  **Timing of QDRO payment.** A distribution to an Alternate Payee shall not be permitted prior to the time a Participant would be entitled to a distribution.
- q.  **Applicable law.** Instead of using the applicable laws set forth in Plan Section 10.4(a), the Plan will be governed by the laws of: \_\_\_\_\_

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- r.  **Total and Permanent Disability.** Instead of the definition at Plan Section 1.83, Total and Permanent Disability means: \_\_\_\_\_ (must be definitely determinable).
- s.  **Inclusion of Reclassified Employees** (1.28(a)). The Employer does not exclude Reclassified Employees subject to the following provisions: (leave blank if not applicable): \_\_\_\_\_
- t.  **Age 62 In-Service Distributions For Transferred Money Purchase Assets** (Plan Section 6.11)  
In-service distributions will be allowed for Participants at age 62. (applies only for Transfer Accounts from a money purchase pension plan) (skip this question if the Plan is a Money Purchase Pension Plan or if in-service distributions are already permitted for Transferred Accounts at Question 38)
- Limitations.** The following limitations apply to these in-service distributions:
1.  The Plan already provides for in-service distributions and the restrictions set forth in the Plan (e.g., minimum amount of distributions or frequency of distributions) are applicable to in-service distributions at age 62.
  2.  N/A (no limitations)
  3.  The following elections apply to in-service distributions at age 62 (select one or more):
    - a.  The minimum amount of a distribution is \$\_\_\_\_\_ (may not exceed \$1,000).
    - b.  No more than \_\_\_\_\_ distribution(s) may be made to a Participant during a Plan Year.
    - c.  Distributions may only be made from Accounts which are fully Vested.
    - d.  In-service distributions may be made subject to the following provisions:  
\_\_\_\_\_ (must be definitely determinable and not subject to discretion).
- u.  **Other provisions for matching contributions** (select one or more; may only be selected for 401(k) plans)
1.  **Match applied to elective deferrals to Code §403(b) arrangement.** In applying any matching contributions in this Plan, elective deferrals to a Code §403(b) arrangement maintained by the Employer will be aggregated with Elective Deferrals to this Plan.
  2.  **Match applied to contributions made to Code §457(b) plan.** In applying any matching contributions in this Plan, contributions to a Code §457(b) plan maintained by the Employer will be aggregated with Elective Deferrals to this Plan.
  3.  **Matching contributions not used to satisfy top-heavy contribution** (Plan Section 4.3(j)). Employer matching contributions will NOT be taken into account for purposes of satisfying the minimum contribution requirements of Code §416(c)(2) and the Plan.
- v.  **QACA safe harbor contributions vesting options.** The vesting options selected at Question 19 on the Adoption Agreement also apply to the Participant's Qualified Automatic Contribution Safe Harbor Account unless otherwise selected below (select all that apply):
- Excluded service prior to initial Effective Date of Plan or a predecessor plan (as defined in Regulations §1.411(a)-5(b)(3))**
1.  applies
  2.  does not apply
- Excluded service prior to the computation period in which an Employee has attained age 18**
3.  applies
  4.  does not apply
- Full vesting upon death**
5.  applies
  6.  does not apply
- Full vesting upon Total and Permanent Disability**
7.  applies
  8.  does not apply
- w.  **Investment Fiduciary**
1.  Administrator (use Administrator address and telephone number)
  2.  The Employer or a Committee appointed by the Employer (use Employer address and telephone number)

**Non-Standardized Defined Contribution****ADMINISTRATIVE PROCEDURES**

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this Section without a formal Plan amendment. In addition, modifications to these procedures will not affect an Employer's reliance on the Plan.

**A. Loan limitations. Note:** the separate loan program required by the DOL will override any inconsistent selections made below. (complete only if loans to Participants are permitted)

- a.  Limitations (select one or more; leave blank if none apply):
1.  Loans will be treated as Participant directed investments.
  2.  Loans will only be made for hardship or financial necessity as defined below (select a. or b.)
    - a.  hardship reasons specified in Plan Section 12.10
    - b.  other: hardship reasons specified in Plan Section 6.12 (specify financial necessity)
  3.  The minimum loan will be \$ 1,000 (may not exceed \$1,000).
  4.  A Participant may only have 1 (e.g., one (1)) loan(s) outstanding at any time.
  5.  All outstanding loan balances will become due and payable in their entirety upon severance of employment unless directly rolled over (if otherwise permitted) to another employer's plan.
  6.  The home loan term will be \_\_\_\_\_ years. (if not selected, the Administrator establishes the term for repayment of a home loan)
  7.  **Account restrictions.** Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
    - a.  Pre-Tax Elective Deferral Account (may only be selected with 401(k) Plans)
    - b.  Roth Elective Deferral Account (may only be selected with 401(k) Plans)
    - c.  Account(s) attributable to Employer matching contributions (includes matching "ADP test safe harbor contributions") (may only be selected with 401(k) Plans)
    - d.  Account attributable to Employer Nonelective Contributions
    - e.  Qualified Nonelective Contribution Account (for 401(k) plans, includes nonelective "ADP test safe harbor contributions")
    - f.  Rollover Account
    - g.  Transfer Account attributable to (select one or both; may only be selected with 401(k) or Profit Sharing Plans):
      1.  non-pension assets
      2.  pension assets (e.g., from a money purchase pension plan)
    - h.  Voluntary Contribution Account
    - i.  Other: \_\_\_\_\_

**AND**, if loans are restricted to certain Accounts, the limitations of Code §72(p) and the adequate security requirement of the DOL Regulations will be applied:

- j.  by determining the limits by only considering the restricted Accounts.
- k.  by determining the limits taking into account a Participant's entire interest in the Plan.

**Additional loan provisions** (select all that apply; leave blank if none apply)

- b.  **Loan payments.** Loans are repaid by (if left blank, then payroll deduction applies unless Participant is not subject to payroll; e.g., partner who only has a draw):
1.  payroll deduction
  2.  ACH (Automated Clearing House)
  3.  check
    - a.  Only for prepayment
- c.  **Interest rate.** Loans will be granted at the following interest rate (if left blank, then 3. below applies):
1.  1 percentage points over the prime interest rate
  2.  \_\_\_\_\_%
  3.  the Administrator establishes the rate in a nondiscriminatory manner
- d.  **Refinancing.** Loan refinancing is allowed.

**B. Life insurance.** (Plan Section 7.5)

- a.  Life insurance may not be purchased.
- b.  Life insurance may be purchased...
1.  at the option of the Administrator
  2.  at the option of the Participant

**Limitations**

3.  N/A (no limitations)
4.  The purchase of initial or additional life insurance will be subject to the following limitations (select one or more):
  - a.  Each initial Contract will have a minimum face amount of \$ \_\_\_\_\_.
  - b.  Each additional Contract will have a minimum face amount of \$ \_\_\_\_\_.
  - c.  The Participant has completed \_\_\_\_\_ Years (or Periods) of Service.
  - d.  The Participant has completed \_\_\_\_\_ Years (or Periods) of Service while a Participant in the Plan.
  - e.  The Participant is under age \_\_\_\_\_ on the Contract issue date.
  - f.  The maximum amount of all Contracts on behalf of a Participant may not exceed \$ \_\_\_\_\_.

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g.  The maximum face amount of any life insurance Contract will be \$\_\_\_\_\_.

**C. Plan expenses and Forfeitures**

**Plan expenses.** Will the Plan assess against an individual Participant's Account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan service?

- a.  No  
b.  Yes

**Use of Forfeitures** (skip if this is NOT a Profit Sharing Plan or a 401(k) Plan; for a Money Purchase Pension Plan, see 32.d.-g. on the Adoption Agreement)

**Other than Employer matching contributions.** Forfeitures of amounts attributable to Employer contributions other than Employer matching contributions will be:

- c.  added to any Employer discretionary contribution (for 401(k) plans, matching or profit sharing) and allocated in the same manner  
d.  used to reduce any Employer contribution  
e.  added to any Employer matching contribution and allocated as an additional matching contribution (may only be selected with 401(k) Plans)  
f.  allocated to all Participants eligible to share in the allocations of profit sharing contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year  
g.  other: \_\_\_\_\_ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion)

**Matching contributions.** Forfeitures of amounts attributable to Employer matching contributions will be: (skip if this is NOT a 401(k) Plan)

- h.  N/A (same as above or no Employer matching contributions)  
i.  used to reduce the Employer matching contribution (other than contributions that must be fully Vested when contributed such as QNECs, QMACs and "ADP test safe harbor" contributions that are not made pursuant to a QACA) (see Note below)  
j.  added to any Employer matching contribution and allocated as an additional matching contribution  
k.  added to any Employer discretionary profit sharing contribution  
l.  used to reduce any Employer contribution  
m.  other: \_\_\_\_\_ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion)

**NOTE:** The reallocation of Forfeitures could affect the Plan's top-heavy exemption (see Plan Section 12.8(f)). One approach to avoid this result is to provide for a discretionary matching contribution that satisfies the "ACP test safe harbor" provisions (i.e., select Question 28A.b and select a discretionary matching contribution at Question 29) and then allocate Forfeitures as a matching contribution.

**D. Directed investments** (Plan Section 4.10)

- a.  Participant directed investments are NOT permitted.  
b.  Participant directed investments are permitted from the following Participant Accounts:  
1.  all Accounts  
2.  only from the following Accounts (select one or more):  
a.  Pre-Tax Elective Deferral Account (may only be selected with 401(k) Plans)  
b.  Roth Elective Deferral Account (may only be selected with 401(k) Plans)  
c.  Account(s) attributable to Employer matching contributions (includes matching "ADP test safe harbor contributions") (may only be selected with 401(k) Plans)  
d.  Account attributable to Employer Nonelective Contributions  
e.  Qualified Nonelective Contribution Account (for 401(k) plans, includes nonelective "ADP test safe harbor contributions")  
f.  Rollover Account  
g.  Transfer Account  
h.  Voluntary Contribution Account  
i.  Other: \_\_\_\_\_ (specify Account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion)

**Directed investment options** (If directed investments are permitted, select all that apply; leave blank if none apply)

- c.  **ERISA Section 404(c).** It is intended that the Plan comply with ERISA Section 404(c) with respect to the Accounts subject to Participant investment directions.  
d.  **QDIA.** Plan will include a qualified default investment alternative.

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- E. **Rollover limitations.** Will the Plan specify which sources of rollovers will be accepted? (skip if rollover contributions are NOT selected at 12.f.)
- a.  No, Administrator determines in operation which sources will be accepted.
  - b.  Yes
- Rollover sources.** Indicate the sources of rollovers that will be accepted (select one or more)
1.  **Direct rollovers.** Plan will accept a direct rollover of an eligible rollover distribution from (select one or more):
    - a.  a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions
    - b.  a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions
    - c.  a plan described in Code §403(a) (an annuity plan), excluding after-tax employee contributions
    - d.  a plan described in Code §403(a) (an annuity plan), including after-tax employee contributions
    - e.  a plan described in Code §403(b) (a tax-sheltered annuity), excluding after-tax employee contributions
    - f.  a plan described in Code §403(b) (a tax-sheltered annuity), including after-tax employee contributions
    - g.  a governmental plan described in Code §457(b) (eligible deferred compensation plan)
    - h.  if this Plan permits Roth Elective Deferrals, a Roth Elective Deferral Account from (select one or more) (may only be selected with 401(k) Plans):
      1.  a qualified plan described in Code §401(a)
      2.  a plan described in Code §403(b) (a tax-sheltered annuity)
- Direct rollovers of Participant loan.** The Plan will NOT accept a direct rollover of a Participant loan from another plan unless selected below (leave blank if default applies)
- i.  The Plan will accept a direct rollover of a Participant loan
    1.  only in the following situation(s): \_\_\_\_\_ (e.g., only from Participants who were employees of an acquired organization; leave blank if not applicable).
2.  **Participant rollover contributions from other plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution (select one or more):
    - a.  a qualified plan described in Code §401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan)
    - b.  a plan described in Code §403(a) (an annuity plan)
    - c.  a plan described in Code §403(b) (a tax-sheltered annuity)
    - d.  a governmental plan described in Code §457(b) (eligible deferred compensation plan)
  3.  **Participant rollover contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.
- F. **Elective Deferral procedures** (may only be selected with 401(k) Plans)
- Optional date.** Participants may commence Elective Deferrals on the effective date of participation. Participants may also commence making Elective Deferrals on (leave blank if not applicable):
- a.  \_\_\_\_\_ (must be at least once each calendar year)
- Elective Deferral modifications.** Participants may modify Elective Deferral elections:
- b.  as of each payroll period
  - c.  on the first day of each month
  - d.  on the first day of each Plan Year quarter
  - e.  on the first day of the Plan Year or the first day of the 7th month of the Plan Year
  - f.  other: \_\_\_\_\_ (must be at least once each calendar year)
- Escalation** (leave blank if not applicable)
- g.  Include option for Participants to elect to automatically escalate an Affirmative Election in accordance with the following:
 

**Escalation amount.** A Participant's Affirmative Election will increase by:

    1.  \_\_\_\_\_% of Compensation
      - a.  up to a maximum of \_\_\_\_\_% of Compensation (leave blank if no limit)
    2.  other: \_\_\_\_\_
- Timing of escalation.** The escalation will apply as of:
3.  first day of each Plan Year
  4.  anniversary of date of participation
  5.  other: \_\_\_\_\_



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**First period of application.** Unless selected below, the escalation provision above will apply as of the second period specified above that begins after the period in which the Participant first has contributions made pursuant to a default election.

- 6.  The escalation provision will apply as of the first period after the Participant first has contributions made pursuant to a default election.

**Suspended Elective Deferrals.** If a Participant's Elective Deferrals must be suspended pursuant to a provision of the Plan, then a Participant is deemed to have made as of the date the suspension period begins, an Affirmative Election to have no Elective Deferrals made to the Plan unless otherwise selected below.

- h.  the Participant's Affirmative Election will resume after the suspension period.
- i.  the Participant is deemed to have no Affirmative Election after the suspension period (e.g., for purposes of applying any Automatic Deferral provisions).

**Re-enrollment of existing Affirmative Elections.** Affirmative Elections will remain in effect until revoked or modified by a Participant unless selected below.

- j.  Affirmative Elections lapse at the end of each Plan Year.
- k.  Affirmative Elections lapse: \_\_\_\_\_

**Application to Automatic Deferral provisions to rehired Employees.** Unless this Plan is a QACA, or with respect to withdrawal rights for EACAs, then rehired Employees are treated as new hires pursuant to the following (leave blank if not applicable):

- l.  A rehired Employee is only treated as a new hire for purposes of the Automatic Deferral provisions (except as otherwise provided in the Basic Plan Document) if the rehired Employee has separated from service for at least \_\_\_\_\_ (enter a period; e.g., 3 months)

**G. Trustee(s) or Insurer(s).** Information regarding Trustee(s)/Insurer(s) (required for the Summary Plan Description and, if requested, the Trust Agreement)

(NOTE: Select a. if not using provided trust. MUST select b and following questions as applicable):

- a.  Do not produce the trust agreement
- b.  Complete the following UNLESS not selecting supporting forms:

**Trustee/Insurer** (select c. OR one or more of d. - e.)

- c.  **Insurer.** This Plan is funded exclusively with Contracts (select one or more of 1. - 4. skip to q.)

**Name of Insurer(s)/Address**

- 1.  \_\_\_\_\_
- 2.  \_\_\_\_\_
- 3.  Use Employer address/telephone number/email
- 4.  Use following address/telephone number/email
  - a. Street: \_\_\_\_\_
  - b. City: \_\_\_\_\_
  - c. State: \_\_\_\_\_
  - d. Zip: \_\_\_\_\_
  - e. Telephone: \_\_\_\_\_
  - f. Email: \_\_\_\_\_

- d.  Individual Trustee(s)
- e.  Corporate Trustee

**Name of Trust**

- f. Specify name of Trust (required for FIS trust): North Texas Mobility Corporation (NTMC) - Trust

**Individual Trustees** (if d. selected above, complete g. - j.)

**Directed/Discretionary Trustees.** The individual Trustee(s) executing this Adoption Agreement are (select g. or h.)

- g.  Select for each individual Trustee (skip to next question)
- h.  The following selections apply to all individual Trustee(s) (select 1. - 4. as applicable)
  - 1.  A discretionary Trustee over all plan assets (may not be selected with 2. - 4.)
  - 2.  A nondiscretionary (directed) Trustee over all plan assets (may not be selected with 1., 3. or 4.)
  - 3.  The individual Trustee(s) will serve as a discretionary Trustee over the following assets: \_\_\_\_\_ (may not be selected with 1. or 2.)
  - 4.  The individual Trustee(s) will serve as a nondiscretionary (directed) Trustee over the following assets: \_\_\_\_\_ (may not be selected with 1. or 2.)

**Individual Trustee(s)**

- i.  Individual Trustee(s) are (select one or more of a. - j.; enter address at j. below)
  - a. **Name** Cameron Springer
  - Title/Email:**
    - 1. Title Trustee
    - 2. Email \_\_\_\_\_ (optional)

**Non-Standardized Defined Contribution**

**Trustee is:** (complete if g. selected above; select 3. - 6. as applicable)

- 3.  Discretionary Trustee over all plan assets (may not be selected with 4. - 6.)
- 4.  A discretionary Trustee over the following plan assets: \_\_\_\_\_ (may not be selected with 3. or 5.)
- 5.  Nondiscretionary Trustee over all plan assets (may not be selected with 3., 4. or 6.)
- 6.  A nondiscretionary (directed) Trustee or Custodian over the following plan assets: \_\_\_\_\_ (may not be selected with 3. or 5.)

j.  **Individual Trustee Address** (complete if d. selected above)

- 1.  Use Employer address/telephone number/email
- 2.  Use following address/telephone number/email
  - a. Street: \_\_\_\_\_
  - b. City: \_\_\_\_\_
  - c. State: \_\_\_\_\_
  - d. Zip: \_\_\_\_\_
  - e. Telephone: \_\_\_\_\_
  - f. Email: \_\_\_\_\_

**Corporate Trustee Name/Type/Address** (complete if e. selected above)

k.  **Name** \_\_\_\_\_

**Address/telephone number/email**

- 1.  Use Employer address/telephone number/email
- 2.  Use following address/telephone number/email
  - a. Street: \_\_\_\_\_
  - b. City: \_\_\_\_\_
  - c. State: \_\_\_\_\_
  - d. Zip: \_\_\_\_\_
  - e. Telephone: \_\_\_\_\_
  - f. Email: \_\_\_\_\_

**Directed/Discretionary.** The Corporate Trustee is (select 3. - 6. as applicable)

- 3.  A discretionary Trustee over all plan assets (may not be selected with 4. - 6.)
- 4.  A nondiscretionary (directed) Trustee over all plan assets (may not be selected with 3., 5. or 6.)
- 5.  A discretionary Trustee over the following assets: \_\_\_\_\_ (may not be selected with 3. - 4.)
- 6.  A nondiscretionary (directed) Trustee over the following plan assets \_\_\_\_\_ (may not be selected with 3. - 4.)

**Signee** (optional):

- 7.  Name of person signing on behalf of the corporate Trustee \_\_\_\_\_
- 8.  Email address of person signing on behalf of the corporate Trustee \_\_\_\_\_

**Special Trustee for collection of contributions.** The Employer appoints the following Special Trustee with the responsibility to collect delinquent contributions (*optional*)

l.  **Name** Chief Executive Officer of Plan Sponsor

**Title:**

1. CEO

**Address/telephone number/email**

- 2.  Use Employer address/telephone number/email
- 3.  Use following address/telephone number/email
  - a. Street: \_\_\_\_\_
  - b. City: \_\_\_\_\_
  - c. State: \_\_\_\_\_
  - d. Zip: \_\_\_\_\_
  - e. Telephone: \_\_\_\_\_
  - f. Email: \_\_\_\_\_

**Custodian(s) Name/Address** . The Custodian(s) are (*optional*)

m.  **Name(s)** \_\_\_\_\_

**Address/telephone number/email**

- 1.  Use Employer address/telephone number/email
- 2.  Use following address/telephone number/email
  - a. Street: \_\_\_\_\_
  - b. City: \_\_\_\_\_

**Non-Standardized Defined Contribution**

- c. State: \_\_\_\_\_
- d. Zip: \_\_\_\_\_
- e. Telephone: \_\_\_\_\_
- f. Email: \_\_\_\_\_

**Investment in common, collective or pooled trust funds.** The nondiscretionary Trustee, as directed or the discretionary Trustee acting without direction (and in addition to the discretionary Trustee's authority to invest in its own funds), may invest in any of the following trust funds: *(optional)*

n.  \_\_\_\_\_ (Specify the names of one or more trust funds in which the Plan can invest)

**Choice of law**

- o.  This trust will be governed by the laws of the state of:
  - 1.  State in which the Employer's principal office is located
  - 2.  State in which the corporate trustee or insurer is located
  - 3.  Other \_\_\_\_\_

**Non-Standardized Defined Contribution**

NATIONAL BENEFIT SERVICES, LLC NON-STANDARDIZED MODIFICATIONS

NTMC 401(K) PLAN

The enclosed Plan is being submitted for expedited review as a Non-Standardized Plan.

No modifications from the approved specimen plan have been made to this Plan.

**ADOPTING RESOLUTION**

The undersigned authorized representative of North Texas Mobility Corporation (NTMC) (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on the date specified below, and that such resolutions have not been modified or rescinded as of the signature date below:

RESOLVED, that the form of amended 401(k) Profit Sharing Plan effective October 1, 2021, presented to this meeting is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

The undersigned further certifies that attached hereto are true copies of NTMC 401(k) Plan as amended and restated, the Summary Plan Description and the Funding Policy and Method which are hereby approved and adopted.

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
[print name/title]

**NTMC 401(K) PLAN**

**FUNDING POLICY AND METHOD**

A pension benefit plan (as defined in the Employee Retirement Income Security Act of 1974) has been adopted by the company for the purpose of rewarding long and loyal service to the company by providing to employees additional financial security at retirement. Incidental benefits are provided in the case of disability, death or other termination of employment.

Since the principal purpose of the plan is to provide benefits at normal retirement age, the principal goal of the investment of the funds in the plan should be both security and long-term stability with moderate growth commensurate with the anticipated retirement dates of participants. Investments, other than "fixed dollar" investments, should be included among the plan's investments to prevent erosion by inflation. However, investments should be sufficiently liquid to enable the plan, on short notice, to make some distributions in the event of the death or disability of a participant.

**AMENDMENT TO IMPLEMENT HARDSHIP DISTRIBUTION  
PROVISIONS OF THE BIPARTISAN BUDGET ACT OF 2018**

**NTMC 401(K) PLAN**

**ARTICLE I  
PREAMBLE**

- 1.1 **Adoption and effective date of Amendment.** The Document Provider, on behalf of the Employer, hereby adopts this Amendment to the Employer's Plan. Except as otherwise specified in this Amendment, this Amendment is effective ("the Effective Date") on the first day of the first Plan Year beginning after December 31, 2018, or as soon as administratively feasible thereafter, and in no event later than the Latest Effective Date. If the Plan, prior to this Amendment, does not provide for hardship distributions, then this Amendment will be void and of no effect.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment. Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment.
- 1.3 **Construction.** Except as otherwise provided in this Amendment, any "Section" reference in this Amendment refers only to this Amendment and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to the Plan article, section, or other numbering designations.
- 1.4 **Effect of restatement of Plan.** If the Employer restates the Plan using the Document Provider's pre-approved plan based on The Cumulative List of Changes in Plan Qualification Requirements for Pre-approved Defined Contribution Plans for 2017 (Notice 2017-37) or any earlier Cumulative List, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these provisions).
- 1.5 **Adoption by Document Provider.** The Document Provider hereby adopts this Amendment on behalf of all of the Document Provider's plans adopted by its adopting employers. The adoption by the Document Provider becomes applicable with respect to an Employer's Plan on the Effective Date (or, if later, the Effective Date of the Plan), unless the Employer individually adopts this Amendment, or an alternative amendment, prior to the expiration of the remedial amendment period relating to this Amendment.

**ARTICLE II  
ELECTIONS**

**Instructions: Complete the elections at Sections 2.1 and 2.2.** Unless this Amendment is signed by the Employer, the default elections in Section 2.3 will apply. If the Employer is satisfied with those defaults and the Document Provider's elections in Sections 2.1 and 2.2, the Employer does not need to execute this Amendment. Otherwise, the Employer must complete the elections at Sections 2.1 and 2.2, may complete one or more of Sections 2.4 through 2.7 in order to override the default elections in Amendment Section 2.3, and must execute the amendment.

- 2.1 **Termination of deferral suspension.** Hardship distributions made on or after the Effective Date will not trigger a suspension of Elective Deferrals, pursuant to Section 3.1(c). If a Participant received a hardship distribution before the Effective Date, and therefore Elective Deferrals were suspended, will the Participant be able to resume deferrals as soon as practical after the Effective Date?
- a.  **YES.** Beginning on the Effective Date, Elective Deferrals will not be suspended on account of a hardship distribution, regardless of the date of the distribution.
- b.  **NO.** The Participant's suspension of Elective Deferrals begun before the Effective Date will continue as originally scheduled.
- 2.2 **Expansion of sources available for a hardship distribution.** Pursuant to Amendment Section 3.2, are QNECs and QMACs available for hardship distributions?
- a.  **YES.** QNECs and QMACs are available for hardship distributions.
- b.  **NO.** QNECs and QMACs are not available for hardship distributions.
- 2.3 **Default Provisions.** The following provisions apply except to the extent the Employer makes a different election in one or more of Sections 2.4 through 2.7 and executes the Amendment.
- a. After the Effective Date, Participants do not need to take plan loans before taking hardship distributions.
- b. After the Effective Date, earnings on Elective Deferrals may be withdrawn on account of a hardship.
- c. Hardship needs include residential casualty losses (without regard to whether the casualty was in a federally declared disaster area) and Disaster Losses, effective January 1, 2018 or as soon as practical thereafter.
- d. The Effective Date is the first day of the first Plan Year beginning after December 31, 2018, or as soon as administratively feasible thereafter, and in no event later than the Latest Effective Date.

**Skip Sections 2.4 through 2.7 if you accept the default provisions listed in Section 2.3. Any entry in Sections 2.4 through 2.7 will override those defaults.**

- 2.4 **Loan Requirement.** The provisions of Amendment Section 3.1(b), requiring recipients of hardship distributions to take available nontaxable loans, will NOT apply unless selected below:
- a.  Amendment Section 3.1(b) APPLIES (i.e., Participants are required to obtain a Plan loan) indefinitely, unless and until the Plan is further amended.
- 2.5 **Expansion of sources available for a hardship distribution.** Earnings on amounts attributable to Elective Deferrals are available for hardship distribution, unless selected below:
- a.  Earnings on amounts attributable to Elective Deferrals are NOT available for hardship distributions.
- 2.6 **Hardship needs/events.** The provisions of Amendment Sections 3.3 (relating to residential casualty losses) and 3.4 (relating to Disaster Losses) apply as of January 1, 2018, or as soon as practical thereafter, unless otherwise elected below.
- a.  Amendment Section 3.3 will NOT apply (and so casualty losses are limited to federally declared disasters, pursuant to Code §165(h)).
- b.  Amendment Section 3.4 will NOT apply (and so the Plan will not make hardship distributions on account of Disaster Losses).
- 2.7 **Effective Dates.** Unless otherwise selected below, the Effective Date is the first day of the first Plan Year beginning after December 31, 2018, or as soon as administratively feasible thereafter, and in no event later than the Latest Effective Date. Except as otherwise specified in this Amendment, all provisions are effective on the Effective Date.
- a.  Other general Effective Date: \_\_\_\_\_ (may not be earlier than the first day of the first Plan Year beginning on or after January 1, 2019 or after the Latest Effective Date).
- b.  Special Effective Date for Amendment Section 2.2a: \_\_\_\_\_ [Enter a special effective date, no sooner than the first day of the 2019 Plan Year.]
- c.  Special Effective Date for Amendment Section 2.3a: \_\_\_\_\_ [Enter a special effective date, no sooner than the first day of the 2019 Plan Year.]
- d.  Special Effective Date for Amendment Section 2.3b: \_\_\_\_\_ [Enter a special effective date no sooner than the first day of the 2019 Plan Year.]
- e.  Special Effective Date for Amendment Section 2.3c: \_\_\_\_\_ [Enter a special effective date for the expansion of hardship needs/events, no sooner than January 1, 2018.]

### ARTICLE III DISTRIBUTION BASED ON HARDSHIP

#### 3.1 Modification of hardship necessity provisions.

- a. The Necessity Provisions of the Plan are repealed. Except as otherwise provided in this Section 3.1, the Plan will not make a hardship distribution to a Participant unless the Participant has obtained all other currently available distributions (including distributions of ESOP dividends under section Code §404(k), but not hardship distributions) under the plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the Employer. In addition, for a distribution that is made on or after the Latest Effective Date (or such earlier date as the Plan Administrator has implemented the procedure), the Participant must certify (in writing, by an electronic medium as defined in Treas. Reg. §1.401(a)-21(e)(3), or in such other form as authorized in IRS guidance) that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need.
- b. If and only if elected in Amendment Section 2.4, before a hardship distribution may be made, a Participant must obtain all nontaxable loans (determined at the time a loan is made) available under the plan and all other plans maintained by the Employer.
- c. The Plan will not suspend the Participant from making Elective Deferrals on account of receipt of a hardship distribution. This provision will apply to hardship distributions made after the Effective Date. Under Amendment Section 2.1, it may also apply, as of the Effective Date, to certain suspensions of Elective Deferrals on account of receipt of a hardship distribution prior to the Effective Date.

#### 3.2 Modification of amounts that may be withdrawn on account of a hardship. Except as otherwise elected in Amendment Sections 2.2 and 2.5, earnings on Elective Deferrals, QNECs, and QMACs (and the earnings thereon) may be withdrawn on account of a hardship. The hardship provisions set forth in the Plan, except as modified by this Amendment, continue to apply.



- 3.3 **Residential casualty loss.** Except as otherwise provided in Amendment Section 2.6, effective January 1, 2018 or as soon as practical thereafter, to the extent the Plan permits hardship distributions for expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code §165, such amounts will be determined without regard to Code §165(h)(5).
- 3.4 **Disaster loss.** If the Plan is a Deemed Need Plan, then except as otherwise provided in Amendment Section 2.6, effective January 1, 2018 or as soon as practical thereafter, the financial needs which can justify a hardship distribution to a Participant are expanded to include Disaster Losses.

#### ARTICLE IV DEFINITIONS

- 4.1 **Suspensions of Elective Deferrals.** Any reference to suspension of Elective Deferrals means and includes a suspension of Elective Deferrals and/or Employee Contributions to this Plan or any other qualified plan, a 403(b) plan, or an eligible governmental plan (described in Treas. Reg. §1.457-2(f)) of the Employer.
- 4.2 **QNECs.** A "QNEC" is a Qualified Nonelective Contribution, described in Code §401(m)(4)(C) or a safe harbor nonelective contribution described in Code §401(k)(12)(C). For purposes of this Amendment only, a QACA nonelective contribution described in Code §401(k)(13)(D)(i)(II) will also be treated as though it were a QNEC.
- 4.3 **QMACs.** A "QMAC" is a Qualified Matching Contribution, described in Code §401(k)(3)(D)(ii)(I), or a safe harbor matching contribution described in Code §401(k)(12)(B). For purposes of this Amendment only, a QACA matching contribution described in Code §401(k)(13)(D)(i)(I) will also be treated as though it were a QMAC.
- 4.4 **Necessity Provisions.** The "Necessity Provisions" of the Plan are those provisions which implement the provisions of Treas. Reg. §1.401(k)-1(d)(3)(iv)(B), (C), (D), and (E), as in effect prior to April 1, 2019. These provisions may either reflect the safe harbor "deemed necessary" standards of subparagraph (E) of that regulation, or the non-safe harbor "no alternative means" standards of subparagraphs (B), (C), and (D) of that regulation.
- 4.5 **Deemed Need Plan.** The Plan is a "Deemed Need Plan" to the extent the Plan limits eligibility for a hardship distribution to the deemed immediate and heavy financial needs described in Treas. Reg. §1.401(k)-1(d)(3)(ii)(B), (as revised effective April 1, 2019).
- 4.6 **Disaster Losses.** Disaster Losses are expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.
- 4.7 **Document Provider.** The Document Provider means the Sponsor of a Prototype Plan or VS Practitioner of a Volume Submitter Plan as defined in Rev. Proc. 2015-36, or the Provider of a Pre-approved Plan, as defined in Rev. Proc. 2017-41. References to the Document Provider's plans or to pre-approved plans refer to the Prototype Plans, Volume Submitter Plans, and/or Pre-approved Plans sponsored by the Document Provider for use by adopting employers, as the case may be.
- 4.8 **Latest Effective Date.** The "Latest Effective Date" is the latest of January 1, 2020, the Effective Date of the Plan, or the effective date of any amendment adding hardship distributions to the Plan.

Except with respect to any election made by the employer in Article II, this Amendment is hereby adopted by the prototype sponsor/volume submitter practitioner on behalf of all adopting employers.

Signature and date on file \_\_\_\_\_  
(signature and date)

Sponsor/Practitioner Name: National Benefit Services, LLC

**CERTIFICATE OF ADOPTING RESOLUTION**

The undersigned authorized representative of North Texas Mobility Corporation (NTMC) (the Employer) hereby certifies that the following resolution was duly adopted by Employer on the date specified below, and that such resolution has not been modified or rescinded as of the date hereof:

RESOLVED, the Amendment to Implement Hardship Distribution Provisions of The Bipartisan Budget Bill of 2018 to the NTMC 401(k) Plan (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Plan Administrator the Amendment and to take any and all actions as it may deem necessary to effectuate this resolution.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

\_\_\_\_\_  
[print name/title]

## NTMC 401(K) PLAN

### PARTICIPANT LOAN PROGRAM

NTMC 401(k) Plan permits loans to be made to Participants and their beneficiaries. However, before any loan is made, the Plan requires that a written loan program be established which sets forth the rules and guidelines for making Participant loans. This document shall serve as the required written loan program. In addition, the Administrator may use this document to serve as, or supplement, any required notice of the loan program to Participants and their beneficiaries. All references to Participants in this loan program shall only include Participants and their Beneficiaries or any alternate payee with respect to the Plan. Furthermore, it shall only include those individuals to the extent they are "parties in interest" as defined by ERISA Section 3(14).

The Administrator is authorized to administer the Participant Loan Program. A Participant must apply to the Administrator for a loan in the manner set forth by the Administrator.

**1. Loan application.** Any Participant that is actively employed may apply for a loan from the Plan. A Participant must apply for each loan in a form approved by the Administrator, which specifies the amount of the loan desired, the requested duration for the loan and the source of security for the loan.

All loan applications will be considered by the Administrator within a reasonable time after the Participant applies for the loan. The Participant will be required to provide any supporting information deemed necessary by the Administrator.

**2. Loan limitations and rules.** The Administrator will not approve any loan to a Participant in an amount which exceeds 50% of his or her nonforfeitable account balance. The maximum aggregate dollar amount of loans outstanding to any Participant may not exceed \$50,000, reduced by the excess of the Participant's highest outstanding Participant loan balance during the 12-month period ending on the date of the loan over the Participant's current outstanding Participant loan balance on the date of the loan. With regard to any loan made pursuant to this program, the following rule(s) and limitation(s) shall apply, in addition to such other requirements set forth in the Plan:

- a. No loan in an amount less than \$1,000 will be granted to any Participant.
- b. A Participant can only have 1 loan(s) currently outstanding from the Plan.
- c. All loans made pursuant to this program will be considered a directed investment from the account(s) of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant will be credited only to the account(s) of such Participant. The Plan also will charge that portion of the Participant's account balances with expenses directly related to the origination, maintenance and collection of the note.
- d. Loans will only be granted for the purpose of enabling a Participant to meet certain specified financial situations. For this purpose, a loan will be authorized for the following: hardship reasons specified in Plan Section 6.12.
- e. Loan refinancing is not permitted.

**3. Account restrictions.** Loans may be made from any of the Participant's accounts in the Plan.

**4. Evidence and terms of loan.** The Administrator will document every loan in the form of a promissory note, or other document including a check, signed by the Participant for the face amount of the loan, together with a commercially reasonable rate of interest.

Any loan granted or renewed under this program will bear an interest rate equal to 1% above the prime rate. The interest rate will be fixed for the duration of the loan.

The loan must provide at least quarterly payments under a level amortization schedule. Generally, the Administrator will require that the Participant repay the loan by agreeing to payroll deduction or payment by check (for prepayments only).

The Administrator will fix the term for repayment of any loan, however, in no instance may the term of repayment be greater than five years, unless the loan qualifies as a home loan. A "home loan" is a loan used to acquire a dwelling unit which, within a reasonable time, the Participant will use as a principal residence.

A loan, if not otherwise due and payable, is due and payable on termination of the Plan, notwithstanding any contrary provision in the promissory note. Nothing in this loan policy restricts the Employer's right to terminate the Plan at any time.

Participants should note the law treats the amount of any loan (other than a "home loan") not repaid five years after the date of the loan as a taxable distribution on the last day of the five year period or, if sooner, at the time the loan is in default. If a Participant extends a non-home loan having a five year or less repayment term beyond five years, the balance of the loan at the time of the extension is a taxable distribution to the Participant.

**5. Security for loan.** The Plan will require that adequate security be provided by the Participant before a loan is granted. For this purpose, the Plan will consider a Participant's interest under the Plan to be adequate security. However, in no event will more than 50% of a Participant's vested interest in the Plan (determined immediately after origination of the loan) be used as security for the loan. Generally, it will be the policy of the Plan not to make loans which require security other than the Participant's vested interest in the Plan. However, if additional security is necessary to adequately secure the loan, then the Administrator will require that such security be provided before the loan will be granted.

**6. Form of pledge.** The pledge and assignment of a Participant's account balances will be in the form prescribed by the Administrator.

**7. Military service.** If a Participant separates from service (or takes a leave of absence) from the Employer because of service in the military and does not receive a distribution of his or her account balances, the Plan shall suspend loan repayments upon request by the Participant until the Participant's completion of military service. The Employer will provide the Participant with a written explanation of the effect of the Participant's military service upon his or her Plan loan. While the Participant is on active duty in the United States military, the interest rate on the loan shall not exceed six percent (6%), compounded annually.

**8. Leave of absence/suspension of payment.** The Administrator may, upon request by the Participant, suspend loan repayments for a period not exceeding one year which occurs during an approved leave of absence, either without pay from the Employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. The Administrator will provide the Participant with the below written explanation of the effect of the leave of absence upon his or her Plan loan.

**9. Payments after leave of absence.** When payments resume following a payment suspension in connection with a leave of absence authorized in 7 or 8 above, the Participant shall select one of the following methods to repay the loan, plus accumulated interest:

- a. The Participant shall increase the amount of the required installments to an amount sufficient to amortize the remaining balance of the loan, plus accrued interest, over the remaining term of the loan.
- b. The Participant shall pay a balloon payment of the remaining unpaid principal and interest, at the conclusion of the term of the loan as determined in the promissory note.
- c. The Participant may extend the maturity of the loan and reamortize the payments over the remaining term of the loan. In no event shall the amount of the adjusted installment payment be less than the amount of the installment payment provided under the promissory note. In the case of a leave of absence described in item 8 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above. In the case of a leave of absence described in item 7 above, the revised term of the loan shall not exceed the maximum term permitted under item 4 above, augmented by the time the Participant was actually in United States military service.

**10. Default.** The Administrator will treat a loan in default if:

- a. any scheduled payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the Participant missed the scheduled payment; or
- b. the Participant makes or furnishes any false representation or statement to the Plan.

The Participant will have the opportunity to repay the loan, resume current status of the loan by paying any missed payment plus interest or, if distribution is available under the Plan, request distribution of the note. If the loan remains in default, the Administrator will offset the Participant's vested account balances by the outstanding balance of the loan to the extent permitted by law. The Administrator will treat the note as repaid to the extent of any permissible offset. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest.

\*\*\*\*\*

**ADOPTION OF LOAN PROGRAM**

The Administrator of NTMC 401(k) Plan adopts this Loan Program on the date specified below.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Administrator

## NTMC 401(K) PLAN

### QUALIFIED DOMESTIC RELATIONS ORDER (QDRO) PROCEDURE

In the case of any domestic relations order (DRO) received by NTMC 401(k) Plan, its status as a "qualified domestic relations order" (QDRO) under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code will be determined under the following procedures. The Administrator is responsible for administering the QDRO Procedure. The purpose of the QDRO Procedure is to establish a reasonable and consistent procedure for determining the qualified status of a domestic relations order and for making distributions pursuant to a domestic relations order which qualifies under Internal Revenue Code Section 414(p).

**Procedure prior to receipt of order:** The Plan will apply the following procedure prior to the Plan's receipt of a domestic relations order.

**1. Suspension of Participant distributions or loans.** If the Administrator is on notice (verbal or written) regarding a pending domestic relations action (e.g., a divorce) and has a reasonable belief the Participant's account may become subject to a QDRO, the Administrator may suspend processing the Participant's distribution or loan requests pending resolution.

**2. Removing hold on the account.** After placing a hold on the account, the Administrator should notify the Participant of the hold on the account. In order to remove the hold, the Administrator should request the Participant to provide written confirmation that a court will not issue a QDRO with respect to the account; such as a property settlement agreement awarding the entire account to the Participant.

**Procedure after receipt of order:** The Plan will apply the following procedure whenever it receives a DRO which purports to be a QDRO.

**1. Notice to Participant and to alternate payee.** Within a reasonable time period after receipt of a domestic relations order, the Administrator will notify the Participant and any alternate payee of the receipt of the order, and will deliver to the Participant and to each alternate payee a copy of this QDRO Procedure. Any alternate payee may designate a representative to receive copies of notices that are to the alternate payee regarding a domestic relations order.

**2. Notice to Trustee.** The Administrator, within a reasonable time period after receipt of a domestic relations order, will notify the Trustee of the receipt of the order. The Administrator, for any period during which the Administrator (or a court of competent jurisdiction) is determining the issue of whether the order is a QDRO, will account separately for the amount of the Participant's benefit which is subject to the order. The Administrator will direct the Trustee to segregate the "QDRO amount" if possible.

**3. Review of order.** The Administrator will review the order within a reasonable time to determine its qualified status. The Administrator will complete a QDRO DETERMINATION CHECKLIST with respect to each order the Plan receives. In most circumstances, the Administrator will complete review of the order within 30 days of receipt. After review, the Administrator will determine whether the order is a QDRO.

**4. Source of distributions: Roth vs. non-Roth.** Unless the QDRO provides otherwise, if the Participant's account includes both a Roth 401(k) deferral account and one or more other accounts (e.g., profit sharing, Pre-Tax 401(k) deferral and matching), the Plan will distribute any amounts payable under the QDRO pro rata from all of the Participant's accounts, including the Roth 401(k) deferral account.

**5. Suspension of Participant investment or distributions.** The Plan will suspend the Participant's right to direct any investments during the period the Administrator is determining the qualified status of the order. If the Participant is receiving benefits from the Plan at the time of receipt of the order, the Administrator will suspend distributions to the Participant to the extent the Administrator deems necessary to comply with the order should the Administrator determine the order is a QDRO.

**6. Determination order is a QDRO.** If the Administrator determines the order is a QDRO:

a. The Administrator will notify the Participant and each alternate payee that the order is a QDRO and the Plan will distribute amounts pursuant to the QDRO. The Administrator will notify the Participant and each alternate payee of the decision within ten days of the determination by mailing to each party a copy of the QDRO DETERMINATION CHECKLIST, which will include the Administrator's certification.

b. If the QDRO requires immediate payment, the Plan will pay the designated amounts as soon as administratively feasible. Payment of any amount the order required the Plan to pay during the determination period will include interest from the date the QDRO required the first payment, at the rate of interest determined to be reasonable. The rate of interest payable on a regular savings account is a reasonable rate of interest for this purpose.

c. If the Plan cannot make the distribution within 30 days of the determination of qualified status of the QDRO, the Administrator will advise the parties of the delay, of the reason for the delay and of the date by which the Plan expects to make payment.

d. The Administrator will advise the Participant when the Plan has completed payment to the alternate payee.

e. The Plan will maintain a separate accounting (which may include a segregated account) for each alternate payee until the Plan has completed benefit payments under the QDRO.

f. Each alternate payee is entitled to file with the Plan a beneficiary designation in the same manner as a Participant in the Plan.

**7. Determination order is not a QDRO.** If the Administrator determines the order is not a QDRO:

a. The Administrator will advise the Participant and each alternate payee of the adverse decision and of the reasons for the adverse decision. The Plan will advise the Participant and each alternate payee of the decision within ten days of the determination by mailing to each party a copy of the QDRO DETERMINATION CHECKLIST, which will include the Administrator's certification of the decision.

b. The Administrator will discontinue separate accounting for the amounts payable under the order. The Plan will pay the benefits to the party entitled to receive the benefits. If the Participant is not entitled to a present distribution of any of the segregated benefits, the Plan will continue to account for the Participant's benefits as if the Plan had not received the order.

c. If the Administrator determines the status of the order within the 18-month period beginning on the date the order would require the first payment, the Administrator may delay distribution of any benefits subject to the order if the Administrator has reason to believe a party will seek to cure the defects in the order. The Administrator will continue to delay distribution during the period the Administrator determines to be necessary to fulfill the Administrator's fiduciary duties under the Plan.

**8. Consultation with legal counsel.** The Administrator will consult with the Plan's legal counsel in case of questions which arise with respect to the interpretation of any provision of the order or with respect to the qualified status of the order.

\* \* \* \* \*

**Adoption of QDRO Procedure**

The Administrator of NTMC 401(k) Plan adopts this QDRO Procedure on the date specified below.

By: \_\_\_\_\_  
Administrator

Date: \_\_\_\_\_

## NORTH TEXAS MOBILITY CORPORATION (NTMC) - TRUST

The Employer hereby establishes or restates the North Texas Mobility Corporation (NTMC) - Trust, pursuant to the following terms and conditions. The Trustee accepts the Trust hereby created and agrees to perform the obligations this Trust imposes on the Trustee.

### ARTICLE I DEFINITIONS

**1.01 Plan.** This Trust is associated with the following plan ("the Plan"): NTMC 401(k) Plan, which is intended to be qualified under Code §401(a). All of the definitions of the Plan are incorporated into this Trust by reference. All "Section" references in this Trust are to provisions of the Trust and not to Provisions of the Plan, unless otherwise clearly indicated. The Trustee may rely upon the terms of the Plan, including identification of the Named Fiduciary and Plan Administrator, as well as any documents relating to the Plan provided by the Employer, Named Fiduciary, or Plan Administrator, until such time as the Trustee receives a replacement document or a revocation of the prior document.

**1.02 Trustee.** Trustee means the person or persons who as Trustee, Insurer, or Custodian execute the Trust, or any successor in office who in writing accepts the position. Such signature shall indicate the capacity in which the person is agreeing to serve, either as Discretionary Trustee, Directed Trustee, Insurer, or Custodian. The Trustee is identified in Article 4. References to Trustee do not include a Special Trustee (as described in Section 2.06), unless the context requires otherwise. If the Plan is funded totally by insurance contracts, the Insurer shall be the Trustee and shall have all powers of a Custodian hereunder. If the sponsor is a bank, savings and loan, trust company, credit union or similar institution, a person or entity other than the sponsor (or its affiliates or subsidiaries) may not serve as Trustee without the written consent of the pre-approved plan sponsor.

**1.03 Trust Fund.** The Trust Fund means and includes all property of every kind acquired by the Plan and held by the Trust, other than incidental benefit insurance contracts. The Trust Fund is intended to be a qualified trust under Code § 501(a); all contributions so received, together with the income therefrom and any other increment thereon, shall be held, invested, reinvested and administered by the Trustee pursuant to the terms of this agreement. All right, title and interest in and to the assets of the Trust Fund shall be at all times, vested exclusively in the Trustee. Only assets actually received by Trustee will become part of the Trust Fund. Plan Sponsor acknowledges and agrees that it is responsible for effectuating the transfer of any assets held by a prior trustee or custodian to Trustee. All assets so received, together with the income there from and any other increment thereon, shall be held by Trustee pursuant to the terms of this agreement without distinction between principal and income and without liability for the payment of interest thereon. The Trustee shall have only such duties with respect to the Plan as are set forth in this agreement.

**1.04 Effective Date.** The Trust is effective on the Effective Date of the Plan. To the extent the Plan has operated under a prior trust agreement (including one incorporated into the Plan document), this document amends and restates the Trust effective as of the later of the date it is executed or when the Trustee receives assets.

**1.05 Employer.** The Employer means the Employer named in the Plan. By an appendix to this Trust, the Employer may provide that any and all powers of the Employer hereunder may be exercised by the Named Fiduciary specified in the Plan.

### ARTICLE II TRUSTEE POWERS AND DUTIES

**2.01 Discretionary Trustee Powers.** A Discretionary Trustee has full discretion and authority with regard to the investment of the Trust Fund, except as to a Plan asset: (i) properly under the control or the direction of an Investment Manager, ancillary trustee or other Plan fiduciary; (ii) subject to proper Employer or Named Fiduciary direction of investment; or (iii) subject to proper Participant or Beneficiary direction of investment. The exercise of any investment discretion hereunder shall be consistent with the funding policy determined by the Employer. Any such policy shall be consistent with the objectives of this Plan and with the requirements of Title I of the Act. The Discretionary Trustee is authorized and empowered, but not by way of limitation, with the following powers:

**(A) General Powers.** To invest and reinvest the Trust Fund and to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to: any time deposits, or savings accounts, common or preferred stocks, open end or closed end mutual funds (including proprietary funds), put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, to open and to maintain margin accounts, to engage in short sales, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments the Trustee deems appropriate. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code or the Act, so that at all times this Plan may qualify as a qualified Plan and Trust. The Trustee shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

**(B) Liquidity.** To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank or other institutional account at reasonable interest or without interest if the Trustee determines that such deposits are reasonable or necessary to facilitate a Plan transaction or for other purposes, but consistent with the Trustee's duties under Section 2.05.

**(C) Trustee's Common/Collective Funds.** To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by any State, in any type of deposit of the Trustee (or of a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund, as described in Code §584, or in a collective investment fund, (including a group trust described in Section 3.08), the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency, as applicable.

**(D) Real/Personal Property.** To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides.

**(E) Borrowing.** To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund. No person lending money to the Trust shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing.

**(F) Claims.** To compromise, contest, arbitrate or abandon claims and demands affecting the investment of Trust assets, in the Trustee's discretion. However, nothing in this paragraph requires a Participant or Beneficiary to arbitrate any claim under the Plan.

**(G) Voting, Tender, Exercise.** To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, including any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate reorganizations or other changes affecting corporate securities, and to delegate discretionary powers, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property.

**(H) Mineral rights.** To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders.

**(I) Annuities or other Contracts.** To apply for and procure from the Insurer as an investment of the Trust Fund any annuity or other Contracts (on the life of any Participant, or in the case of a profit sharing plan (including a 401(k) Plan), on the life of any person in whom a Participant has an insurable interest, or on the joint lives of a Participant and any person in whom the Participant has an insurable interest) as the Plan Administrator shall deem proper; to exercise, at any time or from time to time, whatever rights and privileges may be granted under such annuity, or other Contracts; to collect, receive, and settle for the proceeds of all such annuity, or other Contracts as and when entitled to do so under the provisions thereof.

**(J) Title.** To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship. However, any securities held in a nominee or street name must be held on behalf of the Plan by: (a) a bank or trust company that is subject to supervision by the United States, any State, or a nominee of such bank or trust company; (b) a broker or dealer registered under the Securities Exchange Act of 1934 or a nominee of such broker or dealer; or (c) a clearing agency as defined in Securities Exchange Act of 1934, Section 3(a)(23), or its nominee.

**(K) Hold Pending Dispute Resolution.** To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes final adjudication.

**(L) Litigation.** To settle, compromise, or submit to arbitration (provided such arbitration does not apply to Participants or Beneficiaries) any claims, debts, or damages due or owing to or from the Plan, to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings. The Trustee shall have no obligation to undertake, defend or continue to maintain any action or proceeding arising in connection with the Trust, unless and until the Employer requests the Trustee to do so and agrees in writing to indemnify the Trustee against the Trustee's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto, to be primarily liable for such payment and to make periodic payments in respect of such fees and expenses during the course of such proceedings. If the Employer thereafter does not pay such costs, expenses and liabilities in a reasonably timely manner, the Trustee shall discontinue participation in such action or proceeding, and charge the assets of the Trust Fund to the extent sufficient for any unpaid fees and expenses.

**(M) Investment Policy.** To adopt and to amend from time to time, an investment policy consistent with the Plan's funding policy.



**(N) Bank.** The Trustee may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record keeping nature.

**(O) Pooling Assets.** To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any related or affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and Trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests.

**(P) Catch All.** To perform any and all other acts which in the Trustee's judgment are necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust.

**2.02 Directed Trustee.** Except as otherwise provided herein, a Directed Trustee has all of the same powers as a Discretionary Trustee in Section 2.01 except that the Directed Trustee only may exercise such powers pursuant to a proper written direction. A "proper written direction" means the written direction of a Plan fiduciary or of a Participant or Beneficiary with authority over the Trust asset which is the subject of the direction. Written direction may be given electronically. The Employer and the Directed Trustee may, in writing, limit the powers of the Directed Trustee to any combination of powers listed within Section 2.01. The party which has the authority to manage and control the investment of the Plan assets shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Employer, in adopting this Trust, acknowledges and agrees:

**(A) No Discretion.** The Directed Trustee does not have any discretion as to the investment or the reinvestment of the Trust Fund and the Directed Trustee is acting solely as a directed fiduciary as to the assets comprising the Trust Fund, to the extent that the Directed Trustee has the authority to act upon such assets as granted by the Employer.

**(B) No Review or Recommendations.** The Directed Trustee does not have any duty to review or to make recommendations regarding investments made pursuant to a proper written direction.

**(C) No Action Without Direction.** The Directed Trustee must retain any investment obtained upon a proper written direction until receipt of another proper written direction to dispose of such investment.

**(D) No Liability for Following Orders.** The Directed Trustee is not liable in any manner or for any reason for making, retaining or disposing of any investment pursuant to any proper written direction.

**(E) Indemnity.** The Employer will indemnify, defend and hold the Directed Trustee harmless from any damages, costs or expenses, including reasonable attorneys' fees, which the Directed Trustee may incur as a result of any claim asserted against the Directed Trustee or the Trust arising out of the Directed Trustee's compliance with any proper written direction.

**2.03 Agents.** The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee reasonably may delegate to any agent, attorney, accountant or other person selected by it any power or duty vested in it by the Plan, to the extent that such delegation of power or duty is allowed under ERISA, and the Trustee may act reasonably or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

**2.04 Orphaned Plan.** If the Trustee determines that the Employer has abandoned the Plan, the Trustee (if qualified to so act) may appoint itself as a Qualified Termination Administrator ("QTA"), as defined in Department of Labor guidance, for purposes of terminating the Plan and distributing all Plan Accounts. As a QTA, the Trustee may undertake all authorized acts to wind up the Plan, including causing the Trust to pay from Trust assets to the QTA and to other service providers a reasonable fee for services rendered. A Directed Trustee may serve as a QTA without regard to the receipt of proper written direction.

**2.05 Duties.** The Trustee agrees to perform the responsibilities expressly imposed on it hereunder. The Employer and the Trustee intend that nothing shall be construed to require the Trustee to perform any responsibility or function that it has no express authority to perform under this agreement. The Trustee agrees to the following duties:

**(A) ERISA.** If ERISA applies to the Plan and to the extent that ERISA so requires, to act: (a) solely in the interest of Participants and Beneficiaries for the exclusive purposes of providing benefits under the Plan and defraying the reasonable expenses of Plan administration; (b) with the care, skill, prudence and diligence under the circumstances then prevailing as would a prudent person acting in a like capacity and familiar with such matters; (c) by diversifying Trust investments so as to minimize the risk of large losses unless not prudent under the circumstances to do so; and (d) in accordance with the Plan to the extent that the Plan is consistent with ERISA.

**(B) Investment Policy.** To coordinate its investment policy with Plan financial needs as communicated to it by the Plan Administrator.

**(C) Trust Accounting.** To furnish to the Employer and to the Plan Administrator an annual statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement, including the net income, or loss, of the Trust Fund, the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets, and the increase, or decrease, in the value of the Trust Fund, stating the assets of the Trust held at the end of the Plan Year. Such statements are conclusive on all persons, including the Employer and the Plan Administrator, except as to any act or transaction concerning which the

Employer or the Plan Administrator files with the Trustee written exceptions or objections within 45 days after the receipt of the statements or for which ERISA authorizes a longer period within which to object. The Trustee also may agree with the Employer or Plan Administrator to provide the information described in this paragraph more frequently than annually. Nothing contained in this Section shall deprive the Trustee of any right to have its accounts judicially settled if the Trustee so desires. To the extent permitted by law, but subject to any express provision of applicable law as may be in effect from time to time to the contrary, no person other than the Plan Administrator or Employer may require an accounting or bring any action against the Trustee with respect to the assets of the Trust or its actions as Trustee.

**(D) Trust Valuation.** To the extent directed by the terms of the Plan, the Plan Administrator, or the Named Fiduciary, to report the value of the Trust Fund and as applicable, the value of the Trust assets within each Participant or Beneficiary Account provided, however, the Trustee reserves the right to notify the Plan Administrator or Named Fiduciary of any non-marketable securities or other property held under the Trust without a readily-determinable value, and such securities or other property shall be valued as determined by the Plan Administrator or Named Fiduciary or other fiduciary (but not the Trustee) at least annually. However, if the Trustee is a Directed Trustee (as defined in this document) the Named Fiduciary will value the assets and will provide the valuation to the Trustee, unless the Trustee and the Named Fiduciary agree that the Trustee will conduct the valuation. The Trustee may reasonably rely on any valuation the Named Fiduciary conducts and provides.

**(E) Distributions.** To credit and distribute the Trust Fund as the Plan Administrator directs. The Trustee is not obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee is accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the direction of the Plan Administrator. The Trustee must promptly notify the Plan Administrator of any unclaimed Plan payment or distribution and then dispose of the distribution in accordance with the Plan Administrator's direction, including any processes or limitations enumerated in the Plan document. The Trustee shall be released and discharged from all further accountability or liability respecting such assets of the Trust, shall be fully protected in making payments out of the assets of the Trust in accordance with such written directions, and shall have no responsibility to see to the application of such payments or to ascertain whether such directions comply with the provisions of the Plan.

**(F) Fees/Expenses.** To pay from the Trust Fund all reasonable Plan fees and expenses, and if applicable to allocate the fees and expenses to Plan Accounts, both as the Plan Administrator directs. Any fee or expense that the Employer pays, directly or indirectly, is not an Employer contribution to the Plan, provided the fee or the expense relates to the ordinary and necessary administration of the Trust Fund.

**(G) Loans.** To make loans to a Participant or to a Beneficiary in accordance with the Plan Administrator's direction and the terms of the Plan.

**(H) Records/Statements.** To keep the Trustee's Plan records open to the inspection of the Plan Administrator and the Employer at all reasonable times and to permit the review or audit of such records from time to time by any person or persons as the Employer or Plan Administrator may specify in writing. The Trustee must furnish the Plan Administrator with whatever information relating to the Trust Fund the Plan Administrator considers necessary to perform its duties as Plan Administrator.

**(I) Tax Returns.** To file all information and tax returns required of the Trustee.

**(J) Incapacity.** To follow the direction of the Plan Administrator with regard to distributions to any Participant or Beneficiary whom the Plan Administrator has determined to be incapacitated (such as physical or mental incapacity, or age as defined by the Plan). The Trustee also will provide any reasonable information and take any reasonable action that the Plan Administrator requests relating to a determination of incapacity or otherwise pertaining to the administration of the Account of any incapacitated person. The Trustee has no duty or liability with regard to such distributions except to follow the instructions of the Plan Administrator.

**(K) Bond.** To provide a bond for the faithful performance of its duties as Trustee under the Trust to the extent required by ERISA.

**(L) Contributions.** To receive, take and hold any contributions paid to the Trustee by the Employer in cash or, in the case of a profit sharing plan, such other property as may be acceptable to the Trustee. All contributions so received together with the income therefrom and any other increment thereon shall be held managed and administered by the Trustee pursuant to the terms of this Trust without distinction between principal and income and without liability for the payment of interest thereon. Notwithstanding the foregoing, the Trustee agrees to perform the responsibilities expressly imposed on it. The Employer and the Trustee intend that nothing shall be construed to require the Trustee to perform any responsibility or function that it has no express authority to perform under this agreement.

## 2.06 Duty to Collect Employer Contributions.

**(A) Duty.** A discretionary Trustee has the duty to collect Employer contributions, including, but not limited to, elective deferrals, except to the extent such duty is limited by the Employer or as provided in paragraph (B). A Directed Trustee does not have the duty to collect employer contributions and the Employer represents and warrants that it either has responsibility as a "named fiduciary" (as defined in ERISA §402(a)(2)) or has properly delegated the responsibility to a Plan fiduciary, other than the Directed Trustee, for determining the correctness, amount and timing of contributions and for the collection of contributions. This duty is effective no sooner than the later of the date the Employer signs this Agreement or the date the Trustee or Special Trustee executes either this Agreement or otherwise accepts its responsibilities under the Agreement.

**(B) Special Trustee.** If a Special Trustee has been appointed, the Special Trustee will have the duty to collect Employer Contributions, working with the highest-ranking officer of the Employer in the case of resignation or removal until another Trustee is appointed. This is the sole duty of the Special Trustee, acting in that capacity. No other Trustee has any duty to ensure that the contributions received comply with the provisions of the Plan or is obliged to collect any contributions from the Employer. No Trustee, other than the Special Trustee, is obliged to ensure that funds deposited are deposited according to the provisions of the Plan. The Special Trustee will either execute the Trust Agreement or a form accepting its position and agreeing to its obligations hereunder. The Special Trustee may perform any and all acts which in the Special Trustee's judgment are necessary or appropriate for the proper and advantageous discharge of its responsibilities.

**(C) Standards.** In determining how to discharge any duty to collect contributions, a Trustee, Special Trustee, or other Named Fiduciary of the Plan should weigh the value of the Plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred. Among other factors, a Trustee, Special Trustee or other Named Fiduciary of the Plan may take into account the Employer's solvency in deciding whether to expend Plan assets to pursue a claim.

### ARTICLE III ADMINISTRATIVE PROVISIONS

**3.01 Co-fiduciary Liability.** Each fiduciary under the Trust is responsible solely for his/her or its own acts or omissions. A fiduciary does not have any liability for another fiduciary's breach of fiduciary responsibility with respect to the Trust unless the fiduciary: (a) participates knowingly in or undertakes to conceal the breach; (b) has actual knowledge of the breach and fails to take reasonable remedial action to remedy the breach; or (c) through failure to perform his/her or its own specific fiduciary responsibilities that give rise to fiduciary status, the fiduciary has enabled the other fiduciary to commit a breach of the latter's fiduciary responsibility.

#### **3.02 Limitation of Liability.**

**(A) Apportionment of duties.** The Named Fiduciary, the Trustee(s) and any properly appointed Investment Manager may execute a written agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager or Trustee(s) with respect to any part of the Trust Fund under the control of the Investment Manager or the Trustee(s).

**(B) Investment Manager.** The Trustee is not liable for the acts or omissions of any Investment Manager the Named Fiduciary may appoint, nor is the Trustee under any obligation to invest or otherwise to manage any asset of the Trust Fund which is subject to the management of a properly appointed Investment Manager. If investment of the Plan assets is to be directed in whole or in part by an Investment Manager, the Trustee shall be under no duty or obligation to review any investment to be acquired, held or disposed of pursuant to such directions nor to make any recommendations with respect to the disposition or retention of any such investment. The Trustee shall have no liability or responsibility for acting or not acting pursuant to the direction of, or failing to act in the absence of any direction from, the Investment Manager.

**(C) Other Fiduciaries.** The Trustee is not liable for the acts or omissions of any ancillary trustee or independent fiduciary properly appointed under Section 3.06. However, if a Discretionary Trustee, pursuant to the delegation described in Section 3.06, appoints an ancillary trustee, the Discretionary Trustee is responsible for the periodic review of the ancillary trustee's actions and the ancillary trustee must exercise its delegated authority in accordance with the terms of the Plan and in a manner consistent with ERISA.

**(D) Indemnity.** To the extent permitted by the Code and ERISA, the Employer agrees to indemnify and hold harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's powers and duties hereunder, unless the same are judicially determined to be due to gross negligence or willful misconduct; including, but not limited to, attorney's fees in expenses covered. This provision applies whether or not the Trustee has resigned or has been removed.

**(E) Receipt of Assets.** The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred to the Trust, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of the Plan.

**(F) Insurer.** The Trustee (other than an Insurer acting as Trustee) shall not be responsible for the validity of the provisions under an insurance contract issued to the Plan or for the failure or refusal by the Insurer to provide benefits under such contract. The Trustee is also not responsible for any action or failure to act by the Insurer or any other person which results in the delay of a payment under the contract or which renders the contract invalid or unenforceable in whole or in part.

**(G) Direction.** If the Trustee shall be directed by a Participant (pursuant to Plan authorized procedures), the Employer, or an Investment Manager or other agent appointed by the Employer with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instructions as so directed. In addition, if the investment of Plan assets is to be directed by Participants, the Plan Administrator, Employer or other designated Named Fiduciary shall be solely responsible for the Plan satisfying the various criteria set forth in Department of Labor Regulation §2550.404c-1 for qualification as an "ERISA Section 404(c) Plan."

**(1) Reliance.** The Trustee shall be entitled to rely fully on the written (or other form acceptable to the Plan Administrator and the Trustee, including but not limited to, voice recorded) instructions of a Participant (pursuant to the Plan procedures), the Employer, or any fiduciary or nonfiduciary agent of the Employer, in the discharge of

such duties, and shall not be liable for any loss or other liability resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

- (2) **Delegation.** The Trustee may delegate the duty of executing such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee or any Plan representative.
- (3) **Refusal.** The Trustee may refuse to comply with any direction from the Participant in the event the Trustee, in its sole and absolute discretion, deems such direction improper by virtue of applicable law. The Trustee shall not be responsible or liable for any loss or expense that may result from the Trustee's refusal or failure to comply with any direction from the Participant.
- (4) **Costs.** Any costs and expenses related to compliance with the Participant's directions shall be borne by the Participant's Directed Account, unless paid by the Employer.
- (5) **Collectibles.** Notwithstanding anything herein above to the contrary, the Trustee shall not invest any portion of a Participant's Directed Account in "collectibles" within the meaning of Code §408(m).

**3.03 Multiple Trustees.** An Employer may appoint one or more Trustees to perform duties in Section 2.01 for specified assets in the Plan if the Trustees accept such appointment. Multiple Trustees may consist of financial institutions or individuals in any combination at the election of the Employer. If multiple parties act as Trustee over specified assets in the Plan, the power or duties of the Trustee shall be interpreted as applying to each such Trustee only with respect to the assets of the Trust Fund for which such Trustee is the Trustee. Each Trustee shall have no responsibility for, or liability with respect to, any of the Trust Fund other than the assets for which it serves as Trustee.

(A) **Majority Decisions.** If more than two persons act as Trustee, a decision of the majority of such persons controls with respect to any decision regarding the administration or the investment of the Trust Fund or of any portion of the Trust Fund with respect to which such persons jointly act as Trustee. Except as provided in paragraph (B), the Trustees jointly will manage and control the assets of the Trust Fund (or those Trust assets as to which they act as Trustee).

(B) **Multiple Institutional Trustees.** If there is more than one Trustee which is a financial institution, each Trustee shall be the Trustee only with respect to those assets specifically deposited by the Employer in the Trust Fund for which such Trustee is the Trustee. References in the Trust to the responsibilities, power or duties of the Trustee shall be interpreted as applying to each such Trustee only with respect to the assets of the Trust Fund for which such Trustee is the Trustee. Each Trustee shall have no responsibility for, or liability with respect to, any of the Trust Fund other than the assets for which it serves as Trustee.

(C) **Allocation.** Multiple Trustees may allocate among themselves specific responsibilities or obligations or may authorize one or more of them, either individually or in concert, to exercise any or all of the powers granted to the Trustee, or to perform any or all of the duties assigned to the Trustee under this Trust.

(D) **Signature.** The signature of only one Trustee is necessary to effect any transaction on behalf of the Trust (or as to those Trust assets as to which the signatory acts as Trustee).

**3.04 Trustee Fees and Expenses.** A Trustee will receive reasonable compensation and reimbursement for reasonable Trust expenses (including counsel fees) actually incurred as Trustee, as set forth in the Trustee's fee schedule (if the Trustee has such a schedule), or as may be agreed upon from time to time by the Employer and the Trustee. No person who is receiving full pay from the Employer may receive compensation (except for reimbursement of Plan expenses) for services as Trustee. As the Plan Administrator or Employer directs, such fees and expenses will be paid by the Employer, or the Trustee will charge the Trust for the fees or expenses. If, within a reasonable time after a Plan related fee or expense is incurred (or if within the time specified in any agreement between the Plan and the Trustee regarding payment of a fee or expense) the Plan Administrator does not communicate the Employer's decision regarding payment or if the Employer does not pay the fee or expense, the Trustee may charge the Trust for such reasonable fees and expenses as are not settlor expenses. All taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

**3.05 Third Party Reliance.** A person dealing with the Trustee is not obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Plan. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and is not liable to any person in so acting. The certificate of the Trustee that it is acting in accordance with the Plan is conclusive in favor of any person relying on the certificate.

**3.06 Appointment of Ancillary Trustee or Independent Fiduciary**

(A) **Appointment.** The Employer or Named Fiduciary, in writing, may appoint any qualified person in any state to act as ancillary trustee with respect to a designated portion of the Trust Fund, subject to any consent required under the Plan. An ancillary trustee must acknowledge in writing its acceptance of the terms and conditions of its appointment as ancillary trustee and its fiduciary status under ERISA.

(B) **Powers.** The ancillary trustee has the rights, powers, duties and discretion as the Employer may delegate, subject to any limitations or directions specified in the agreement appointing the ancillary trustee and to the terms of the Plan or of ERISA. The Employer may delegate its responsibilities under this Section 3.06 to a Discretionary Trustee (subject to the acceptance by such Discretionary Trustee of that delegation), but the Employer may not delegate its responsibilities to a Directed Trustee. The investment powers delegated to the ancillary trustee may include any investment powers available

under Section 2.01. The delegated investment powers may include the right to invest any portion of the assets of the Trust Fund in a common trust fund, as described in Code §584, or in any collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, but only if the ancillary trustee is a bank or similar financial institution supervised by the United States or by a state and the ancillary trustee (or its affiliate, as defined in Code §1504) maintains the common trust fund or collective investment fund exclusively for the collective investment of money contributed by the ancillary trustee (or its affiliate) in a trustee capacity and which conforms to the rules of the Comptroller of the Currency, as applicable. The Employer also may appoint as an ancillary trustee, the trustee of any group trust fund designated for investment pursuant to the provisions of Section 3.08.

**(C) Resignation/Removal.** The ancillary trustee may resign its position and the Employer may remove an ancillary trustee as provided in Section 3.07 regarding resignation and removal of the Trustee. In the event of such resignation or removal, the Employer may appoint another ancillary trustee or may return the assets to the control and management of the Trustee.

**(D) Independent Fiduciary.** If the DOL requires engagement of an independent fiduciary to have control or management of all or a portion of the Trust Fund, the Employer will appoint such independent fiduciary, as directed by the DOL. The independent fiduciary will have the duties, responsibilities and powers prescribed by the DOL and will exercise those duties, responsibilities and powers in accordance with the terms, restrictions and conditions established by the DOL and, to the extent not inconsistent with ERISA, the terms of the Plan. The independent fiduciary must accept its appointment in writing and must acknowledge its status as a fiduciary of the Plan.

**3.07 Resignation and Removal.** The following provisions relate to Trustee resignation and removal and to appointment of a successor. They apply to a Special Trustee as well as a Trustee.

**(A) Resignation.** The Trustee may resign its position by giving written notice to the Named Fiduciary and to the Plan Administrator. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days following the date of the Trustee's notice, unless the Named Fiduciary consents in writing to shorter notice.

**(B) Removal.** The Employer or Named Fiduciary may remove a Trustee by giving written notice to the affected party. The Employer's notice must specify the effective date of removal which date must be at least 30 days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

**(C) Successor Appointment.** In the event of the death, incapacity, resignation or the removal of a Trustee, where no other Trustee continues to serve, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons shall have full authority to act under the terms of the Plan as Trustee.

**(1) Default Successor Trustee.** Except as provided in subparagraph (2) below, if the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee. If state law prohibits the Employer from serving as successor Trustee, the appointed successor Trustee is the president of a corporate Employer, the managing partner of a partnership Employer, the managing member of a limited liability company Employer, the sole proprietor of a proprietorship Employer, or in the case of any other entity type, such other person with title and responsibilities similar to the foregoing.

**(2) Default Custodian.** If the Employer fails to appoint a successor Custodian as of the effective date of Custodian resignation or removal, the Trustee will direct the investment of Plan assets held by the former Custodian.

**(D) Acceptance.** Each successor Trustee succeeds its predecessor Trustee by accepting in writing its appointment as successor Trustee and by filing the acceptance with the former Trustee and the Plan Administrator. For this purpose, the successor Trustee's execution of this Trust or the Adoption Agreement to the Plan constitutes the Trustee's acceptance of its appointment as successor Trustee. The successor Trustee will also execute such other documents, if any, as the Plan Administrator may reasonably require in connection therewith.

**(E) Outgoing Trustee.** The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and must perform all acts necessary to vest the title to Plan assets of record in any successor Trustee. In addition, to the extent reasonably necessary for the ongoing administration of the Plan, at the request of the Plan Administrator and the successor Trustee, the resigning or removed Trustee must transfer records, provide information and otherwise cooperate in effecting the change of Trustees. Such resigning or removed Trustee is authorized to reserve such sum of money (and for that purpose to liquidate such property as may be necessary to produce such sum) for payment of all proper expenses and charges against the assets of the Trust including reasonable expenses in connection with such resignation or removal, and any balance of such reserve remaining after the payment of such charges shall be paid over to the successor Trustee. Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Employer and Plan Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Employer no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 2.05 for the approval by the Employer of annual statements of account shall apply to any

special statement of account rendered hereunder and approval by the Employer of any such special statement in the manner provided in Section 2.05 shall have the same effect upon the statement as the Employer's approval of an annual statement of account.

**(F) Successor Powers.** Each successor Trustee has and enjoys all of the powers, both discretionary and ministerial, conferred under the Plan upon its predecessor.

**(G) No Liability for Predecessor or Successor.** A successor Trustee is not personally liable for any act or failure to act of any predecessor Trustee, except as required under ERISA. With the approval of the Employer and the Plan Administrator, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without liability. No Trustee shall be required to investigate, or be responsible for, any acts or omissions occurring before it became, or after it ceased to be, Trustee.

**3.08 Investment in Group Trust Fund.** The Employer specifically authorizes a Directed Trustee, as directed, or a Discretionary Trustee to invest all or any portion of the assets comprising the Trust Fund in any group trust fund which at the time of the investment provides for the pooling of the assets of plans qualified under Code §401(a), including a group trust fund that also permits the pooling of qualified plan assets with assets of an individual retirement account that is exempt from taxation under Code §408(e), assets of an eligible governmental plan under Code §457(b) that is exempt from taxation under Code §457(g), assets of a custodial account under Code §403(b)(7) or a retirement income account under Code §403(b)(9), or assets of a governmental plan under Code §401(a)(24). This authorization applies solely to a group trust fund exempt from taxation under Code §501(a) and the trust agreement of which satisfies the requirements of Rev. Rul. 81 100 (as modified and clarified by Rev. Rul. 2004-67, Rev. Rul. 2011-1, and Rev. Rul. 2014-24), or any successor thereto. The provisions of the group trust fund agreement, as amended from time to time, are by this reference incorporated within this Plan and Trust. The provisions of the group trust fund will govern any investment of Plan assets in that fund. To comply with Code §4975(d)(8) as to any group trust fund maintained by a disqualified person, including the Trustee, the following provisions apply: (a) a Discretionary Trustee or a Directed Trustee may invest in any such fund at the direction of the Named Fiduciary who is independent of the Trustee and the Trustee's affiliates; (b) a Discretionary Trustee or a Directed Trustee (the latter as directed) may invest in any such fund which the Employer specifies in the Adoption Agreement to the Plan or in an appendix thereto; and (c) notwithstanding (a) and (b) a Discretionary Trustee may invest in its own funds as described in Section 2.01(C). The Employer may attach an appendix to this Trust to specify the group trust funds in which the assets of the Trust Fund may be invested. If so, investments in group trust funds shall be limited to the group trust funds so specified.

**3.09 Combining Trusts.** At the Employer's direction, the Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the trust created under any other qualified retirement plan the Employer maintains. However, the Trustee must maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Account Balance under the qualified plans in which he/she is a participant.

**3.10 Amendment/Substitution.** The Employer may, at any time and from time to time, amend or restate the Trust or any of its provisions. Any Trust amendment (a) must not conflict with any other provisions of the Plan (except as expressly are intended to override an existing Trust provision); and (b) must not cause the Plan to violate Code §401(a). The Trustee must execute or consent in writing to any amendment.

**3.11 Electronic Communication.** Any communication, notice, direction, or other writing in connection with the Trust may be given electronically, under reasonable commercial procedures satisfactory to the Trustee.

**3.12 Governing Law.** The law of the state or commonwealth where the Employer's principal office is located will determine all questions arising with respect to the provisions of the Trust.

**3.13 Reliance on Counsel.** The Trustee may consult with legal counsel (who may be of counsel to the Employer) concerning any question which may arise with reference to its duties under this Trust Agreement and the opinion of such counsel shall be full and complete protection to the Trustee in respect to any action taken or suffered by the Trustee in good faith and in accordance with the opinion of such counsel.

**3.14 Termination.** This Trust Agreement and the Trust created hereby may be terminated at any time by the Employer, and upon such termination, the assets of the Trust shall be paid out by the Trustee as and when directed by the Plan Administrator pursuant to the terms of the Plan and this Trust. When the assets of the Trust have been applied or distributed as provided herein, the Trustee shall be released and discharged from all further accountability or liability respecting the assets of the Trust (or that part of the assets so applied or distributed if the Trust is terminated only in part) or any part thereof so applied or distributed and shall not be responsible in any way or to any person for the further disposition of the assets of the Trust (or that part of the assets so applied or distributed, if the Trust is terminated only in part) or any part thereof so applied or distributed.

**ARTICLE IV  
TRUSTEE/CUSTODIAN**

The Trustee(s) Special Trustee, by executing this Trust, hereby accepts its position and agrees to all of the obligations, responsibilities and duties imposed upon the Trustee (or Custodian) under the Trust.

A Trustee who executes the Adoption Agreement need not separately execute this Trust.

The persons or entities are acting as Trustee(s), Special Trustee hereunder, as defined in this agreement, are listed in the attached Appendix.

_____	_____
EMPLOYER	DATE SIGNED
_____	_____
Cameron Springer, TRUSTEE	DATE SIGNED
_____	_____
CEO, SPECIAL TRUSTEE	DATE SIGNED

ACCEPTANCE OF SPECIAL TRUSTEE

I, the undersigned, accept the appointment as Special Trustee of the NTMC 401(k) Plan (Plan), and agree to all of the obligations, responsibilities and duties imposed upon the Special Trustee under the Plan and Trust. The sole responsibility of the Special Trustee is to collect contributions owed to the Plan. No other Trustee has the responsibility to collect contributions owed to the Plan.

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CEO, SPECIAL TRUSTEE

---

DATE SIGNED





## MEMO

To: NTMC Board of Directors  
From: Robert J. Garza, General Manager, *RJ Garza*  
CC: NTMC Officers; Louise Francois, AGM, and John Hendrickson, HTG President  
Date: July 12, 2021  
Subject: National Benefits Services (NBS) Operator 401(k) Authorization Document and Service Agreement with North Texas Mobility Corporation

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### **BACKGROUND:**

North Texas Mobility Corporation will enter in an agreement with National Benefits Services, LLC (NBS) to create an Operator 401(k) Plan to reflect the new Collective Bargaining Agreement negotiated between NTMC and the ATU Local 1338 in March 2021.

### **NORTH TEXAS MOBILITY CORPORATION & NATIONAL SERVICE AGREEMENT:**

National Benefits Services, LLC will assist North Texas Mobility Corporation in creating the Operator 401(k) Plan documents. The plan will be designed as a discretionary plan to include any future CBA negotiations to increase the employer match and has a vesting schedule of 5 years. As agreed in the Collective Bargaining Agreement the North Texas Mobility Corporation will provide a match of .50 cents on each dollar contributed to the plan up to 3% of the Operator's pay.

### **FINANCIAL IMPACT:**

Please reference page 5 for cost impact.

### **RECOMMENDATION:**

NTMC staff recommends authorizing the NTMC President to execute the Authorization Document and Service Agreement between NTMC and National Benefit Services, LLC (NBS) to provide a 401(k) Plan available for NTMC Operators effective October 1, 2021.

If you should have any questions or concerns, please feel free to contact me.



## 401(k) PLAN

### DOCUMENT AUTHORIZATION

The information on this page reflects the information that has been given to National Benefit Services, LLC (NBS) in preparing your plan document. Please carefully review the Company and Plan Information section and mark any changes you see.

Company Information			
Employer Legal Name	North Texas Mobility Corporation (NTMC)		
EIN	83-4362684	Entity Type	Corporation
		Date Company Established	6/2/2019
Employer Physical Address	1955 Lakeway Drive, Suite 260, Lewisville, TX 75067		
Phone Number	940-218-1614	Fax Number	n/a
Primary Contact for Plan Operation	Cameron Springer		
Contact Email Address	cspringer@ntmc.com		
What is the Company's NAICS Code?	485113		
If not know what is the Company's Industry? _____			
Is this a governmental plan? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Payroll Contact	Cameron Springer		
Payroll Contact Email	cspringer@ntmc.com		
Payroll Cycle	<input type="checkbox"/> weekly <input checked="" type="checkbox"/> every two weeks <input type="checkbox"/> semi-monthly <input type="checkbox"/> monthly		
	Date of 1 <sup>st</sup> expected payroll: 10/13/2021 Date of 2 <sup>nd</sup> expected payroll: 10/27/2021		
Investment Provider	Nationwide		
Plan Advisor Name			
Plan Advisor Email			
Plan Advisor Phone Number			
Takeover Plan: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
Prior Vendor/Provider	n/a		
Prior TPA	n/a	Prior TPA Phone	n/a
Prior TPA Contact	n/a	Prior TPA Email	n/a
Items already completed from _____ Plan Year <input type="checkbox"/> Valuation <input type="checkbox"/> 5500 <input type="checkbox"/> Audit			
NBS will be completing annual administration work for _____ year(s)			
Are there current outstanding loans in the Plan? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			
Part of a Controlled Group	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes * If yes, please provide ownership details on all related companies.		
Adopting Employer(s)	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Please complete the table below with all required information		

Plan Information			
Legal Plan Name	NTMC 401(k) Plan - Union Employees		
Plan Trustees	<b>Trustee Name</b>	<b>Trustee email address</b>	
	Cameron Springer	cspringer@ntmc.com	
Corporate Trustee	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (if yes, please see below)		
Corporate Directed Trustee (nondiscretionary) <input type="checkbox"/> No <input type="checkbox"/> Yes - Corporate Discretionary Trustee <input type="checkbox"/> No <input type="checkbox"/> Yes			
Corporate Trustee Address (if applicable)			



## 401(K) PLAN DOCUMENT AUTHORIZATION (CONTINUED)

Effective Date of Plan ( <i>original effective date</i> )	October 1, 2021				
Target payroll contribution date	October 1, 2021	Plan Year End	9/30		
		Fiscal Year End	9/30		
Safe Harbor Plan	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	IRS Plan #	002		
First effective date of Safe Harbor	n/a				
<b>Eligibility Provisions</b>					
Excluded Employees	<input type="checkbox"/> None <input type="checkbox"/> Leased <input type="checkbox"/> Union <input type="checkbox"/> Nonresident Aliens <input checked="" type="checkbox"/> Other: Non Operator employees, part time operator employees (less than 30 hrs/week.)				
Eligibility Conditions:	<i>Please see table below</i>				
<b>Type</b>	<b>Age Requirement</b>	<b>Service Requirement</b>	<b>Entry Date</b>	<b>Waive Service Requirement</b>	<b>Date of Waiver Service</b>
All Contribution Types ( <i>same</i> )	21	6 Months Elapsed time	Quarterly	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	
Elective Deferrals				<input type="checkbox"/> No <input type="checkbox"/> Yes	
Matching Contributions				<input type="checkbox"/> No <input type="checkbox"/> Yes	
Profit Sharing Contributions				<input type="checkbox"/> No <input type="checkbox"/> Yes	
Credit Service with any other Employers	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, please list Employer's name: EE's participating in the Non Union Plan For the following: <input type="checkbox"/> eligibility <input type="checkbox"/> vesting <input type="checkbox"/> contribution allocation				

<b>Employer Contributions</b>			
<b>Vesting:</b>			
Is the vesting schedule below new?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, if yes, please provide old vesting and if there are existing forfeitures Match: n/a Forfeitures: <input type="checkbox"/> No <input type="checkbox"/> Yes Profit Sharing: n/a Forfeitures: <input type="checkbox"/> No <input type="checkbox"/> Yes		
<b>Employer Contributions</b>			
<b>Discretionary Match with vesting:</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	Allocation Requirements	<input checked="" type="checkbox"/> n/a <input type="checkbox"/> 1,000 hours <input type="checkbox"/> Last day
Current Vesting – Match	Yr 1: 20% Yr 2: 40% Yr 3: 60% Yr 4: 80% Yr 5: 100%		
<b>Discretionary Profit Sharing with vesting:</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	Allocation Requirements	<input checked="" type="checkbox"/> 500 Hours if NOT employed on the last day
Current Vesting – Profit Sharing	Yr 1: 20% Yr 2: 40% Yr 3: 60% Yr 4: 80% Yr 5: 100%		
Profit Sharing Allocation:	<input type="checkbox"/> New Comparability <input type="checkbox"/> Integrated <input checked="" type="checkbox"/> Divide Equally ( <i>refer to notes for additional info</i> )		
<b>Exclude Vesting</b>	<input checked="" type="checkbox"/> No Exclusions <b>Prior to</b> <input type="checkbox"/> Age 18 <input type="checkbox"/> Effective date of Plan		
Forfeitures	<input type="checkbox"/> Reduce Employer Contributions <input checked="" type="checkbox"/> Pay plan expenses <input type="checkbox"/> credit to all eligible EEs		
Employee Contribution Changes	Per Pay Period		
Hardship Distributions Allowed	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		
Loans Allowed	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (1) <input type="checkbox"/> Yes ( )		



### 401(K) PLAN DOCUMENT AUTHORIZATION (CONTINUED)

Normal Retirement Age	65 - Date of Participant's NRA		
In-Service Distributions allowed at age 59 ½ from all sources that are 100% vested?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		
<b>Safe Harbor Options</b>	<input checked="" type="checkbox"/> n/a <input type="checkbox"/> Basic Match <input type="checkbox"/> Enhanced Match _____ (both matching options have immediate vesting) <input type="checkbox"/> 3% Non-Elective Profit Sharing		
Safe Harbor funded	<input type="checkbox"/> Per pay period <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually		
<b>Miscellaneous Provisions</b>			
Roth Contributions Allowed	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	Effective Date	10/1/2021
In-Plan Roth Conversions	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	Effective Date	10/1/2021 <i>no earlier than 9/28/2010</i>
In-Plan Roth Transfers	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	Effective Date	10/1/2021 <i>no earlier than 1/1/2013</i>
Excluded Compensation	<input type="checkbox"/> No Exclusions <input type="checkbox"/> Bonuses <input checked="" type="checkbox"/> Prior to Participation <input type="checkbox"/> Other:		
Mandatory Distributions	<input type="checkbox"/> \$1,000 <input checked="" type="checkbox"/> \$5,000		
Top Paid Group Election	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		
<b>Automatic Enrollment</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	Effective Date of Automatic Enrollment:	
	<input type="checkbox"/> Roth or <input checked="" type="checkbox"/> Pre-tax <b>Default percentage: 4</b>		
Automatic Escalation:	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes % points up to a maximum of % (not more than 10%) Timing: <input type="checkbox"/> first day of the Plan Year <input type="checkbox"/> Other		
Apply automatic enrollment:	<input checked="" type="checkbox"/> All Participants, regardless of any affirmative election that was previously made (or not made) <input type="checkbox"/> Participants with no existing election on file <input type="checkbox"/> Participants with a % below automatic enrollment %		
<b>EACA or QACA:</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, complete appropriate appendix		

<b>Adopting Employers (if applicable)</b>					
<i>Note: complete ownership must be provided on all adopting employers to insure proper compliance.</i>					
Name of Adopting Employer	Initial Effective Date	EIN Number	Address	Email Address	Common ownership between Sponsor and Adopting Employer (%)

Below are items that pertain to the provisions of your plan



### 401(K) PLAN DOCUMENT AUTHORIZATION (CONTINUED)

NBS Notes
<b>W-2 Wages</b>
<b>No QDIA in existing doc.</b>
<b>Elapsed time for eligibility</b>
<b>Profit Sharing Allocation Conditions apply to Death, Disability and Term or NRA</b>
<b>Lump Sum Distributions Only</b>
<b>Qualified Reservist Distributions Allowed</b>

**Upon review of this form, please indicate any changes that may be required. Also include any comments you may have that will be beneficial during the on-boarding process. You must initial this section below, verifying changes and/or that no changes are required.**

Plan Sponsor Comments and/or Changes

Initial Here: \_\_\_\_\_



## 401(K) PLAN DOCUMENT AUTHORIZATION (CONTINUED)

Administration Fee Schedule	
Plan Document Services	
Plan Document	\$1,200
Annual Document Maintenance Fee • Includes all amendments both requested and required and future IRS restatement (anticipated 2020)	\$350 (Annually)
Administration Services	
Annual Administration	\$1,500 (billed quarterly)
Per Participant Fee	\$36 / participant / year
Takeover Fee (one-time)	\$ n/a
Miscellaneous Services	
Investment Platform Conversion	\$650
Distribution Fee (paid by participant)	\$125 / distribution
Loan Fee (paid by participant)	\$125 / loan
Audit Coordination/Assistance	\$550
Additional Investment Accounts (as applicable)	\$100 / account
New Comparability or Age-Weighted Calculation (as applicable)	\$300 / calculation
Extra Hourly Work	\$200 / hour
Payment Method	
Annual Administration Fee	<input type="checkbox"/> Deduct from Plan Assets <input type="checkbox"/> Bill Employer (default)
Per Participant Fee	<input type="checkbox"/> Deduct from Plan Assets <input type="checkbox"/> Bill Employer (default)
Miscellaneous Services	<input type="checkbox"/> Deduct from Plan Assets <input type="checkbox"/> Bill Employer (default)

**Email address for billing invoices (if different than primary email address):** \_\_\_\_\_

This schedule of fees and the parties' Service Agreement is provided in compliance with the disclosure requirements of ERISA §408(b)(2). Please review the fees listed above and the Service Agreement, sign on the bottom and return to NBS. Further, by signing below you are agreeing to the above fee schedule, the provisions of the Service Agreement, and authorizing NBS to prepare your plan documents.

Once this signed document has been received, we will prepare the plan document and send them to you. You will also receive an email so you can electronically sign your documents via AdobeSign. You will need to sign and keep a copy of all signature pages in the documents for your records. Signing, will make the plan official and in force.

**Voluntary changes during Plan Implementation to provisions outside of those listed in the Document Authorization will result in a \$150 reprocessing fee.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date



**ADDENDUM – SERVICE AGREEMENT**

**EMPLOYEE BENEFITS**

Employer: **North Texas Mobility Corporation**

**RECITALS**

Wherefore:

- A. As the above named employer (“Employer”) has executed a service agreement (“Service Agreement”), effective February 12, 1028, outlining the terms, conditions, and specific services to be performed by National Benefit Services (“NBS”) in conjunction with the following benefits:
  - 401(k) (Non-Union); and
- B. NBS provides services related to other employer-sponsored benefits; and
- C. Employer wishes to engage NBS to perform additional services in conjunction with other benefits offered by Employer to its employees;

Accordingly, Employer and NBS (collectively the “Parties”) adopt this Addendum to the Service Agreement for the provision of additional services (“Additional Services”) for the following benefits:

- 401(k) (Union)

According to the following terms and conditions:

**ADDENDUM**

1. **Additional Services, Obligations, and Fees.** The Parties agree to comply with the terms of Additional Services and Obligations described in one or more “Schedule(s) A” attached to this Addendum. The Employer agrees to pay fees for the Additional Services pursuant to the applicable fee schedule(s), attached to this Addendum as one or more “Schedule(s) B.”
2. **Incorporation by Reference.** By signing below, the Parties agree that this Addendum, together with the attached Schedules, is hereby incorporated into and shall be subject to the terms and conditions of the Service Agreement between the Parties, effective as of the date signed by the Employer below.

**North Texas Mobility Corporation**

Signed: \_\_\_\_\_  
(Its Authorized Agent)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: Paul R. Lovell  
(Its Authorized Agent)

Title: CEO

Date: June 9, 2021

**NATIONAL BENEFIT SERVICES, LLC**

**SCHEDULE 'A'****SCHEDULE A – SERVICES AND OBLIGATIONS****DEFINED CONTRIBUTION PLANS****I. APPLICABLE LAW AND DEFINED TERMS****A. Applicable Law**

1. As used in this Service Agreement, “the law” means the relevant portion of the Internal Revenue Code (“the Code”), the Employee Retirement Income Security Act (“ERISA”), and relevant final and proposed regulations adopted under the Code and ERISA.

**B. Defined Terms**

1. Employees: “Employees” means those employees of the Employer meeting the definition of “employees” under the Code.
2. Employer: “Employer” means the entity identified as the Employer in Recital A of the Service Agreement document. While the operation of the Plan is carried out under distinct, federally defined fiduciary roles which include “plan sponsor,” “plan administrator,” and in some instances “designated plan fiduciary,” “Employer” as used in the Service Agreement shall mean whichever fiduciary is designated by the Plan to fulfill those responsibilities. Unless another individual or entity is named in the Plan Document as the Administrator or the Plan Sponsor, the Employer is considered under ERISA as the Administrator and the Plan Sponsor.
3. Participant: “Participant” means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.
4. Plan: “Plan” means the particular Defined Contribution Plan that is sponsored by the Employer for the benefit of its Employees and meets the requirements of § 401(a) of the Code.
5. Plan Document: “Plan Document” means the written instrument within the meaning of § 401(a) of the Code, which contains all of the operating rules adopted by the Employer as prescribed by § 401(a) and the regulations thereunder.
6. QDRO: “QDRO” means Qualified Domestic Relations Order. A QDRO is a judgment, decree, or order for a retirement plan to pay child support, alimony, or marital property rights to a spouse, former spouse, child, or other dependent participant.
7. SPD: “SPD” means the summary plan description that is required to be given to plan participants and beneficiaries. The SPD describes participant and beneficiary rights, benefits, and responsibilities under the plan in understandable language.

**II. NBS SERVICES:**

NBS shall provide services as described in this Service Agreement on behalf of the Employer and as agreed upon herein by the Parties. NBS shall provide the services described herein in a professional, workmanlike



**SCHEDULE 'A'**

manner. NBS, as a Third Party Administrator, shall be obligated to perform only those services specifically enumerated in this Service Agreement. NBS reserves the right to perform other services, which in its sole discretion it believes are necessary to the efficient, professional, and workmanlike execution of its obligations hereunder; however, performance of such services not enumerated herein shall not create an ongoing obligation to perform such services. In no event shall NBS be deemed to have breached its obligations to the Employer because of a failure to perform a function not enumerated herein and agreed-upon by the Parties.

**A. Plan Setup and Document Services**

NBS shall:

1. Prepare the following documents in the initial year of the Service Agreement and subsequent restatements thereafter as necessary to comply with the law. *(Note: All plan documents completed by NBS should be reviewed by competent legal counsel.)*
  - a. Plan and Trust documents (pre-approved Volume Submitter document), updated for current regulatory requirements
  - b. Employer Resolution to adopt the Plan
  - c. SPD
  - d. Highlights Page
  - e. Loan Policy, as applicable
  - f. QDRO Procedure
2. Prepare amendments to the Plan, as required by law and as requested by the Employer, and the correlating updated SPD and Summary of Material Modifications. *(Note: The Employer is required to send updated Summary of Material Modifications to all the participants in the Plan for each new amendment.)*
3. Prepare the following notices, as applicable:
  - a. Special Tax Notice *(provided initially with plan document)*
    - i. The Employer needs to provide this notice to all terminated participants once the participant receives distribution forms.
  - b. Safe Harbor Notice *(provided on an annual basis in accordance with Safe Harbor rules)*
    - ii. For Safe Harbor plans, the Employer needs to provide this notice to all newly eligible participants 30 to 90 days prior to the new participant's eligibility date, or as soon as administratively feasible if the Plan's eligibility provisions are less than 90 days, and to all participants in the Plan on an annual basis 30 to 90 days before the beginning of the plan year.
  - c. Automatic Enrollment Notice *(provided on an annual basis)*
    - iii. For Plans with Automatic Enrollment features, the Employer needs to provide this notice to all eligible participants 30 to 90 days prior to the new participant's eligibility date, or as soon as administratively feasible if the Plan's eligibility provisions are less than 90 days, and all participants on an annual basis 30 to 90 days before the beginning of the plan year.
  - d. NBS's 404(a)(5) Participant Disclosure Notice *(provided initially with plan document and then upon any changes in fees)*
    - iv. The Employer must provide this notice, along with any other 404(a)(5) required notices, to all newly eligible participants on the new participant's eligibility date and to all participants when the Plan makes any changes to the fees.

**SCHEDULE 'A'**

- e. 204(h) Notice (*provided upon a reduction of benefits*)
    - v. This notice is only needed when there is a reduction in benefits, including plan termination. If applicable, the Employer must send this notice to all participants.
  - f. ESOP Diversification Notice (*for ESOPs only on an annual basis*)
    - vi. The Employer must distribute this notice to participants on an annual basis.
4. If requested by the Employer, prepare necessary documentation to split the Plan into multiple plans with one trust.
  5. Maintain electronic copies of all plan documents, annual statements, and reports in PDF format consistent with IRS retention requirements.
  6. Perform the following general administrative services for the Plan:
    - a. Obtain financial account data from the Plan Trustees and designated third parties and perform the following services:
      - i. Reconcile plan reports to investment company statements.
      - ii. Calculate investment gain or loss and allocate earnings to participant accounts, as applicable.
      - iii. Reconcile contributions to and distributions from participant accounts.
    - b. Assist the Employer in calculating contributions and forfeiture allocations to the Plan and in allocating contributions and forfeitures to participant accounts to ensure compliance with the following documents and regulations:
      - i. Governing plan document
      - ii. Annual addition limits (IRC § 415)
      - iii. Elective deferral limits
        1. NBS shall monitor the elective deferral limits on an annual basis (IRC §§ 402(g) and 401(a)(30)). (*Note: An additional fee may be assessed if the Plan Sponsor requests monitoring on a more frequent basis.*)
      - iv. Non-discrimination rules (IRC § 401(a)(4))
      - v. Maximum deductible contribution limit
      - vi. Non-discrimination rules for 401(k) arrangements (ADP/ACP)
        1. Compliance with the non-discrimination rules includes preliminary testing and identification of Highly Compensated Employees, as applicable.
      - vii. 414(s) Compensation Ratio Test, as applicable
    - c. Track receivable contributions to verify deposit into the Plan and ensure proper reporting. (*Note: To calculate the cost of correction for each Participant affected by the delayed remittance, NBS shall use the "Lost Earnings Calculator" provided by the Department of Labor.*)
    - d. Assist the Employer with contribution submission by:
      - i. Calculating the Employer match on an annual basis. (*Note: An additional fee may be assessed if the Employer requests a calculation on a more frequent basis.*)

**SCHEDULE 'A'**

- ii. Calculating the lost earnings and preparing Form 5330 for payrolls deemed untimely per Department of Labor guidelines. *(Note: An additional fee may be required.)*
- e. Test the Plan to ensure compliance with coverage requirements under IRC §410(b).
- f. Test the Plan to ensure compliance with top-heavy rules (IRC § 416) by:
  - i. Identifying all Key Employees.
  - ii. Calculating the top-heavy ratio.
  - iii. Verifying that benefit and vesting structures are appropriate for the Plan's top-heavy status.
- g. Assist the Employer with distribution of benefits to participants and beneficiaries by:
  - i. Ensuring compliance with the distribution provisions of the Plan.
  - ii. Providing appropriate election forms, notices, and disclosures to the Plan Sponsor.
  - iii. Calculating vesting percentage.
  - iv. Reviewing withdrawal forms for accuracy and completeness.
  - v. Ensuring compliance with minimum distribution rules under IRC §401(a)(9).
  - vi. Determining eligibility for in-service withdrawals.
  - vii. Assisting with the death benefit withdrawal process.
  - viii. Determining appropriate action with respect to income tax withholding and ensuring compliance with withholding rules, including verification of the proper IRS distribution code.
  - ix. Confirming distribution is processed at the appropriate financial institution.
  - x. Upon request, sending the full service distribution option, including applicable notices and vendor-specific forms as necessary, to terminated participants. *(Note: An additional fee may be required)*
  - xi. Calculating and processing any required corrective distributions, including ADP/ACP excess withdrawals, 402(g) excess withdrawals, and 415 excess withdrawals. *(Note: An additional fee shall apply.)*
  - xii. Processing hardship withdrawals approved by the Employer by:
    - 1. Educating the Employer on what constitutes a hardship according to IRS regulations and in compliance with the plan document.
    - 2. Maintaining a record of participant hardship basis.
  - xiii. Preparing the following IRS forms for submission by the Employer as applicable:
    - 1. Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans)
    - 2. Form 1096 (Annual Summary and Transmittal of U.S. Information Returns)
    - 3. Form 945 (Annual Return of Withheld Federal Income Tax)
- h. Assist the Employer in administration of the participant loan program, if applicable, by:
  - i. Ensuring compliance with plan document, loan policy, and IRC § 72(p).
  - ii. Determining applicable loan limits and participant loan eligibility.
  - iii. Preparing loan documents in accordance with the loan policy.
  - iv. Monitoring loan repayment and assisting the Plan Sponsor in complying with the reporting requirements on defaulted loans.
  - v. Performing an annual review of timeliness on outstanding participant loans.
  - vi. Generating loan modeling and payoff quotes for participants.

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- i. Assist the Employer in tracking Roth account data, if applicable, including:
    - i. First year of contribution
    - ii. Roth basis
    - iii. In-plan Roth conversion information
    - iv. In-plan Roth transfer information
  - j. Assist the Employer with participant enrollment forms by reviewing the forms for accuracy and then forwarding the forms to the appropriate financial institution.
  - k. Track participant vesting on an annual basis and provide the financial institution with current vesting information for populating participant statements.
  - l. As required, prepare participant statements or notices that meet the requirements of the benefit statement provisions of ERISA (as amended by the Pension Protection Act of 2006).
  - m. Provide the Employer with participant notices and reports as required for distribution by the Employer.
  - n. Prepare an electronic signature-ready Form 5500 (Annual Return/Report of Employee Benefit Plan) together with appropriate schedules in conformance with filing deadlines, including extensions.
  - o. Prepare an electronic signature-ready Schedule 8955-SSA when applicable.
  - p. Provide the Employer with the Summary Annual Report (SAR) for distribution to plan participants.
  - q. Provide audit support for plans required to submit an Audit Report with Form 5500, including preparation of annual audit package. *(Note: The first three hours of audit support is included in the Audit Coordination fee, additional support shall be billed at the hourly rate.)*
  - r. Provide the Employer and participants with daily direct access to a qualified Relationship Manager and administrative team during normal business hours.
7. Perform the following miscellaneous services, as applicable:
- a. As required, notify the Employer of a large plan audit requirement for the plan year. Coordinate audit with the Employer-selected independent auditor.
  - b. Notify the Employer of any regulation changes pertaining to the Plan, including updated annual IRS limits.
  - c. Attend annual Trustee meetings, as requested by the Employer, to review Plan design and compliance. *(Note: An additional fee shall apply.)*
  - d. Assist the Employer with IRS audits and DOL investigations. *(Note: The first three hours of audit or investigation assistance is included, additional support shall be billed at the hourly rate.)*

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- e. If required, assist in coordination and filing of Delinquent Filer Voluntary Compliance application in regards to Form 5500. *(Note: An additional fee shall apply.)*
- f. Assist the Employer in the submission of a requested Voluntary Correction Process or Self-Correction Process Application. *(Note: An additional fee shall apply.)*
- g. Assist the Employer in determining the qualified status of domestic relations orders and in calculating and processing distributions under a QDRO.
- h. Coordinate payment of invoices with financial institution for NBS or other parties, including independent auditors or advisors.
- i. Assist the Employer in coordinating any necessary items required for the Plan as a result of a merger or acquisition. *(Note: An additional fee shall apply.)*
- j. Provide plan termination services by:
  - i. Completing all relevant and required services specified in this Schedule A for the final, shortened plan year.
  - ii. Providing knowledge and direction to the Employer in coordinating the Plan termination.
  - iii. Assisting the Plan with the preparation of distribution paperwork for plan participants.
  - iv. Assisting the Plan with notification to investment provider(s) of pending plan termination.
  - v. Processing distributions for participants.

*(Note: All outstanding invoices owed to NBS shall be paid prior to completion of the plan termination services.)*

- k. Provide plan transfer/contract termination services by:
  - i. Providing final reports to the succeeding service provider including, but not limited to, the following:
    - 1. Year to date account information
    - 2. Loan Report, as applicable
    - 3. Participant Census Report

*(Note: All outstanding invoices owed to NBS shall be paid prior to releasing of information to the succeeding service provider.)*

- l. Notify the Employer of a potential prohibited transaction. However, NBS shall not make any final determinations regarding prohibited transactions.
- m. Additional services not specified in the Service Agreement:
  - i. NBS shall charge an additional amount on an hourly basis for services required by the Employer but not specified in this Service Agreement. The hourly rate is specified on Schedule B attached to the Service Agreement.

**SCHEDULE 'A'**

8. Perform the following conversion services when taking over an existing plan (Takeover Plans):
  - a. Establish a timeline for the transfer of assets and execution of the Service Agreement.
  - b. Coordinate the transfer of assets from the Plan's previous provider by:
    - i. Preparing the initial termination of services and request for transfer letter. The Employer shall then sign and send the letter to the previous provider(s) (TPA and/or financial institution).
    - ii. Preparing the Blackout Notice pursuant to the Sarbanes-Oxley Act and sending the notice to the Employer for distribution to all plan participants and beneficiaries in advance of the transfer date.
    - iii. Assisting the Employer in completing the previous provider's termination package.
    - iv. Reconciling all participant accounts using the information provided to NBS by the previous provider.
    - v. Providing new financial institution with breakdown by participant and source for allocation into new investments.
    - vi. As applicable, obtaining data on takeover loans and setting up the loans with the new financial institution.
    - vii. Arranging for contribution submission training with new financial institution.
    - viii. Assisting in the order of enrollment kits from new financial institution.
  - c. Obtain and review the prior years' administration and Form 5500 filings.

**III. The Employer shall:**

- A. Determine the eligibility of participants to receive benefits and to make contributions to the Plan.
- B. Provide information to participants regarding their rights, benefits, or elections available under the Plan and assist employees in completing any necessary forms for participation.
- C. Obtain and process all Salary Reduction Agreements for all plan participants.
- D. Submit participant contributions and loan repayments to the financial institution or NBS, pursuant to the plan's setup, in a timely manner.
- E. Provide timely, accurate, and complete census data as requested for all participants in the Plan in an electronic spreadsheet format. *(Note: Data provided in a non-spreadsheet format shall require an additional fee.)*
- F. Provide NBS with the following information during the conversion process:
  1. A copy of all applicable historical plan records, including but not limited to:
    - a. All previously adopted plan documents and amendments
    - b. Previous administration compliance report(s) and/or statement(s)
    - c. Plan loan documentation, including but not limited to current amortization schedules and highest outstanding balance over the last 12 months
    - d. Hardship basis
    - e. Roth basis and Roth start year
    - f. Vesting percentages and years of service
    - g. Copies of previously filed Form 5500s
  2. Contact information for prior third-party administrator, financial institution, and advisor (as applicable).

**SCHEDULE 'A'**

*(Note: NBS shall have no liability for the accuracy or completeness of any of the records or filings of the Plan for any period preceding the effective date of this Service Agreement.)*

- G. Review and send out all notices for the Plan to plan participants and beneficiaries.
- H. Obtain an ERISA Fidelity Bond covering no less than 10% of the qualifying plan assets, or \$500k whichever is smaller, update the bond periodically to ensure that the amount is appropriate at all times, and provide NBS with either a copy of the bond certificate or all relevant details of the bond *(see ERISA § 412 for additional bond requirements that may apply)*.
- I. Provide NBS with timely information of any additions or changes that are required for transaction processing, including but not limited to contributions, distributions, and loans.
- J. Fulfill all fiduciary requirements as designated by the DOL. In so doing, the Employer shall review and sign all documents provided by NBS, including but not limited to:
  - 1. An annual compliance review
  - 2. Form 5500
  - 3. Form 8955-SSA
  - 4. Plan documents and amendments
  - 5. Transaction requests

SCHEDULE 'B'

**NORTH TEXAS MOBILITY CORPORATION (NTMC) 8  
NBS DEFINED CONTRIBUTION RETIREMENT PLAN**

FEE SCHEDULE

**PLAN DOCUMENT SERVICES**

IRS Approved Plan Document and SPD.....	\$1,200
Annual Document Maintenance Fee.....	\$350 (Annually)
• Includes all amendments both requested and required	

*Includes services listed on Schedule A under Plan Document Services.*

**ADMINISTRATION SERVICES**

Administration Fee .....	\$1,500 / Plan Year (Billed Quarterly) Plus \$36 / Year / Participant
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*Includes services listed on Schedule A under Administration Services.*

Takeover Annual Administration – when applicable ( <i>not applicable to start-up Plans</i> )	
Initial fee, plus hourly - billed at Extra Hourly Work rate, as applicable .....	\$650

**MISCELLANEOUS SERVICES**

Loan: Truth-in-Lending Disclosure, Amortization Schedule, Funding Coordination (Participant Fee per loan) ....	\$125 / loan
Loan Refinance .....	\$200 / loan
Distribution and/or In-Plan Roth Conversions/Transfers:	
Vesting Calculation, 1099R & 1096 (Participant Fee per distribution) .....	\$125 / distribution
Participant Locator Fee (Service to locate missing Participant).....	\$25 / participant
Investment Platform Conversion .....	\$650
Lost Earning Calculation.....	\$25 / payroll
Audit Coordination (large plan audit by independent CPA).....	\$550
Audit Assistance (IRS audit or DOL investigation) .....	\$550
New Comparability or Age-Weighted Calculation (as applicable) .....	\$300 / calculation
Additional Investment Platforms (as applicable) .....	\$100 / Platform
Printing Fulfillment.....	Not included - Price given upon request
Plan Termination Services ( <i>only applies when the plan terminates</i> ).....	same as full year administration fee
Eligibility Tracking Service.....	\$1 / month / Employee on payroll
Extra Hourly Work (as specified in Schedule A) .....	\$200 / hour

**NBS shall invoice the Employer directly, unless otherwise instructed in writing by the Plan Sponsor and approved by NBS. If you wish to have plan administration fees paid by plan assets, please contact your Relationship Manager.**

*(Fees for outsourced plan administration can be paid by plan assets. DOL Adv. Ops. 97-15A and 2003-09A)*

Employer Signature \_\_\_\_\_ Date \_\_\_\_\_





## MEMO

To: NTMC Board of Directors  
From: Robert J. Garza, General Manager, *RJ Garza*  
CC: NTMC Officers; Louise Francois, AGM, and John Hendrickson, HTG President  
Date: July 12, 2021  
Subject: BenefitScape Affordable Care Act (ACA) Contract & Reporting Proposal

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### **BACKGROUND:**

The BenefitScape contract is for NTMC's 2021 Affordable Care Act (ACA) annual data collection and IRS reporting.

### **BENEFITSCAPE ACA REPORTING CONTRACT:**

BenefitScape will enter into a contract to assist in supporting NTMC with data monitoring, transformation, and IRS reporting to comply with the Affordable Care Act (ACA) for Applicable Large Employers. This ACA Compliance and Reporting contract offers services such as Calculating the Coding of all 1095-B/C Forms, Print/Pressure-sealed 1095-Cs, Distribution via USPS First Class Mail, e-filing via IRSAIR Integration, Prior Year Filings, and Penalty Remediation (IRS Notices 5699 & 226J).

### **FINANCIAL IMPACT:**

Please reference page 11 for cost impact

### **RECOMMENDATION:**

NTMC staff recommends authorizing the NTMC President to execute the BenefitScape contract for NTMC's 2021 Affordable Care Act (ACA) Annual Data Collection and Internal Revenue Service Reporting.

If you should have any questions or concerns, please feel free to contact me.

**ACA COMPLIANCE AND REPORTING PROPOSAL  
TAX YEAR 2021**

Date: JUNE 24, 2021

**North Texas Mobility Corporation, “NTMC”**

Address: 1101 Teasley Lane, Denton, TX 76205

**Holmes Murphy**

Contact: Adam Kinyicky

Phone: 214-265-2291

Email: AKINYICKY@HOLMESMURPHY.COM

**BenefitScape**

Contact: Kim Phillips

Address: 34 Main Street, Natick, MA 01760

Phone: (508) 655-3307

Email: kim.phillips@benefitscape.com



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## INTRODUCTION

As ACA Compliance and Reporting experts, BenefitScape is dedicated to ensuring complete, accurate, and timely ACA Compliance. Our proprietary and secure BenefitScape application is built to handle and facilitate all tasks in this process with accuracy, speed, and efficiency.

BenefitScape is a privately held Women Owned Enterprise and has secured ACA Compliance and Reporting for over 1,250 Organizations across the USA, servicing all market sectors, including large and small businesses, non-profits and multiple state governments and municipalities and we are resourced to continue to expand this number.

Our unrivaled team of experts in ACA Compliance will be available and fully committed to NTMC. Our goal is to ensure 100% on-time and accurate ACA Compliance and Reporting with an emphasis on making the process as easy as possible for NTMC.

## OVERVIEW OF PROPOSED SERVICES

NTMC seeks support in its data monitoring, transformation, and IRS reporting to comply with the Affordable Care Act (ACA) for Applicable Large Employers.

This ACA Compliance and Reporting proposal offers the following solution and services:

- Calculating the Coding of all 1095-B/C Forms
- Print/Pressure-sealed 1095-Cs in our in-house facility
- Distribution via USPS First Class Mail
- e-filing via IRSAIR Integration
- **NEW!** State-Mandated reporting (NJ, DC, CA)
- Prior Year Filings
- Penalty Remediation (IRS Notices 5699 & 226J)

## ASSUMPTIONS

Number of FEINs	1
Estimated Number of 1095-C	120
Estimated Number of 1095-B	TBD
Fully Insured/Self-Funded/Both	TBD

### Required Data and Data Sources

BenefitScape will provide NTMC with direction and assistance in framing, identifying, and assembling all the data required to monitor and report for ACA Compliance. BenefitScape assumes that this data will be located across multiple business management systems including your payroll and benefit administration systems and health carriers, and we are fully equipped and happy to accept this data from these sources in any variety of formats.

The data required by BenefitScape will include census/demographic data for all benefits-eligible employees and their health enrollment information. We may also require dependent, COBRA, and Retiree data in accordance with the business rules of NTMC's benefit policies (and any relevant collective bargaining agreements).

## DESCRIPTION OF SERVICES

The following describes the proposed services making up a successful ACA Compliance and Reporting project for NTMC. Any combination of these services can be customized as an individual solution based on NTMC's needs.



### STEP ONE : BenefitScape & Client Name

#### LET'S GET STARTED!

We have a collaborative session where we answer all of your questions and BenefitScape gathers Information on Client Name to frame the project for your specific needs, business rules, and operations. Employee data requirements and sources are identified, and a secure data collection process along with an overall project schedule is issued.



### STEP TWO: BenefitScape

#### PROJECT DATA COLLECTION

BenefitScape receives the project data [in any format] from Client Name via a secure ShareFile portal. BenefitScape verifies and reviews this data, working with Client Name to fill any gaps.



### STEP THREE: BenefitScape

#### DATA TRANSFORMATION

Client Name's Employee Data is transformed and compiled by BenefitScape's secure, cloud based BenefitScape platform into a custom ACA reporting database, applying the Employer's specific business rules and standards.



### STEP FOUR: BenefitScape

#### ELIGIBILITY, AFFORDABILITY & IRS CODING

Benefitscape processes Employee Activity Dates [Date of Hire, Effective Date, Termination Date etc.] plus monthly offer details to verify ACA Eligibility, Offer Affordability, and assign 100% accurate IRS Codes to each Employee.



### STEP FIVE: BenefitScape & Client Name

#### TESTING, REPORTING, & ANALYTICS

We provide you with advanced testing tools and reporting analytics on your employee population. We will then have a collaborative session to review the results. After you've reviewed the results and are satisfied, we'll move on to production.



### STEP SIX: BenefitScape

#### FORM 1095 GENERATION & DISTRIBUTION

BenefitScape calculates IRS codes using Client Name's data and generates Form 1095s for all eligible employees. BenefitScape's in-house production facility handles the pressure-sealed printing and distribution to Employees via USPS First Class mail.



### STEP SEVEN: BenefitScape

#### IRS E-FILING ALONG WITH ANY STATE MANDATED FILING

Post mailing, BenefitScape transmits Client Name's data via IRSAIR integration and any applicable State tax authorities (currently mandated in CA, DC, NJ, and RI in 2020). Upon transmittal, any reported IRS-generated TIN errors are analyzed, corrected, and retransmitted by BenefitScape. All project data along including IRS Transmission Receipts and State Mandated filing receipts are securely archived.

## DATA SECURITY

Features	Description
<b>Secure file transfer between NTMC and BenefitScape</b>	
<b>File Transfer</b>	BenefitScape contracts with Citrix to utilize its secure and HIPAA compliant Share-File service. The service is accessed by NTMC by utilizing SSL/TLS protocols to protect authentication and file transfers.
<b>High-Grade Encryption</b>	As NTMC and BenefitScape transfer files using Share-File, all data in transit is protected by a minimum of 128-bit encryption protocols.
<b>No email</b>	BenefitScape will not send any PII data over the public network using email. It advises NTMC to avoid doing the same.
<b>Data protection during storage</b>	
<b>Datacenters</b>	Citrix uses SSAE 16 Type II accredited or ISO 27001 certified datacenters to host the SaaS application and metadata. All files are stored in SSAE116 Type II SOC1, SOC2, and ISO 27001 accredited datacenters with high availability and durability ratings.
<b>Encryption</b>	Share-File stores NTMC files at rest using AES 256-bit encryption, a Federal Information Processing Standards (FIPS) encryption algorithm.
<b>Redundant Storage</b>	All files are stored in replicate with leading Infrastructure-as-a-Service (IaaS) providers to ensure high file durability and availability.
<b>Secure access to data</b>	
<b>BenefitScape</b>	We permit only authorized parties trained in the proper handling of sensitive NTMC information to access data. Access is on a need to know basis. Parties who violate our Security Policy are subject to disciplinary action including termination and legal action.
<b>NTMC</b>	Only those individuals who have been identified by NTMC are invited to the secure Sharefile system and provided usernames.
<b>Secure data transfer between BenefitScape and IRSAIR</b>	
<b>A2A Channel</b>	A secure Application to Application (A2A) channel is created between BenefitScape and the IRS using 2048-bit keys to conduct e-Filing transmission.
<b>Secure in-house printing facility</b>	
<b>Secure Print Facility</b>	BenefitScape will print all forms securely and onsite. The office location is monitored 24/7.
<b>Masking Sensitive Data</b>	BenefitScape masks employees' Social Security Numbers as authorized by the IRS. Only the last four digits are placed on the forms.

## CONCLUSION

BenefitScape would very much welcome the opportunity to support NTMC in completing its ACA Compliance and Reporting requirements.

Our mission at BenefitScape is to be the best ACA Compliance and Reporting partner at every step, from contracting through IRS and State-Mandated e-filing and more. Above all else, our goal is for NTMC to receive the best service possible for TY2021 and beyond.

We're looking forward to shining together serving all your ACA Compliance needs.

*Kim Phillips*

**Kim Phillips**

President & CEO



## SERVICE AGREEMENT

This Agreement (the "Agreement") is entered into by and between Benefit Coordinators of America, LLC, a Massachusetts corporation doing business as ("BenefitScape"), with offices at 34 Main Street 2<sup>nd</sup> Floor, Natick, MA 01760, and **NTMC ("the Customer")**. This Agreement is made this day, **June 24, 2021** ("Effective Date"). BenefitScape and Customer each desire that BenefitScape perform certain services for Customer, subject to the terms and conditions of this Agreement. In consideration of the mutual covenants and agreements listed, the parties agree as follows:

### 1 SERVICES

- a) BenefitScape shall undertake and perform the Service(s) specified in Exhibit A, Statement of Work and Cost ("SOWC"), which contains the tasks performed in detail.
- b) Any changes to the Services shall be made in a writing signed by authorized representatives of each party ("Change Order"). BenefitScape shall respond to written requests for changes to the Services within a reasonable amount of time after receiving such request. The response shall include an estimate of cost and time period anticipated to complete the requested changes.

### 2 BENEFITSCAPE FEES

The CUSTOMER agrees to pay Fees for the Services as outlined briefly in detail in SOWC and specified in any mutually executed Change Orders.

#### PAYMENT TERMS

BenefitScape shall bill the Customer 50% upon contract signing and the remaining 50% and additional fees upon providing Customer with the IRS Transmittal Receipt(s). The Customer shall pay all invoices net upon receipt of the invoice via the payment method set up by the Customer and BenefitScape.

### 3 LIMITED WARRANTY

- a) BenefitScape shall perform all Services in a professional and workmanlike manner using a commercially reasonable degree of care. This warranty is made solely to Customer and Customer may make no representations or warranties to any third party on BenefitScape's behalf.
- b) If Customer believes that a Service was not performed in accordance with the limited warranty in Section 3(a), Customer shall promptly notify BenefitScape in writing of such non-conformity. Customer's sole remedy and BenefitScape's exclusive liability for a breach of this limited warranty shall be for BenefitScape to re-perform the non-conforming Service, one-time only, within thirty (30) days of BenefitScape's receipt of Customer's notice of non-conformity.
- c) Except as specifically set forth in this Section 3, BenefitScape makes no representations, conditions, warranties, or guarantees, statutory or otherwise, either express or implied. BenefitScape expressly disclaims all other conditions or warranties statutory or otherwise including but not limited to the implied warranty of title fitness for a particular purpose and merchantability.

### 4 LIMITATION OF LIABILITY

- a) In no event will BenefitScape be responsible for any delay or failure to perform its service under this agreement which delay or failure is caused in whole or in part, directly or indirectly, by the failure of delay of customer to perform its obligations under this agreement.
- b) BenefitScape's entire liability to customer arising out of BenefitScape's provision of, or failure, or delay in providing services under this agreement regardless of the form of any claim or action or theory of liability including without limitation contract, tort, or warranty, shall be limited to the total amounts actually paid to BenefitScape by the customer for the service during the preceding 12 months, Pursuant to section 2.
- c) BenefitScape shall be excused from its obligation to perform its obligation under this Agreement in the event and to the extent that its ability to perform such obligations is delayed or prevented by any circumstances beyond its control, including, but not limited to, fire, utility, flood, epidemic, act of God, labor dispute, unusually severe weather conditions or civil disturbance.

# BenefitScape®

## THE LEADING ACA COMPLIANCE SPECIALIST

### 5 CONFIDENTIALITY AND RETURN OF DATA

- a) BenefitScape and Customer agree that certain information supplied by each to the other related to the performance of Services or otherwise under this Agreement may be proprietary or confidential. Any such information that is marked or otherwise reasonable identifiable as proprietary or confidential, including any Personally Identifiable information on specific employees:
- b) Shall be held in confidence by the receiving party with at least the same degree of care as it uses to keep its own proprietary information confidential, which shall in no event be less than reasonable care,
- c) May be disclosed by the receiving party to its directors, officers, employees, or agents who need to know such information for the sole purposes of providing or receiving Services under this Agreement,
- d) Shall be used only for the purposes of providing or receiving Services under this Agreement, and
- e) Shall be returned to Customer within 30 days upon request after all invoices have been paid.

### 6 TERM AND TERMINATION

- a) The term of this Agreement shall commence on the Effective Date and shall continue until the Agreement is terminated by Customer or BenefitScape.
- b) Upon the expiration of this Agreement, (a) BenefitScape may immediately cease providing Services under this Agreement, and (b) all payment obligations of Customer under this Agreement will become due and payable immediately. The obligations of Customer to pay BenefitScape for any fees or expenses accrued or incurred as of the expiration of this Agreement shall survive the expiration of this Agreement.
- c) The provisions of Sections 3,4,5, and 6 shall survive the expiration of this Agreement.

### 7 MISCELLANEOUS

- a) Relationship of Parties The relationship of BenefitScape and Customer established by this agreement is that of independent contractors, and nothing contained in this Agreement shall be construed (i) to give either party the power to direct or control the day-to-day activities of the other; (ii) to deem the parties to be acting as partners, joint ventures or otherwise as participants in a joint undertaking (iii) to allow either party to create any obligation on behalf of the other party for any purpose whatsoever; or (iv) to constitute, or be deemed to constitute, either party as a franchisee of the other.
- b) Assignment This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither this Agreement nor the rights or obligations of the parties hereunder may be assigned, subleased, or transferred (by operation of law or otherwise) by either party without the express written consent of the other party, which consent shall not be unreasonably withheld, provided that BenefitScape may assign this Agreement as part of the sale or all or substantially all of the business or assets of BenefitScape (whether by means of a merger, stock sale, asset sale or otherwise).
- c) Notices Any notice required, or permitted to be delivered by this Agreement, shall be in writing and shall be delivered by hand or sent (postage prepaid) by certified mail or by a reputable overnight courier service. Any such notice shall be delivered or sent to the signatories below at the address set forth in the introduction to this Agreement.
- d) Entire Agreement This Agreement (together with all attachments and exhibits) constitutes the entire agreement between BenefitScape and Customer with respect to the subject matter hereof and supersedes and terminates all prior agreements, representations, statements, and understandings with respect to such subject matter. This Agreement may be modified or amended only by the written agreement of BenefitScape and Customer.
- e) Governing Law This Agreement and any disputes between the parties relating to the subject matter of this Agreement shall be governed by and construed in accordance with, and any arbitration or court actions hereunder shall apply, the laws of the Commonwealth of Massachusetts. The parties hereto consent settling any and all disputes arising under or in connection with this Agreement via binding arbitration in Boston, Massachusetts, subject to the commercial rules of the American Arbitration Association. However, each party shall have the right to institute judicial proceedings against the other party or anyone acting by, through or under such other party, in order to enforce injunction or similar equitable relief.
- f) Sections Headings Captions and section headings are used herein for reference purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.
- g) Authorized Signatures Each party represents that (i) it has the legal right to enter into this Agreement and perform its obligations hereunder and (ii) the person signing this Agreement on its behalf has been duly authorized to bind such party to perform its obligations hereunder.

## CONTRACT SIGNATURE PAGE

### IN WITNESS WHEREOF

BenefitScape and Customer have signed this Agreement on the respective dates set forth below:

x	x <i>Kim Phillips</i>
<hr/>	
NTMC	BenefitScape
	<i>Kim Phillips</i>
<hr/>	
Name (Print)	Name (Print)
	<i>June 24, 2021</i>
<hr/>	
Date	Date

## EXHIBIT A: ACA Compliance and Reporting

Project Activity	BenefitScape tasks and project deliverables
<b>Project Management</b>	
<b>Discovery &amp; Project Framing</b>	Discovery interview with NTMC. Framing of overall reporting process for NTMC's specific operations, business rules, and data sources. All required NTMC data identified, and plan developed, including frequency, formats, and modes of receiving files.
<b>Quality Assurance</b>	NTMC appraised of progress throughout project and of sample data testing on BenefitScape application as assurance of successful final filing.
<b>End-of-Project Report &amp; IRSAIR Transmission Receipt TY2020</b>	End-of-project report and digital package issued to NTMC documenting/including: All filed ACA Compliance data, transmission receipts, and other critical activities undertaken on the NTMC's behalf.
<b>Post-Filing Support</b>	All TY2021 NTMC compliance questions addressed, and securely archived project data accessed if needed.
<b>Data Processing</b>	
<b>Data Collection &amp; Review</b>	Secure and encrypted cloud-based environment created for file-sharing and housing NTMC project data. Data files received (in existing formats) from NTMC. Data reviewed and verified with report to NTMC on adequacy of supplied data.
<b>Data Transformation</b>	NTMC data transformed on BenefitScape application into structure and formats to support all ACA Compliance tasks – from eligibility and IRS coding to Form 1095 generation and final e-Filing via IRSAIR.
<b>Production, Fulfillment &amp; Post-Filing</b>	
<b>Employee Eligibility &amp; IRS Coding</b>	BenefitScape application processes project database to determine ACA eligibility of NTMC employees, retirees, and COBRA members. Correct IRS Codes allocated.
<b>Form Generation &amp; Distribution</b>	BenefitScape application used to generate accurate Form 1095s for all eligible employees (plus eligible retirees and COBRA members). PDFs of all Form 1095s sent electronically to NTMC for approval prior to distribution to employees.  Form 1095s printed in heat-sealed format and distributed via USPS First Class or else distributed via approved secure and recorded electronic means. Lost, damaged, spoiled or otherwise unreturned Form 1095s re-generated and re-distributed.
<b>e-Filing via IRSAIR System</b>	BenefitScape Transmission Control Code (TCC) used to file electronically all Form 1095s, Form 1094 for NTMC's FEIN(s), and the necessary manifests to IRS via the IRS ACA Information Return (IRSAIR) system.
<b>State-Mandated Reporting Requirements</b>	Applicable US States (NJ, DC, CA, RI) are e-Filed and all receipts securely archived for employees who live within the State-Mandated filing requirements.
<b>Additional Form 1095 Generation</b>	Individual Form 1095s changed to reconcile IRS-generated ERROR Codes re-generated and re-distributed.
<b>IRS ERROR Code Processing &amp; Remediation</b>	BenefitScape application used to analyze and report to NTMC on any IRS-generated ERROR Codes. Remediation work performed as approved by NTMC and retransmissions made via IRSAIR as needed.
<b>Final IRSAIR Transmission Receipt, Archiving &amp; Continued Support</b>	As noted above, end-of-project report and digital package supplied to NTMC, including the Final IRSAIR Transmission Receipt showing TY2021 ACA Compliance. Project data & final IRSAIR transmission securely archived. Forensic evidence supplied to NTMC should future need arise to verify full and accurately reported ACA Compliance.
<b>Total Price for ACA Compliance &amp; Reporting:</b>	
	<b>\$ 2,600.00</b>



## General Manager's – Board of Director's June 2021 Report

(July 14, 2021)

### EXECUTIVE SUMMARY

Our main focus this month was spent updating policies, 401K Plans, recruiting and making preparations for upcoming bids for August. We also recently received eight (8) - 2021 Arboc units.

#### **NTMC Policy Update: COVID-19 (July 2021 revision)**

Protocols have been put in place to keep all employees, contractors, visitors, and personnel safe. This policy is kept updated with recommendations meeting CDC guidelines and federal requirements. Please see attached NTMC COVID-19 policy.

#### **Operations: 401K Plans Revisions and New Plan for Operators**

NTMC has created an Operator 401K Plan to reflect with the new Collective Bargaining Agreement negotiated between NTMC and the ATU in March 2021. This is an action item for board consideration on the July 2021 board meeting.

There was a minor revision to the NTMC staffing 401K Plan.

The ATU amended their plan per the recently executed Collective Bargaining Agreement in March 2021, adding the employer match (3%) and updating the company name. Previously, the agreement (plan) was with Transit Management of Denton County (TMDC).

#### **New Vehicle Equipment Arrivals: Eight (8) – 2021 Arboc (Ford Transit 350 Chassis)**

NTMC recently received eight (8) new Arboc units "Cutaways" on DCTA's behalf. Preparations are being made for the units prior to placing them in revenue service. There are some items that will be removed from the replacement units that will be installed in the new units. There is also one (1) Arboc unit waiting to be delivered from the vendor which will make it a total of nine (9) units. DCTA will provide direction on when we will utilize the units in revenue service.

#### **NTMC New Hires:**

I'm please to announce our new NTMC members that recently join our team.

- Brittnye Hartfield- Scheduler
- Barry O'Connor- Bus Operator (In-Training)
- Dasan Bevil – Parts Coordinator



**NTMC: Vacancy Positions**

- Operators – eleven (11) (Will only fill three (3))
- Safety & Training Coordinator – one (1)
- Dispatchers: one (1)
- Mobility Service Rep. – two (2) – added positions
- Mechanic – one (1) (Will not fill)
- Service Attendants: one (1) P/T (Will not fill)

**Other Focus Points:**

- Increase the line of communication among all employees, & union officials.
- Establishing a new culture that encourages Team effort, Trust, Respect, and Accountability.
- Continue to provide employees necessary Personal Protective Equipment (PPE) to minimize exposure in our fight against COVID-19, tracking the issuance of masks to passengers.
- Monthly GM – Communication Announcement Newsletter.

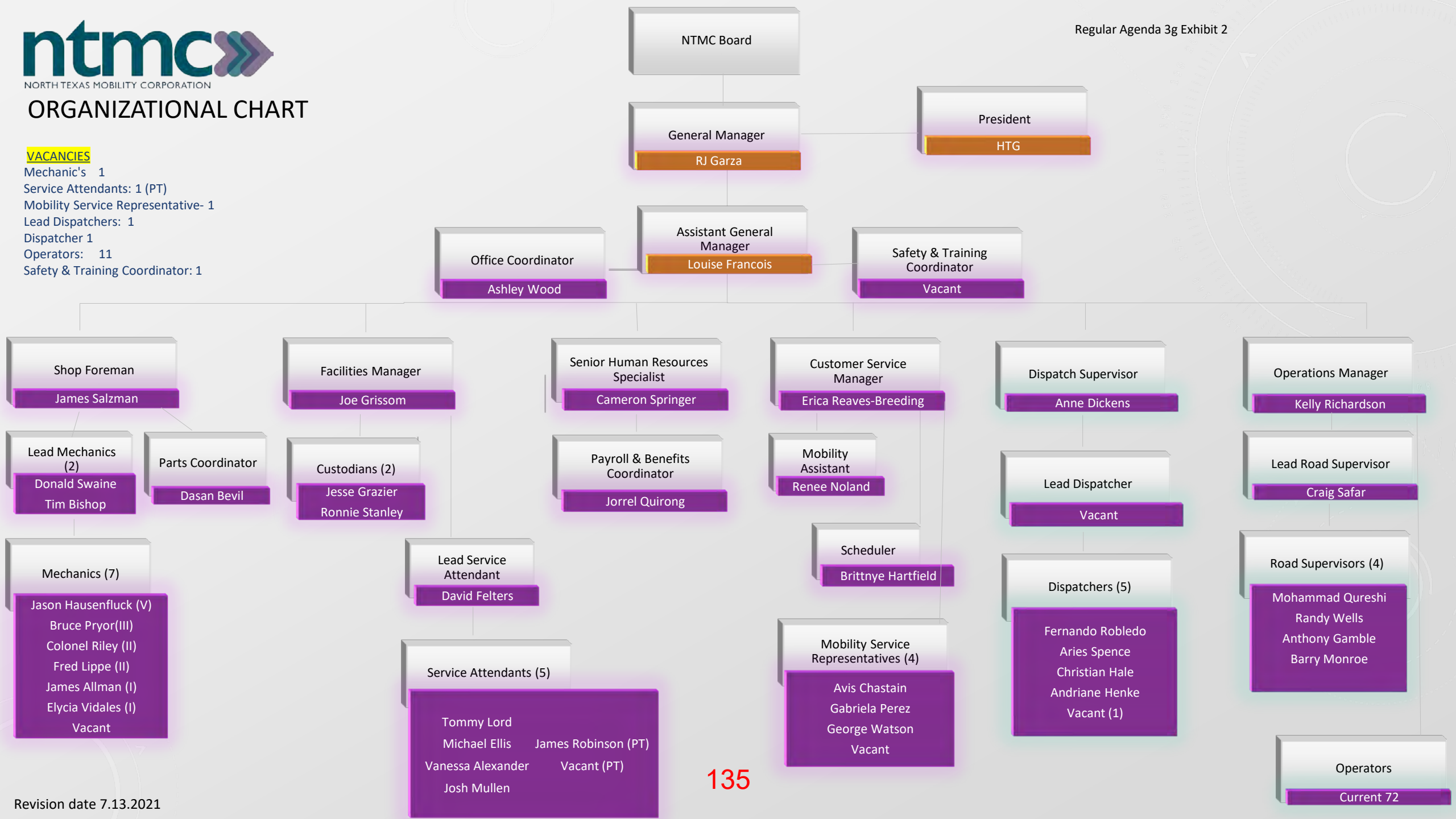
**Robert J. Garza, “RJ”**  
**General Manager**



# ORGANIZATIONAL CHART

### VACANCIES

- Mechanic's 1
- Service Attendants: 1 (PT)
- Mobility Service Representative- 1
- Lead Dispatchers: 1
- Dispatcher 1
- Operators: 11
- Safety & Training Coordinator: 1



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DENTON COUNTY TRANSPORTATION AUTHORITY

Regular Agenda 3g Exhibit 3

DAILY DEPOSIT DETAILS

June 2021

Detailed Daily Report Date	FB Revenue				Pos Revenue				
	Date	Cash	Check	Daily Total	Date	Cash	Check	Credit Card	Daily Total
	6/1/2021	\$ 405.31	\$ -	\$ 405.31	6/1/2021	\$ 1.50	\$ -	\$ 210.00	\$ 211.50
	6/2/2021	\$ 595.45	\$ -	\$ 595.45	6/2/2021	\$ 16.50	\$ -	\$ 48.00	\$ 64.50
	6/3/2021	\$ 448.13	\$ -	\$ 448.13	6/3/2021	\$ 54.00	\$ -	\$ 133.50	\$ 187.50
	6/4/2021	\$ 323.04	\$ 30.00	\$ 353.04	6/4/2021	\$ 21.00	\$ -	\$ 21.50	\$ 42.50
	6/5/2021	\$ 106.05	\$ -	\$ 106.05	6/5/2021	\$ -	\$ -	\$ -	\$ -
	6/6/2021	\$ -	\$ -	\$ -	6/6/2021	\$ -	\$ -	\$ -	\$ -
	6/7/2021	\$ 449.30	\$ -	\$ 449.30	6/7/2021	\$ -	\$ -	\$ 6.00	\$ 6.00
	6/8/2021	\$ 342.35	\$ 30.00	\$ 372.35	6/8/2021	\$ 15.00	\$ -	\$ 309.00	\$ 324.00
	6/9/2021	\$ 563.11	\$ 30.00	\$ 593.11	6/9/2021	\$ 12.75	\$ -	\$ 84.00	\$ 96.75
	6/10/2021	\$ 282.45	\$ -	\$ 282.45	6/10/2021	\$ -	\$ -	\$ 6.00	\$ 6.00
	6/11/2021	\$ 290.80	\$ 30.00	\$ 320.80	6/11/2021	\$ 22.50	\$ -	\$ 84.00	\$ 106.50
	6/12/2021	\$ 126.30	\$ -	\$ 126.30	6/12/2021	\$ -	\$ -	\$ -	\$ -
	6/13/2021	\$ -	\$ -	\$ -	6/13/2021	\$ -	\$ -	\$ -	\$ -
	6/14/2021	\$ 553.46	\$ 90.00	\$ 643.46	6/14/2021	\$ -	\$ -	\$ 24.00	\$ 24.00
	6/15/2021	\$ 423.10	\$ 120.00	\$ 543.10	6/15/2021	\$ 9.00	\$ -	\$ 600.50	\$ 609.50
	6/16/2021	\$ 432.97	\$ 90.00	\$ 522.97	6/16/2021	\$ 58.50	\$ -	\$ 181.50	\$ 240.00
	6/17/2021	\$ 331.29	\$ 60.00	\$ 391.29	6/17/2021	\$ 9.00	\$ -	\$ 150.00	\$ 159.00
	6/18/2021	\$ 353.34	\$ -	\$ 353.34	6/18/2021	\$ 30.00	\$ -	\$ 72.00	\$ 102.00
	6/19/2021	\$ 118.23	\$ -	\$ 118.23	6/19/2021	\$ -	\$ -	\$ -	\$ -
	6/20/2021	\$ -	\$ -	\$ -	6/20/2021	\$ -	\$ -	\$ -	\$ -
	6/21/2021	\$ 517.06	\$ 60.00	\$ 577.06	6/21/2021	\$ 1.50	\$ -	\$ -	\$ 1.50
	6/22/2021	\$ 321.11	\$ -	\$ 321.11	6/22/2021	\$ 19.50	\$ -	\$ 55.50	\$ 75.00
	6/23/2021	\$ 411.87	\$ 90.00	\$ 501.87	6/23/2021	\$ -	\$ -	\$ 66.00	\$ 66.00
	6/24/2021	\$ 264.27	\$ 30.00	\$ 294.27	6/24/2021	\$ 47.00	\$ -	\$ 144.00	\$ 191.00
	6/25/2021	\$ 334.21	\$ -	\$ 334.21	6/25/2021	\$ 3.00	\$ -	\$ 33.00	\$ 36.00
	6/26/2021	\$ 95.73	\$ -	\$ 95.73	6/26/2021	\$ -	\$ -	\$ -	\$ -
	6/27/2021	\$ -	\$ -	\$ -	6/27/2021	\$ -	\$ -	\$ -	\$ -
	6/28/2021	\$ 664.51	\$ 30.00	\$ 694.51	6/28/2021	\$ 17.25	\$ -	\$ 12.00	\$ 29.25
	6/29/2021	\$ 380.39	\$ 30.00	\$ 410.39	6/29/2021	\$ 15.75	\$ -	\$ 34.50	\$ 50.25
	6/30/2021	\$ 418.87	\$ -	\$ 418.87	6/30/2021	\$ 3.00	\$ -	\$ 48.00	\$ 51.00
		\$ -	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -
	Total	\$ 9,552.70	\$ 720.00	\$ 10,272.70		\$ 356.75	\$ -	\$ 2,323.00	\$ 2,679.75



## **NTMC COVID-19 Protocols** *(as of July, 2021)*

*The following protocols have been put in place to keep all employees, contractors, visitors, and personnel safe. All NTMC and DCTA facilities should adhere to these preventive measures unless otherwise instructed. This applies to any person(s) that visits any of the DCTA facilities: Bus Operations & Maintenance Facility (BOM), the Downtown Denton Transit Center (DDTC), Rail Operations & Maintenance Facility (ROM), and the DCTA Administration Office.*

**Masks Required** – masks are required inside any of the DCTA facilities, Vehicles, or property. Masks will not be required if an individual is alone within their own office. If the office is a shared space, masks will still be mandated. All other sections will require masks, including outside areas such as the maintenance bay, platforms, fueling stations, etc.

Employees are to refrain from wearing any mask(s), scarves, or clothing with political affiliations or slogans, have unclear or obscene messages, or endorses offensive material while on duty in the workplace, as outlined in the NTMC Handbook(s):

***“Items having political or social messages may not be worn or displayed on personal, NTMC or DCTA equipment without prior approval by the General Manager.”*** (Section 6 – Appearance, Items with Political or Social Messages; Operator Handbook, page 39; Staff Handbook, page 38)

**Virtual Meetings** – all in-person meetings should be avoidable, if possible until otherwise notified. A virtual platform, Microsoft Teams, should continue to be used for internal virtual meetings. Additionally, any meetings with external personnel should remain virtual, on the most appropriate platform, if possible. Please limit visitors from visiting the facilities/offices.

**Conference Rooms** – if a meeting must be in-person, capacity limits have been set for all conference rooms. Please ensure social distancing is maintained within conference rooms, and the tables/chairs/phone should be cleaned after each meeting is held. The capacity for each conference room is as follows:

- *Bus O&M Conference Room* – maximum of 8
- *Downtown Denton Transit Center*
  - *Community Room* – maximum of 10
  - *Conference Room* – maximum of 2
- *Rail O&M Conference Room* – maximum of 6
- *DCTA Administrative Office*
  - *Library Conference Room* – maximum of 2
  - *T&P Conference Room* – maximum of 4
  - *Board Room* – maximum of 10

**Travel** – work-related travel will be minimal for the unforeseen future. All work-related trips, including any external meetings, require approval of the General Manager until further notice. If the General Manager is unavailable, the Assistance General Manager will step in as authorizer. Any travel (personal or work-related) should be coordinated with your supervisor and be communicated to the General Manager/ Assistant General Manager. Employees could be subject to an additional quarantine period pending General Manager, Assistant General Manager, or HR discretion.

*\*In accordance with CDC guidance, vaccinated NTMC employees will have the option to provide proof of full vaccination in lieu of post-air travel quarantine or testing. Vaccination documentation must be provided to Cameron Springer in Human Resources prior to travel, and the employee must be fully vaccinated to be exempt from quarantine or testing. Vaccinated employees are still expected to continue COVID precautions and monitor symptoms post-travel.*

- *Per CDC guidelines, individuals are considered fully vaccinated:*
- *Two weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or*
- *Two weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine*

Employees who are not fully vaccinated nor wish to provide proof will require at least a seven (7) calendar day quarantine upon returning to the state/Dallas-Fort Worth metroplex. Employees will be required to test between the 3<sup>rd</sup> and 5<sup>th</sup> day after travel and will need to provide HR with a negative test result before returning to work. Employees will be unable to return to work without a negative test **and** HR approval to return.

Employees will be able to work remotely during the quarantine period if their position can remote work. Employees who cannot work remotely are eligible to utilize any accrued Paid Time Off (PTO), Vacation, or Sick time during the 7-day quarantine period.

**Social Distancing & Personal Hygiene** – All personnel should continue to follow the CDC guidelines on social distancing and continue to wash their hands regularly, and refrain from touching their faces in addition to the following practices:

- Wash hands with soap and water for at least 20 seconds. Use an alcohol-based hand sanitizer that contains 60% alcohol if soap and water are unavailable.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Avoid close contact with people who are sick.
- Stay home if you are feeling ill.
- Cover your cough/sneeze with a tissue, then throw the tissue in the trash. Do not cough or sneeze into your hands.
- Clean and disinfect frequently touched objects and surfaces.

**Additional Safety Requirements** – the following processes were put in place to limit the spread of COVID and are required within each facility.

- *High-Touch Points:* please use hand sanitizer before and after use of shared spaces and high-touch points. This includes items such as:
  - Copiers
  - Fridges/Microwaves/Coffee Machines/Ice Machines
  - Most items in breakrooms/kitchen(ette)s
  - Water Coolers
  - Bathroom Doors
  - Entrance/Exit Doors for any room
  - Timeclocks
  - After an exchange of money with passengers/customers (cash or credit cards)

***Operating a Vehicle*** – Operators are required wear their masks at all while operating any DCTA vehicle. Additionally, Operators are expected to uphold all ongoing COVID safety procedures to ensure the wellbeing of all employees and passengers. This includes regularly using hand sanitizer, keeping your hands away from your face and mouth, limiting interaction with passengers, keeping as much distance as possible from others, and notifying management if you are feeling ill.

***Please reach out to either the Human Resources Department, General Manager, or Assistant General Manager for any questions on these protocols.***

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Employee Name (Print)

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Employee Signature

---

Date



Thank  
You

## George Watson

George has been an exceptional help as a member of the NTMC Customer Service team. He has been willing to work the hours needed to make sure we have the coverage in the office. He is always ready to lend a hand whenever customers have concerns or other issues. He always comes to work with a great attitude and he tries to have and encourage a positive attitude while working, even during the tough situations. He's very dedicated and passionate about Customer Service and he's a valuable asset to the team.