

# Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART) Adoption Agreement Amendment

This amendment of the Plan (hereinafter referred to as "the Amendment") is comprised of this Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART) Adoption Agreement Amendment (the "Adoption Agreement Amendment") and the corresponding Basic Plan Document Amendment. The Amendment is adopted to reflect the provisions of the Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART). The Amendment is intended to provide good faith compliance with HEART and related guidance until the Plan is formally restated to incorporate such guidance. The Amendment is effective as specified in this Adoption Agreement Amendment except as otherwise provided in the Basic Plan Document Amendment. The Amendment supersedes the existing provisions of the Plan to the extent that those provisions are inconsistent with the provisions of the Amendment.

## EMPLOYER INFORMATION

Name of Plan \_\_\_\_\_

Plan Sequence Number \_\_\_\_\_ Account Number \_\_\_\_\_

## CONTRIBUTIONS

### Complete Part A

#### Part A. Benefit Accrual in the Case of Death or Disability Resulting from Qualified Military Service

Will the benefit accrual provisions under Code Section 414(u)(9) apply to individuals who are unable to be reemployed on account of death or Disability while performing qualified military service as defined in Code Section 414(u) (*select one*)?

**Option 1:**  Yes, effective \_\_\_\_\_ (*Specify a date that is on or after January 1, 2007, or, if later, the Effective Date of the Plan.*)

**Option 2:**  No.

**NOTE:** *If no option is selected, Option 2 will apply.*

## VESTING AND FORFEITURES

### Complete Part A

#### Part A. Vesting in the Case of Disability Resulting from Qualified Military Service

Will Years of Vesting Service be credited to individuals who are unable to be reemployed on account of Disability while performing qualified military service as defined in Code Section 414(u) (*select one*)?

**Option 1:**  Yes, effective \_\_\_\_\_ (*Specify a date that is on or after January 1, 2007, or, if later, the Effective Date of the Plan.*)

**Option 2:**  No.

**Option 3:**  Not applicable. Individuals become 100% Vested upon Disability under the terms of the Plan.

**NOTE:** *If no option is selected, Option 2 will apply. Regardless of which option is selected, individuals who are unable to be reemployed on account of death while performing qualified military service must be credited with Years of Vesting Service.*

## DISTRIBUTIONS

### Complete Part A

#### Part A. Deemed Severance from Employment

May a Participant request a distribution of their Elective Deferrals and earnings on account of Deemed Severance from Employment while performing military service as defined in Code Section 3401(h)(2)(A) (*select one*)?

**Option 1:**  Yes, effective \_\_\_\_\_ (*Specify a date that is on or after January 1, 2009, or, if later, the Effective Date of the Plan.*)

**Option 2:**  No.

**NOTE:** *If no option is selected, Option 1 will apply.*

## DEFINITIONS

### Complete Part A

#### Part A. Differential Wage Payments

Unless a different definition of Compensation is required by either the Code or ERISA, will Differential Wage Payments be included in Compensation for contribution, allocation and other general Plan purposes (*select one*)?

**Option 1:**  Yes, effective \_\_\_\_\_ (*Specify a date that is on or after January 1, 2009, or, if later, the Effective Date of the Plan.*)

**Option 2:**  No.

**NOTE:** *If no option is selected, Option 1 will apply and the effective date will be the later of January 1, 2009, or the Effective Date of the Plan.*

**EMPLOYER SIGNATURE**

**Signature of Employer**

- 1. I acknowledge that I have relied upon my own advisers regarding the completion of the Amendment and the legal and tax implications of amending this Plan;**
- 2. I understand that my failure to properly complete the Amendment may result in disqualification of the Plan; and**
- 3. I have received a copy of the Amendment.**

Signature of Adopting Employer \_\_\_\_\_ Date Signed \_\_\_\_\_

Type Name \_\_\_\_\_ Title \_\_\_\_\_

# Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART) Basic Plan Document Amendment

This amendment of the Plan (hereinafter referred to as “the Amendment”) is comprised of this Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART) Basic Plan Document Amendment (the “Basic Plan Document Amendment”) and the corresponding Adoption Agreement Amendment. The Amendment is adopted to reflect the provisions of the Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART). The Amendment is intended to provide good faith compliance with HEART and related guidance until the Plan is formally restated to incorporate such guidance. The Amendment is effective as specified in this Basic Plan Document Amendment except as otherwise provided in the Adoption Agreement Amendment. The Amendment supersedes the existing provisions of the Plan to the extent that those provisions are inconsistent with the provisions of the Amendment.

## DEFINITIONS

### DIFFERENTIAL WAGE PAYMENT

*Differential Wage Payment is added to the Plan as a new defined term with the following definition:*

Means a payment defined in Code Section 3401(h)(2) that is made by the Employer to an individual performing service in the uniformed services.

### COMPENSATION

*The Plan’s definition of Compensation is modified by adding the following, as the next alphabetically ordered paragraph, to the end:*

#### Differential Wage Payments

Notwithstanding anything in this Plan to the contrary, for years beginning on or after January 1, 2009, (or, if later, the Effective Date of the Plan) if the Employer chooses to provide Differential Wage Payments to individuals who are active duty members of the uniformed services, such individuals will be treated as Employees of the Employer making the Differential Wage Payment, the Differential Wage Payment will be treated as Compensation for purposes of applying the Code. Accordingly, Differential Wage Payments must be treated as Compensation under Code Section 415(c)(3) and Treasury Regulation 1.415-2(d). Differential Wage Payments will also be treated as Compensation for contribution, allocation and other general Plan purposes unless excluded from the Plan’s definition of Compensation on the Adoption Agreement Amendment. In addition, the Plan will not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit that is based on Differential Wage Payments only if all Employees of the Employer (as determined under Code Sections 414(b), (c), (m), and (o)) performing service in the uniformed services described in Code Section 3401(h)(2)(A) are entitled to receive Differential Wage Payments on reasonably equivalent terms and, if eligible to participate in the Plan, to make contributions based on the payments on reasonably equivalent terms. Such contributions or benefits may be taken into account for purposes of nondiscrimination testing as long as they do not cause the Plan to fail the nondiscrimination requirements.

### DEEMED SEVERANCE FROM EMPLOYMENT

*Deemed Severance from Employment is added to the Plan as a new defined term with the following definition:*

Means, effective for years beginning on or after January 1, 2009, (or, if later, the Effective Date of the Plan) and notwithstanding the definition of Differential Wage Payment, an individual is deemed to cease to be an Employee for purposes of Code Section 414(u)(12)(B) during any period the individual is performing service in the uniformed services as defined in Code Section 3401(h)(2)(A).

### EMPLOYEE

*The Plan’s definition of Employee is modified by adding the following to the end:*

The term Employee will also include individuals providing qualified military service who are treated as reemployed for purposes of applying the rules under Code Sections 403(b)(14) and 414(u).

## DISTRIBUTIONS

*The Basic Plan Document section titled Miscellaneous Distribution Issues is modified by adding as the next numbered paragraph, to the end:*

Distribution Due to a Deemed Severance from Employment – Except as otherwise elected in the Adoption Agreement Amendment, effective for years beginning on or after January 1, 2009, (or such later date as specified in the Adoption Agreement Amendment), individuals who have a Deemed Severance from Employment under Code Section 414(u)(12)(B) during a period of uniformed services as defined in Code Section 3401(h)(2)(A) may elect to receive a distribution of Elective Deferrals, Qualified Nonelective Contributions and income allocable to each. If an individual receives a distribution due to a Deemed Severance from Employment, the individual may not make an Elective Deferral or Nondeductible Employee Contribution during the six-month period beginning on the date of the distribution.

## MISCELLANEOUS

*The Basic Plan Document section MISCELLANEOUS is modified by adding as the next numbered section to the end:*

### MILITARY SERVICE

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u), including, but not limited to the following:

#### Part A. Benefit Accrual in the Case of Death or Disability Resulting From Active Military Service.

1. Benefit Accrual – If elected in the Adoption Agreement Amendment, for benefit accrual purposes, an individual who dies or becomes disabled on or after January 1, 2007, (or such later date as specified in the Adoption Agreement Amendment), while performing qualified military service (as defined in Code Section 414(u)) will be treated as if the individual resumed employment in accordance with the individual’s reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), on the day preceding death or Disability (as applicable) and terminated employment on the actual date of death or Disability. If the Employer elects to treat an individual as having resumed employment as described above, subject to items (2) and (3) below, any full or partial compliance by the Plan with respect to the benefit accrual requirements will be treated for purposes of Code Section 414(u)(1) as if such compliance were required under USERRA.

2. Nondiscrimination Requirement – Part A, item (1) above will only apply if all individuals performing qualified military service with respect to the Employer (as determined under Code Sections 414(b), (c), (m) and (o)) who die or become disabled as a result of performing qualified military service (as defined in Code Section 414(u)) prior to reemployment by the Employer are credited with service and benefits on reasonably equivalent terms.
3. Determination of Benefits – The amount of Nondeductible Employee Contributions and the amount of Elective Deferrals of an Employee treated as reemployed under Part A, item (1) for purposes of applying Code Section 414(u)(8)(C) will be determined on the basis of the individual's average actual Nondeductible Employee Contributions or Elective Deferrals for the lesser of:
  - a. the 12-month period of service with the Employer immediately prior to qualified military service (as defined in Code Section 414(u)), or
  - b. if service with the Employer is less than such 12 month period, the actual length of continuous service with the Employer.

**Part B. Vesting in the Case of Disability Resulting From Active Military Service**

1. Years of Vesting Service – If elected in the Adoption Agreement Amendment, for vesting purposes, an individual who becomes disabled on or after January 1, 2007, (or such later date as specified in the Adoption Agreement Amendment), while performing qualified military service (as defined in Code Section 414(u)) will be treated as if the individual resumed employment in accordance with the individual's reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), on the day preceding Disability and terminated employment on the actual date of Disability. If the Employer elects to treat an individual as having resumed employment as described above, subject to item (2) below, compliance by the Plan with respect to the vesting requirements will be treated for purposes of Code Section 414(u)(1) as if such compliance were required under USERRA.
2. Nondiscrimination Requirements – Part B, item (1) above will apply to the extent permitted under other applicable rules, including the rules provided in Treasury Regulation Section 1.401(a)(4)-11(d)(3), which provides nondiscrimination rules for crediting imputed service. Under Treasury Regulation Section 1.401(a)(4)-11(d)(3), the provisions crediting Years of Vesting Service to any Highly Compensated Employee must apply on the same terms to all similarly situated non-Highly Compensated Employees.

**Part C. Death Benefits**

In the case of an individual Participant who dies on or after January 1, 2007, while performing qualified military service (as defined in Code Section 414(u)), the Participant's survivors are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed employment with the Employer and then terminated employment on account of death.

# Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART) Summary of Material Modifications

Name of Plan \_\_\_\_\_

Name of Adopting Employer \_\_\_\_\_

Plan Sequence Number \_\_\_\_\_ Plan Year End \_\_\_\_\_

The purpose of this document is to update your Summary Plan Description (SPD). This document is very important and should be kept with your SPD. If any provisions in this Summary of Material Modifications (SMM) conflict with your SPD, the terms of this SMM will apply. To the extent addressed below, your SPD is amended to read as follows.

## CONTRIBUTIONS AND VESTING

**Q1. If I die or become Disabled during military service, will the time I was providing military service be considered for determining whether I will receive employer contributions?**

Yes  No *Employer contributions*

If "Yes" is selected, your Employer will treat you as if you had been reemployed on the day before your death or disability and terminated on the day of death or disability to determine your Plan contributions. No matter which box is selected above, if you die, your Employer will treat you as if you had been reemployed on the day before your death and terminated on the day of your death to determine all of your benefits under the Plan other than contributions.

If "Yes" is selected above, your military service will be considered for contribution purposes if you die or become Disabled on or after \_\_\_\_\_.

**Q2. If I become Disabled during military service, will the time I was providing military service be considered for determining the vested portion of my Plan balance?**

Yes  No  Not applicable *Vesting credit*

If "Yes" is selected, your Employer will treat you as if you had been reemployed on the day before your disability and terminated on the day of disability to determine the vested portion of your Plan balance. If "Not applicable" is selected, your Employer's Plan currently provides you with 100% vesting if you become Disabled.

If "Yes" is selected above, your military service will be considered for vesting purposes if you become Disabled on or after \_\_\_\_\_.

## DISTRIBUTIONS

**Q1. May I take a distribution from the Plan if I am an active-duty member of the armed forces?**

Yes  No *Distribution for active-duty members of the armed forces*

If "Yes" is selected, and you are on active duty in the uniformed services for a period of more than 30 days, you may elect to take a distribution of your Elective Deferrals from the Plan while you are on active duty without severing from employment with your Employer. However, if you choose to take distributions under this provision, you will not be permitted to make Elective Deferrals or Nondeductible Employee Contributions to the Plan during the six-month period beginning on the date of the distribution.

If "Yes" is selected above, you may take these distributions beginning on or after \_\_\_\_\_.

## DEFINITIONS

**Q1. Is differential military pay received from my Employer considered Compensation?**

Yes  No *Differential Military Pay*

If "Yes" is selected, and your Employer chooses to provide differential pay to you while you are on active duty with the uniformed services for a period of more than 30 days, the pay will be considered additional Compensation paid to you for purposes of determining Plan contributions. See your Plan Administrator to determine if your Employer provides differential pay.

If "Yes" is selected above, differential military pay you receive will be considered Compensation paid to you for years beginning on or after \_\_\_\_\_.