

F5 NETWORKS INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 6/8/1999

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Industry	Computer Networks
Sector	Technology
Fiscal Year	09/30

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

F5 NETWORKS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Washington
(State or Other Jurisdiction of
Incorporation or Organization)

91-1714307
(I.R.S. Employer
Identification No.)

200 First Avenue West, Suite 500, Seattle, Washington 98119
(Address of Principal Executive Offices, including Zip Code)

F5 NETWORKS, INC. 401(k) PROFIT SHARING PLAN AND TRUST
(Full Title of the Plan)

Joann Reiter
200 First Avenue West, Suite 500
Seattle, Washington 98119
(Name and Address of Agent for Service)

(206) 505-0816
(Telephone Number, Including Area Code, of Agent for Service)

Copy to:
Michael McArthur-Phillips, Esq.
Jason T. Elder, Esq.
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2300
Portland, Oregon 97201-5682
(503) 241-2300

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee(3)
Common Stock	25,000	\$10.00	\$250,000.00	\$69.50

(1) This Registration Statement shall cover any additional securities which become issuable under the F5 Networks, Inc. 401(k) Profit Sharing Plan and Trust by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of the outstanding shares of Common Stock of F5 Networks, Inc.

(2) Estimated solely for the purpose of calculating the registration fee. The price per share is estimated to be \$10.00 based on the initial public offering price of the shares on June 4, 1999. The Common Stock will be traded on the Nasdaq Stock Market (Symbol: FFIV).

(3) The Registration Fee for the 25,000 shares of Common Stock registered by this filing has been paid by the Company when the shares were registered on Form S-1 filed on June 4, 1999. The Company registered its initial public offering on Form S-1 and it is anticipated that these shares will be purchased by the Plan directly from the underwriter as a member of the syndicate. \$69.50 was previously paid, in connection with the registration of these 25,000 shares, on the earlier registration statement. The Company relies on Rule 429(b), which provides for prior payments of registration fees to be carried forward in certain circumstances, when reducing the Registration Fee for this Form S-8 to \$0.00.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The following documents are hereby incorporated by reference into this Registration Statement heretofore filed with the Securities and Exchange Commission (the "Commission") by F5 Networks, Inc., a Washington corporation (the "Registrant"):

(a) The final prospectus filed under Rule 424(b) of the Securities Act contained in the Registrant's Registration Statement on Form S-1 (File No. 333-75817), including any amendments or reports filed for the purpose of updating such prospectus; and

(b) The description of the Common Stock of the Registrant contained in the Registrant's Registration Statement on Form 8-A, including any amendments or reports filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c) and 14 of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated herein by reference into this Registration Statement and to be a part hereof from the date of the filing of such documents. Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superceded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by such statement. Any such statement so modified or superceded shall not be deemed, except as so modified or superceded, to constitute part of this Registration Statement.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTEREST OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Registrant's articles of incorporation limit the liability of directors to the fullest extent permitted by the Washington Business Corporation Act as it currently exists. Consequently, subject to the Washington Business Corporation Act, no director will be personally liable to the Registrant or its shareholders for monetary damages resulting from his or her conduct as a director, except liability for (1) acts or omissions involving intentional misconduct or knowing violations of law; (2) unlawful distributions; or (3) transactions from which the director personally receives a benefit in money, property or services to which the director is not legally entitled.

By the effective date of this Registration Statement, the Registrant's articles of incorporation will also provide that the Registrant may indemnify any individual made a party to a proceeding because that individual is or was a director or officer, and this right to indemnification will continue as to an individual who has ceased to be a director or officer and will inure to the benefit of his or her heirs, executors or administrators. Any repeal of or modification to our articles of incorporation may not adversely affect any right of a director or officer who is or was a director or officer at the time of any repeal or modification. To the extent the provisions of our articles of incorporation provide for indemnification of directors or officers for liabilities arising under the Securities Act of 1933, as amended, those provisions are, in the opinion of the Securities and Exchange Commission, against public policy as expressed in the Securities Act and they are therefore unenforceable.

By the effective date of this Registration Statement, the Registrant's bylaws will provide that it will indemnify our directors and officers and may indemnify our other officers and employees and other agents to the fullest extent permitted by law.

By the effective date of this Registration Statement, we will enter into agreements to indemnify our directors and certain officers, in addition to indemnification provided for in our articles of incorporation or bylaws. These agreements, among other things, indemnify our directors and certain officers for certain expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by any of these persons in any action or proceeding, including any action by us arising out of the person's services as our director or officer or any other company or enterprise to which the person provides services at our request. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and officers. We also currently maintain liability insurance for our officers and directors.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

The following Exhibits are filed as a part of this Registration Statement:

Exhibit Number	Description
4	F5 Labs, Inc. 401(k) Profit Sharing Plan and Trust
4.1	First Amendment effective March 9, 1999
4.2	Second Amendment effective June 1, 1999

4.3	Summary of Plan.
5	Opinion of Davis Wright Tremaine LLP, with respect to the legality of securities being registered
23.1	Consent of Counsel (contained in opinion filed as Exhibit 5)
23.2	Consent of Independent Accountants
24.1	Power of Attorney (see signature page)

ITEM 9. UNDERTAKINGS.

(a) The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement.

(2) That, for the purposes of determining any liability under the Securities Act of 1933, as amended (the "Securities Act"), each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference into this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being

registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Seattle, State of Washington, on the 7th day of June, 1999.

F5 NETWORKS, INC.,
a Washington corporation

By: /s/ Jeffrey S. Hussey

Jeffrey S. Hussey
Chief Executive Officer and President

POWER OF ATTORNEY

We, the undersigned officers and directors of F5 Networks, Inc., hereby severally and individually constitute and appoint Jeffrey S. Hussey and Robert J. Chamberlain, and each of them, as true and lawful attorneys in fact for the undersigned, in any and all capacities, with full power of substitution, to sign any and all amendments to this Registration Statement (including post-effective amendments), and to file the same with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys in fact, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys in fact, or any of them, may lawfully do or cause to be done by virtue of this appointment.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE -----	TITLE -----	DATE ----
/s/ Jeffrey S. Hussey ----- Jeffrey S. Hussey President	Chief Executive Officer and President	June 7, 1999
/s/ Robert J. Chamberlain ----- Robert J. Chamberlain Treasurer	Chief Financial Officer and Treasurer	June 7, 1999

SIGNATURE -----	TITLE -----	DATE ----
/s/ Carlton G. Amdahl ----- Carlton G. Amdahl Director	Director	June 5, 1999
/s/ Kimberly D. Davis ----- Kimberly D. Davis Director	Director	June 7, 1999
/s/ Alan J. Higginson ----- Alan J. Higginson Director	Director	June 7, 1999
----- Sonja L. Hoel Director	Director	June 7, 1999
/s/ Kent L. Johnson ----- Kent L. Johnson Director	Director	June 7, 1999

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F5 LABS, INC.

401(k) PROFIT SHARING PLAN AND TRUST

THIS AGREEMENT is made and entered into at Seattle, Washington, this 1st day of January, 1998, by and between F5 LABS, INC., a Washington corporation, having its principal place of business at Seattle, Washington, hereinafter called the "Employer," and BRIAN DIXON, his successor or successors, hereinafter called "Trustee."

WHEREAS, the Employer desires to promote in its Employees a strong interest in the successful operation of the business, to increase efficiency, and to give to Employees the assurance that they will share in the prosperity of the Employer; and

WHEREAS, the Employer desires to establish for the exclusive benefit of its Employees eligible to participate, and their beneficiaries, an Internal Revenue Code Section 401(k) profit sharing plan, effective as of January 1, 1998; and to adopt this Plan and Trust;

NOW, THEREFORE, it is agreed as follows:

**ARTICLE I.
NAME**

The Plan and Trust shall be known as the F5 Labs, Inc. 401(k) Profit Sharing Plan and Trust (the "Plan").

**ARTICLE II.
DEFINITIONS**

- A. "Accrued Benefit" means the balance of a Participant's accounts at any time.
- B. "Anniversary Date" means the last day of each Plan Year.
- C. "Board" means the Employer's Board of Directors.

D. "Code" means the Internal Revenue Code of 1986, as amended from time to time.

E. "Committee" means the Administrative Committee appointed by the Board.

F. "Compensation" means an Employee's total salary or wages, bonuses and overtime from the Employer before any deferral of income pursuant to Paragraph B of Article IV and before any salary reductions to the Employer's Internal Revenue Code Section 125 flexible benefits plan, if any, but excluding Employer contributions hereunder pursuant to Paragraphs A and C of Article IV, Employer contributions to any other similar retirement plan, and payments by the Employer (other than Section 125 contributions) on account of medical, disability and life insurance. "Compensation" of a self-employed person means the share of the total net earnings of the Employer allocated to such self-employed person during a Plan Year, less Employer contributions made on behalf of the self-employed person to this Plan.

For purposes of the Code Section 415 limitations on contributions and benefits (Article V, Paragraph E hereof) and the Code Section 416 top heavy requirements (Articles XVIII and XIX hereof), "Compensation" means wages, salaries, fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements, and expense allowances). Such compensation does not include:

1. Contributions to a plan of deferred compensation which are not includable in the Employee's gross income for the taxable year in which contributed;
2. Employer contributions to a simplified employee pension described in Section 408(k) of the Code to the extent deductible by the Employee;

3. Distributions from a plan of deferred compensation regardless of whether such amounts are includable in gross income when distributed (except that amounts paid to an Employee under an unfunded nonqualified plan of deferred compensation will be considered as compensation for Code Sections 415 and 416 in the year such amounts are includable in gross income);
4. Amounts realized from the exercise of a nonqualified stock option or when restricted property becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
5. Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;
6. Other amounts which receive special tax benefits such as premiums for group term life insurance (but only to the extent that the premiums are not includable in gross income) or contributions made by an Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Section 403(b) of the Code (whether or not contributions are excludable from gross income).

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit for the 1998 Plan Year is \$160,000, and thereafter shall be as adjusted by the Commissioner for increases in the cost of living in accordance with Code Section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by

a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in this Plan to the limitation under Code Section 401(a)(17) shall mean the OBRA '93 annual compensation limit set forth in this provision.

G. "Effective Date" means January 1, 1998, the date this Plan is effective.

H. "Eligibility Computation Period" initially means the 12-consecutive-month period beginning with the date on which the Employee first performs an Hour of Service for the Employer (the "Employment Commencement Date"), or in the case of an Employee who has had a One-Year Break in Service, the 12-consecutive-month period beginning with the first date on which the Employee completes an Hour of Service following the last computation period in which a One-Year Break in Service occurred (the "Reemployment Commencement Date"). After the initial Computation Period, the succeeding Eligibility Computation Periods shall be the Plan Year which includes the first anniversary of the Employment Commencement Date or Reemployment Commencement Date and each succeeding Plan Year.

I. "Employee" means any person in the service of the Employer receiving a wage or salary or earnings from self-employment. A leased employee as defined in Code Section 414(n)(2) shall be considered an Employee hereunder for purposes of Code Section 414(n)(3) unless (i) leased employees constitute less than 20% of the Employer's non-highly-compensated work force as defined in Code Section 414(n)(5)(C)(ii) and (ii) the leased employee is a participant in a plan described in Code Section 414(n)(5)(B). Notwithstanding that a leased employee is treated as an Employee hereunder for purposes of Code Section 414(n)(3), he shall not receive credit for service or share in Employer contributions hereunder.

J. "Enrollment Date" means the date on which an Employee who has complied with the eligibility requirements shall become eligible to participate in the Plan. The first available

Enrollment Date for an Employee shall be the first day of the month following completion of the eligibility requirements. For an Employee who does not elect to contribute when first eligible, the Enrollment Dates shall be January 1 and July 1.

K. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

L. "Event of Forfeiture" means with respect to a Participant who terminates employment, either the incurring of five consecutive One-Year Breaks in Service or a cash-out payment in full in a single lump sum of all of his vested Accrued Benefit, subject to the reinstatement of forfeitures requirements of Article V, Paragraph F. A Participant who terminates employment with no vested Accrued Benefit shall be deemed to have received a cash-out payment.

M. "Fiscal Year" means the Employer's fiscal year for federal tax purposes. The Employer's fiscal year begins on January 1 and ends on December 31.

N. "Fund" means the trust fund established pursuant to this Plan and Trust Agreement in which all of the assets of the Plan are held. The Fund shall include the assets of a brokerage firm account and a number of separate investment funds selected by the Committee and communicated to Participants.

O. "Highly-Compensated Employee" means any Employee who (i) during the Plan Year or the preceding Plan Year is a 5% owner (as defined by Code Section 416(i)(1)), or (ii) for the preceding Plan Year receives compensation in excess of \$80,000 adjusted as provided in Code Section 414(q)(1), and, if the Employer elects, was part of the top-paid 20% group of Employees (based on Compensation for the preceding year).

"Compensation" means compensation within the meaning of Code Section 415(c)(3), that is, compensation of the Participant from the employer for the applicable Plan Year or preceding

Plan Year, including elective or salary reduction contributions to a cafeteria plan under Code Section 125, cash or deferred arrangement under Code Section 401(k) or tax-sheltered annuity under Code Section 403(b). The Committee must make the determination of who is a Highly Compensated Employee, including the determinations of number and identity of the top paid 20% group, consistent with Code Section 414(q) and regulations issued under that Code Section. The Employer may make a calendar year data election to determine the Highly Compensated Employees for the Plan year, as prescribed by Treasury regulations or by other guidance published in the Internal Revenue Bulletin. A calendar year data election must apply to all plans of the Employer which reference the highly compensated employee definition in Code Section 414(q). The "Employer" for purposes of this Paragraph is the entity employing the Employee and includes all other entities aggregated with such employing entity under the aggregation requirements of Code Sections 414(b), (c), (m), or (o).

A former Employee shall be considered a Highly-Compensated Employee if he was a Highly-Compensated Employee when he separated from service or if he was a Highly-Compensated Employee at any time after attaining age 55.

P. "Hour of Service" means

a. Each hour for which the Employee is directly or indirectly paid, or entitled to payment, by the Employer for the performance of duties. These hours shall be credited to the Employee for the computation period or periods in which the duties are performed; and

b. Each hour for which an Employee is directly or indirectly paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship was terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 Hours of Service shall be credited under this subsection (b) for any

single continuous period (whether or not such period occurs in a single computation period). Hours under this subsection (b) shall be calculated and credited pursuant to Section 2530.200b-2(b) and 2(c) of the Department of Labor Regulations which are incorporated herein by this reference; and

c. Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited under subsection (a) or (b), as the case may be, and under this subsection (c). These hours shall be credited to the Employee for the Eligibility or Vesting Computation Period or Periods to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment is made.

PROVIDED, for the purpose of determining whether an Employee has incurred a One-Year Break in Service (i) Hours of Service described in subsection (b) shall be credited without regard to the 501-hour limitation of subsection (b); (ii) hours at the Employee's customary rate shall be credited during any period the Employee is on authorized leave of absence or temporary layoff, and (iii) in the case of an Employee who is absent from work for any period by reason of pregnancy, birth of a child, placement with the Employee of a child for adoption, or caring for such child immediately following birth or placement, Hours of Service (up to 501 hours) shall be credited equal to the Hours of Service that otherwise would normally have been credited to the Employee but for such absence (or if such hours cannot be determined, equal to 8 Hours of Service per day of absence). The hours credited under (iii) above shall be credited to the applicable computation period in which the absence begins if such crediting will prevent a One-Year Break in Service, or otherwise to the following computation period. No such credit shall be given unless the Employee provides the Committee with timely information (including, if requested, a written statement of a doctor or adoption official) to establish that the absence is for

reasons referred to in this paragraph and the number of days for which there was such an absence. PROVIDED, FURTHER, there shall be no duplication of credit under the Plan.

Hours of Service for any other trade or business that is along with the Employer a member of a group of trades or businesses (whether or not incorporated) which are under common control, as defined in Code Section 414(b) and (c), or an affiliated service group as defined in Code Section 414(m) as modified by Code Section 414(m)(5) and (6), and any other entity required to be aggregated with the Employer pursuant to Code Section 414(o) and the regulations thereunder shall be considered Hours of Service for the Employer.

A salaried Employee who during a month would be entitled to credit for at least one Hour of Service shall receive credit for 190 Hours of Service. All other Employees shall be credited with actual hours (i) for which they are paid or entitled to payment by the Employer, and (ii) for purposes of determining whether a One-Year Break in Service has occurred, at their regular rate during unpaid leave of absence.

Q. "One-Year Break in Service" means the applicable Eligibility or Vesting Computation Period during which an Employee completes less than 501 Hours of Service.

R. "Participant" means an Employee who has satisfied the eligibility requirements of Article III.

S. "Plan" or "Trust" means the 401(k) Plan and Trust set forth in this agreement and all subsequent amendments thereto.

T. "Plan Year" means the twelve-month period on which the records of the Plan are kept. Each Plan Year shall end on December 31.

U. "Spouse" means the lawful husband or wife of the Participant.

V. "Trustee" means Brian Dixon and any successor Trustee hereunder appointed by the Board.

W. "Valuation Date" means the date upon which the assets of the Trust are valued. Each Anniversary Date and the dates occurring three months thereafter shall be Valuation Dates, and the Committee is authorized to establish additional Valuation Dates in its discretion.

X. "Vesting Computation Period" for purposes of determining a Participant's nonforfeitable Accrued Benefit means the Plan Year.

Y. "Year of Service" means the applicable computation period during which the Employee completes not fewer than 1,000 Hours of Service as defined in Paragraph P.

Z. "Miscellaneous." Unless some other meaning and intent is apparent from the context, the plurals shall mean the singular, and vice versa, and masculine, feminine, and neuter words shall be used interchangeably.

ARTICLE III.

ELIGIBLE EMPLOYEES

Each salaried Employee in the employ of the Employer on the Effective Date shall be eligible to participate as of such Effective Date and shall be enrolled as of such date if he has attained age twenty-one (21). Each other and each new salaried Employee shall become eligible upon his attainment of age 21. Hourly paid employees are not eligible to participate in the Plan. Each eligible Employee shall be enrolled as a Participant as of the Enrollment Date coinciding with or following completion of such requirements, provided that the Employee has not separated from service before such Enrollment Date.

Notwithstanding the above, for purposes of eligibility for any Employer discretionary contributions made pursuant to Article IV, Paragraph A, a Participant shall be eligible to share in such contributions made for the calendar year beginning in the calendar year following the year in which he completes six (6) months of service, and for purposes of eligibility for any discretionary Employer matching contributions made pursuant to Article IV, Paragraph C, a

Participant shall be eligible to share in such contributions beginning the first day of the month following completion of six (6) months of service.

Hours of Service shall not be counted in determining whether an Employee has complied with the eligibility requirements.

The Committee may request each eligible Employee to apply for Plan participation in writing on a form to be supplied by the Committee, agreeing to the terms of the Plan and giving such information as may be required by the Committee, including beneficiary designation. An Employee shall not be precluded from Plan participation if he does not complete such form.

ARTICLE IV.

CONTRIBUTIONS

A. EMPLOYER DISCRETIONARY CONTRIBUTION. For each Plan Year, the Employer will pay to the Trustee for investment under the Trust such amount as shall be determined by the Board of Directors of the Employer at a meeting held before the time provided by law for filing of the Employer's income tax return (including extensions).

The Employer's determination of such contribution shall be binding on all Participants, the Committee, and the Trustee. The Trustee shall have no right or duty to inquire into the amount of the Employer's contribution or the method used in determining the amount of such contribution, but shall be accountable only for the funds actually received by it.

B. TAX-DEFERRED CONTRIBUTIONS. Each Participant may sign a tax-deferred contribution agreement, directing the Employer (1) to defer a percentage of his Compensation each pay period commencing as of his Enrollment Date, and (2) to contribute that amount to the Plan within a reasonable time after the end of such pay period. The Committee shall furnish the agreement form to each Employee prior to his Enrollment Date with instructions regarding the time period within which the agreement must be signed and returned. The amount of

Compensation deferred shall be equal to at least one percent (1%) of the Participant's Compensation, provided such contributions are within the limits of Article V, Paragraph E. The amount of a Participant's deferred Compensation shall be rounded to the nearest cent.

Notwithstanding the foregoing, tax-deferred contributions on behalf of a Participant may not exceed \$10,000 for the calendar year 1998 and thereafter such amount for a calendar year as adjusted each year by the Secretary of the Treasury. A Participant who makes Code Section 401 (k) tax-deferred contributions to more than one plan in a calendar year in excess of this dollar limit must submit to the Committee by March 1 of the year following the year of the excess contributions a written statement including the amount of the excess contributions to be allocated to this Plan. Any excess contributions allocated to this Plan shall be distributed, together with income attributable thereto, by April 15 of the year following the year of the excess contributions.

In the event a Participant terminates employment and is rehired, the Participant may elect to begin deferring a percentage of his Compensation as of any Enrollment Date coinciding with or following his date of rehire, provided that prior to that date he signs a tax-deferred contribution agreement form provided by the Committee.

Effective each Enrollment Date, each Participant who is deferring an amount of his Compensation may change the percentage of his Compensation to be deferred, and each Participant who is not deferring an amount of his Compensation may elect to begin deferring a percentage of his Compensation. Each such Participant must obtain a tax-deferred contribution agreement form from the Committee and must sign and return the agreement within the time required by the Committee.

Upon prior written notice to the Committee, a Participant may revoke his tax-deferred contribution agreement effective as of the first day of any subsequent pay period. A Participant

who revokes his tax-deferred contribution agreement may not resume deferring a percentage of his Compensation hereunder until the Enrollment Date after his deferred income contributions cease, provided that prior to the date deferral of income resumes, he signs a tax-deferred contribution agreement form provided by the Committee.

Tax-deferred contributions shall be credited to a separate Tax-Deferred Contribution Account for each Participant. A Participant's Tax-Deferred Contribution Account shall be invested, valued, distributed and except as specifically provided herein, in all respects treated in the same manner as the Participant's Employer Matching Contribution Account, except that the amounts credited to the Participant's Tax-Deferred Contribution Account shall be one hundred percent (100%) vested. Amounts in the Tax-Deferred Contribution Account shall not be distributed until the earliest of the Participant's death, disability, retirement, attainment of age 59 1/2, termination of employment, in accordance with the provisions of Article VII of the Plan, the occurrence of a hardship as set forth in Paragraph G of this Article, Plan termination without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan), or a disposition of assets or of a subsidiary as described in Code Section 401(k)(10)(A)(ii) and (iii).

C. EMPLOYER MATCHING CONTRIBUTIONS. For each Plan Year, the Employer may, in its sole discretion, contribute on behalf of each Participant who has met the eligibility requirements described in Article III for Employer matching contributions and who makes tax-deferred contributions during the Plan Year, a matching contribution equal to such amount as shall be determined by the Board of Directors but which shall not result in an excess contribution as defined in Paragraph E below or exceed the applicable limits of Paragraph E of Article V.

D. NONDISCRIMINATION TEST APPLICABLE TO TAX-DEFERRED CONTRIBUTIONS. The maximum amount of tax-deferred contributions which may be made by Highly-Compensated

Employees is subject to the requirement that one of the following nondiscrimination tests be met during each Plan Year:

- (1) The average deferral percentage for the group of Highly-Compensated Employees who are Participants for the Plan Year may not be more than the average deferral percentage for the group of all other Employees who are Participants for the preceding Plan Year multiplied by 1.25%; or
- (2) The excess of the average deferral percentage for the group of Highly-Compensated Employees who are Participants for the Plan Year over the average deferral percentage of the group of all other Employees who are Participants for the preceding Plan Year may not be more than two (2) percentage points and the average deferral percentage for the group of Highly-Compensated Employees who are Participants for the Plan Year may not be more than the average deferral percentage of the group of all other Employees who are Participants for the preceding Plan Year multiplied by two (2).

The Plan may elect, in accordance with IRS rules, to use the average percentage of Compensation deferred by non-Highly-Compensated Employees in the current year instead of in the preceding year for the foregoing tests.

An Employer may elect to aggregate tax-deferred contributions, and 100% vested qualified Employer matching contributions as defined by applicable regulations in order to meet the nondiscrimination test applicable to tax-deferred contributions.

The Employer may elect to make qualified nonelective Employer contributions that are allocated to the accounts of eligible non-Highly Compensated Employees in the manner prescribed by applicable regulations or IRS guidance, and may take into consideration all or any portion of such contributions in order to meet the nondiscrimination test applicable to tax-deferred contributions. Such contributions shall be 100% vested, shall be subject to the same

restrictions on withdrawal as 401(k) tax-deferred contributions, shall meet the requirements of Code Section 401(a)(4) both before and after any portion is used for purposes of meeting the 401(k) nondiscrimination test, and shall meet the requirements of applicable regulations.

The Plan will take tax-deferred contributions into account only if attributable to Compensation that would be received by the Employee during the Plan Year or earned during the Plan Year and received within 2 1/2 months after the end of the Plan Year. The Plan will aggregate all arrangements under which a Highly-Compensated Employee is eligible to make tax-deferred contributions for purposes of applying the nondiscrimination test applicable to tax-deferred contributions.

Compensation as used in this Paragraph shall mean compensation as defined in Code Section 414(s). After considering any applicable qualified nonelective Employer contributions in applying the nondiscrimination test applicable to tax-deferred contributions, tax-deferred contributions which cause the Plan to fail to meet one of the above tests are hereafter Excess Aggregate Contributions and must be distributed in accordance with Paragraph F of this Article.

E. NONDISCRIMINATION TEST APPLICABLE TO EMPLOYER MATCHING CONTRIBUTIONS. The maximum Employer matching contributions which may be allocated to Highly-Compensated Employees are subject to the requirement that they meet one of the following tests:

- (1) The actual contribution percentage for the group of Highly-Compensated Employees who are Participants for the Plan Year may not be more than the actual contribution percentage for the group of all other Employees who are Participants for the preceding Plan Year multiplied by 1.25%; or
- (2) The excess of the actual contribution percentage for the group of Highly-Compensated Employees who are Participants for the Plan Year over the actual contribution percentage of the group of all other Employees who are Participants for the preceding Plan Year

may not be more than two (2) percentage points, and the actual contribution percentage for the group of Highly-Compensated Employees who are Participants for the Plan Year may not be more than the actual contribution percentage of the group of all other Employees who are Participants for the preceding Plan Year multiplied by two (2).

The Plan may elect, in accordance with IRS rules, to use the actual contribution percentage of the non-Highly-Compensated Employees in the current year instead of in the preceding Plan Year for the foregoing tests.

The actual contribution percentage means the average of the actual contribution ratios (calculated separately for each Employee in the specified group) of Employer matching contributions for the applicable Plan Year divided by the Employee's Compensation for such Plan Year. Compensation means compensation as defined in Paragraph D above. The Committee may elect to take into consideration all or any portion of tax-deferred contributions in calculating the actual contribution percentage in order to meet the nondiscrimination test applicable to Employer matching contributions. If less than all of such contributions are taken into consideration, the balance of such contributions not taken into consideration must continue to meet the requirements of the nondiscrimination test applicable to tax-deferred contributions, as described in Paragraph D.

The Employer may elect to make qualified nonelective Employer contributions that are allocated to the accounts of eligible non-Highly Compensated Employees in the same manner prescribed by applicable regulations or IRS guidance, and may take into consideration all or any portion of such contributions in order to meet the nondiscrimination test applicable to Employer matching contributions, subject to the requirements of applicable regulations. Such contributions shall be 100% vested, shall be subject to the same restrictions on withdrawal as 401(k) tax-deferred contributions, shall meet the requirements of Code Section 401(a)(4) both before and

after any portion is used for purposes of meeting the 401(k) and 401(m) nondiscrimination tests, and shall meet the requirements of the applicable regulations.

Notwithstanding the foregoing, if Highly-Compensated Employees' tax-deferred or Employer matching contributions do not meet the 1.25 nondiscrimination test of Paragraph D(1) or E(1) then the sum of the Highly-Compensated Employees' 401(k) deferral percentages under Paragraph D and 401(m) actual contribution percentage under this Paragraph E must not exceed the Aggregate Limit. The Aggregate Limit is the greater of A or B where A equals the sum of:

1. 1.25 times the greater of the Relevant Actual Deferral Percentage or the Relevant Actual Contribution Percentage, and

2. 2 percentage points plus the lesser of the Relevant Actual Deferral Percentage or the Relevant Actual Contribution Percentage. In no event, however, may this amount exceed twice the lesser of the Relevant Actual Deferral Percentage or the Relevant Actual Contribution Percentage; and B equals the sum of:

1. 1.25 times the lesser of the Relevant Actual Deferral Percentage or the Relevant Actual Contribution Percentage, and

2. 2 percentage points plus the greater of the Relevant Actual Deferral Percentage or the Relevant Actual Contribution Percentage. In no event, however, may this amount exceed twice the greater of the Relevant Actual Deferral Percentage or the Relevant Actual Contribution Percentage.

For purposes of this definition, the term "Relevant Actual Deferral Percentage" means the actual deferral percentage of eligible Non-Highly Compensated Employees and the term "Relevant Actual Contribution Percentage" means the actual contribution percentage of the group of eligible Non-Highly Compensated Employees. After considering any applicable qualified

nonelective Employer contributions and/or tax-deferred contributions permitted to be considered in applying the nondiscrimination test applicable to Employer matching contributions, any amounts of Employer matching contributions which cause the Plan to fail to meet the discrimination test of this Paragraph E are hereafter Excess Aggregate Contributions and must be reduced or distributed in accordance with Paragraph F below.

F. DISTRIBUTION OF EXCESS AGGREGATE CONTRIBUTIONS. Excess Aggregate Contributions, adjusted for allocable income and losses, shall be distributed within two and one-half (2 1/2) months if possible, but in no event later than twelve (12) months, after the end of the Plan Year in which such Excess Aggregate Contributions are made in accordance with the procedures established by the Committee to assure compliance with Code Section 401(k) and Code Section 401(m). Excess Employer matching contributions may be forfeited rather than distributed to the extent permitted by Reg. Section 1.401(m)-1(e). In the case of failure to meet the requirements of Paragraph D, the distribution shall be accomplished by reducing tax-deferred contributions of the Highly-Compensated Employee with the greatest dollar amount of tax-deferred contributions until one of the tests set forth in such Paragraph is met or such tax-deferred contributions equal the tax-deferred contributions of the Highly-Compensated Employee with the next highest amount of tax-deferred contributions. In the case of failure to meet the requirements of Paragraph E, the distribution shall be accomplished by reducing the actual Employer matching contributions of the Highly-Compensated Employee with the highest amount of Employer matching contributions until one of the tests set forth in such Paragraph is met or such Employer matching contributions equal the Employer matching contributions of the Highly-Compensated Employee with the next highest amount of Employer matching contributions. In either case, the process shall be repeated until the Plan satisfies one of the tests under each paragraph. In the case of failure to meet the requirements of Paragraphs D and E, the

Committee may first distribute an Employee's unmatched tax-deferred contributions and, second, distribute an Employee's matched tax-deferred contribution and reduce Employer matching contributions pro rata, adjusted in each case, for allocable income and losses.

Allocable income or loss for the taxable year is determined by multiplying the income or loss for the taxable year allocable to tax-deferred contributions by a fraction, the numerator being the Participant's Excess Aggregate Contributions under Paragraph D for the taxable year and the denominator being the account balance attributable to tax-deferred contributions as of the end of the taxable year minus the income or plus the loss allocable to such account balance for the year. Allocable income or loss for the taxable year with respect to Excess Aggregate Contributions under Paragraph E is determined in a similar manner.

The amount of excess deferrals attributable to tax-deferred contributions that may be distributed by the Plan for the taxable year of the Employee must be reduced by the amount of excess contributions attributable to Employer matching contributions previously distributed for the Plan Year beginning with or within the Employee's taxable year.

The Plan will take a contribution into account for a Plan Year only if it is allocated to the Participant's account on a day within the Plan Year. The Plan will treat contributions made under plans that are aggregated for purposes of Code Sections 401(a) or 410(b) as made under a single plan.

G. HARDSHIP WITHDRAWALS OF TAX-DEFERRED CONTRIBUTIONS. The Plan Committee may distribute all or a part of a Participant's Tax-Deferred Contribution Account, prior to the time such Account would otherwise be distributed, upon a showing of immediate and heavy financial hardship by the Participant in accordance with the provisions of this paragraph. A Participant may not withdraw the earnings on his tax-deferred contributions on account of hardship. A Participant's Tax-Deferred Contribution Account for purposes of hardship distributions shall be

valued as provided in Article VII, Paragraph A.4. A hardship distribution (a) must be on account of an immediate and heavy financial need and may not exceed the amount necessary to meet that need, and (b) must be necessary to satisfy a financial need which the Employee is unable to satisfy from other resources reasonably available to him. An immediate and heavy financial need shall be deemed to exist if the requested distribution is on account of:

- (1) Uninsured medical expenses as defined in Code Section 213 that have already been incurred by the Participant, the Participant's Spouse or a dependent of the Participant, or such expenses that have not already been incurred, provided prepayment of the expenses is necessary to obtain medical services;
- (2) Purchase of the Participant's principal residence (excluding mortgage or loan payments);
- (3) Payment of tuition, related educational fees, and room and board expenses for the next twelve months of post- secondary education for the Participant, the Participant's Spouse, child or dependent, including graduate school and any approved trade or technical school;
- (4) Payment to prevent eviction of the Participant from his principal residence or foreclosure of a mortgage or other financing lien on the Participant's principal residence; or
- (5) Any other deemed immediate and heavy financial need that may be prescribed by the Commissioner of Internal Revenue through the publication of revenue rulings, notices, and other documents of general applicability.

Such a distribution may include an amount necessary to pay taxes and penalties on the distribution.

A distribution will be treated as necessary to satisfy a financial need if the Participant represents to the Plan Committee that the need cannot be satisfied through insurance, by

reasonable liquidation of assets, by cessation of contributions under the Plan or by other distributions or loans either from the Plan or any other Plan maintained by the Employer or from a commercial source on reasonable commercial terms. The Committee may rely on written statements of the Participant as to existence of an immediate and heavy financial need and with respect to the unavailability of other sources of relieving that need. Hardship distributions shall be administered by the Committee in accordance with uniform and nondiscriminatory standards applicable to all Participants.

H. DATE OF PAYMENT. The Employer shall pay to the Trustee, within the time provided by law for filing of the Employer's income tax return (including extensions), the amount to be contributed pursuant to Paragraph A and Paragraph C.

The Employer shall pay to the Trustee, within the time required by ERISA, tax-deferred contributions for the Plan Year on behalf of all Participants pursuant to Paragraph B of this Article IV.

I. PROFIT SHARING PLAN. This Plan is designed to qualify as a profit sharing plan for purposes of Code Section 401(a), 402, 412, and 417. However, notwithstanding any other provision of the Plan, all contributions shall be made without regard to current or accumulated earnings and profits.

ARTICLE V.

PARTICIPANT'S ACCOUNTS, VALUATION, MAXIMUM CONTRIBUTION

A. PARTICIPANT'S ACCOUNTS. The Committee or its delegate shall maintain a separate Employer discretionary contribution account (Employer Discretionary Contribution Account) a separate Tax-Deferred Contribution Account, and a separate Employer Matching Contribution Account, where applicable for each Participant, which accounts shall reflect the Participant's

Accrued Benefit. The Committee shall furnish each Participant who requests the same in writing a statement reflecting, on the basis of the latest available information, his Accrued Benefit and the nonforfeitable portion thereof or if no benefits are nonforfeitable, the earliest date on which benefits will be nonforfeitable. Only one such statement need be furnished a Participant each 12 months. The Employer may appoint the Trustee or any qualified third party to perform recordkeeping functions.

B. ALLOCATION OF EMPLOYER DISCRETIONARY CONTRIBUTIONS. The Employer's discretionary contributions for a Plan Year pursuant to Paragraph A of Article IV shall be allocated to the Employer Discretionary Contribution Account of each Participant who is an Active Participant (as defined in Paragraph C of this Article V) in the proportion that each Active Participant's Compensation during the Plan Year bears to the Compensation of all such Active Participants during such year. Compensation for purposes of this Paragraph B is Compensation as defined in the first paragraph of Article II, Paragraph F of the Plan.

C. ACTIVE PARTICIPANTS RECEIVE ALLOCATIONS. Only an Active Participant shall be entitled to share in the Employer's contributions for a particular Plan Year pursuant to Paragraph A of Article IV. An Active Participant means a Participant, employed on the Anniversary Date, who has met the eligibility requirements for Employer Discretionary Contributions described in Article III.

Notwithstanding any language in this Paragraph C to the contrary, if this Plan would otherwise fail to meet the requirements of Code Sections 401(a)(26), 410(b)(1), or 410(b)(2)(A)(i) and the regulations thereunder because Employer discretionary contributions have not been allocated to a sufficient number or percentage of Participants for a Plan Year, then the following rules shall apply:

- (1) The group of Participants eligible to share in the Employer's contributions

and any forfeitures for the Plan Year shall be expanded to include the minimum number of Participants who would not otherwise be eligible as are necessary to satisfy the applicable test specified above. The specific Participants who shall become eligible under the terms of this paragraph shall be those who are actively employed on the last day of the Plan Year and, when compared to similarly situated Participants, have completed the greatest number of Hours of Service in the Plan Year.

(2) If after application of paragraph (1) above, the applicable test is still not satisfied, then the group of Participants eligible to share in the Employer's contribution and any forfeitures for the Plan Year shall be further expanded to include the minimum number of Participants who are not actively employed on the last day of the Plan Year as are necessary to satisfy the applicable test. The specific Participants who shall become eligible to share shall be those Participants, when compared to similarly situated Participants, who have completed the greatest number of Hours of Service in the Plan Year before terminating employment.

Nothing in this Paragraph shall permit the reduction of a Participant's Accrued Benefit. Any amounts previously allocated to Participants may not be reallocated to satisfy these requirements. The Employer shall make an additional contribution equal to the amount such affected Participants would have received had they been included in the allocations.

If the Participant's failure to complete a Year of Service in the Plan Year results from his death, disability or retirement on or after age 65, he shall be considered an Active Participant for such year.

D. VALUATION OF FUND. As of each Valuation Date, the Trustee shall determine the fair market value of each Fund in order to determine the percentage of increase or decrease in such fair market value when compared with the fair market value of such Fund as of the immediately preceding Valuation Date. As of each applicable Valuation Date, the Trustee shall

cause the value of Participants' accounts invested in each Fund to be adjusted proportionately so that such value will equal the fair market value of the Fund as of the date of such adjustment. The Employer, the Committee, and the Trustee do not in any manner or to any extent whatever warrant, guarantee or represent that the value of a Participant's accounts shall at any time exceed or equal the amount previously contributed thereto.

E. MAXIMUM CONTRIBUTIONS.

1. ANNUAL ADDITION. The term "annual addition" for any Plan Year means the sum of:

- a. The Employer's contributions on a Participant's behalf to the Employer's defined contribution plan(s) (any profit sharing and money purchase pension plans) including tax-deferred contributions hereunder;
- b. The Participant's voluntary nondeductible contributions, if any, to the defined contribution plan(s) maintained by the Employer;
- c. Any forfeitures allocated to the Participant's account under a profit sharing plan maintained by the Employer;
- d. Amounts allocated for a Plan Year beginning after March 31, 1984, to a Code Section 415(1)(2) individual medical account that is part of a pension or annuity plan maintained by the Employer; and
- e. Amounts paid or accrued after December 31, 1985, in taxable years ending after that date, for post-retirement benefits allocated to a separate account in a Code Section 419(e) welfare benefit fund maintained by the Employer. These amounts will not be subject to the present limitations of Code Section 415(c)(1)(B).

Notwithstanding any other provision hereof, the annual addition to a Participant's accounts for any Plan Year shall not exceed the lesser of (i) \$30,000, or, if greater, 1/4 of the

dollar limitation in effect under Code Section 415 (b)(1)(A), or (ii) 25% of the Participant's Compensation from the Employer for the Plan Year excluding from Compensation income deferred by the Participant pursuant to Paragraph B of Article IV for the Plan Year and salary reduction contributions to any Employer-sponsored Code Section 125 cafeteria plan.

The Compensation limitation referred to in the preceding paragraph shall not apply to (i) any contributions for medical benefits (within the meaning of Code Section 419A(f)(2) or 401(n)) which are made after separation from service and which are otherwise treated as an Annual Addition; or (ii) any amount otherwise treated as an Annual Addition under Code Section 415(1)(1) or 419A(d)(2).

2. **EXCESS ANNUAL ADDITION.** If, as a result of the allocation of forfeitures, a reasonable error in estimating a Participant's Compensation, or other facts and circumstances to which Code regulation Section 1.415-6(b)(6) shall be applicable, the annual addition for a Participant exceeds the applicable limitations for the Plan Year, the annual addition shall be reduced as follows:

a. The amount of such excess consisting of Employee Voluntary Nondeductible Contributions shall be paid to the Employee as soon as administratively feasible.

b. The amount of the remaining excess consisting of the Employee's unmatched tax-deferred contributions shall be paid to the Employee as soon as administratively feasible.

c. The amount of any remaining excess consisting of matched tax-deferred contributions on behalf of an Employee and Employer matching contributions on behalf of such Employee shall be reduced pro rata. Such tax-deferred contributions shall be paid to the Employee as soon as administratively feasible, and such Employer matching contributions shall be allocated to a suspense account as forfeitures and applied as provided in (d) below).

d. The amount of any remaining excess consisting of Employer contributions to this Plan shall be allocated to a suspense account as forfeitures and held therein until the next succeeding date on which forfeitures could be applied to reduce future Employer contributions under this Plan. In the event of termination of the Plan, the suspense account shall revert to the Employer.

The limitation year above is the Plan Year. Notwithstanding any other provisions, the Employer shall not contribute any amount that would cause an allocation to the suspense account as of the date the contribution is allocated. If the contribution is made prior to the date as of which it is to be allocated, then such contribution shall not exceed an amount that would cause an allocation to the suspense account if the date of contribution were an allocation date. If an allocation is made to such suspense account, it shall contain no investment gains and losses or other income. Amounts in the suspense account are allocated as of each allocation date on which forfeitures may be allocated until the account is exhausted.

3. For the purpose of this Paragraph E, the following rules shall control:

a. The \$30,000 maximum shall be deemed adjusted for any Plan Year to conform to increases in the cost of living in accordance with regulations to be adopted by the Secretary of Treasury.

b. All qualified defined benefit plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined benefit plan, and all qualified defined contribution plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined contribution plan.

c. If the Employer is a member of a controlled group of corporations, trades or businesses under common control (as defined by Code Section 1563(a) or Code Section 414(b) and (c) as modified by Code Section 415(h)) or is a member of an affiliated service group

(as defined by Code Section 414(m)), all employees of such employers shall be considered to be employed by a single employer.

d. If the Employer or any trade or business which along with the Employer is a member of a group of trades or businesses (whether or not incorporated) which are under common control, as defined in (c), or if an affiliated service group to which the Employer belongs, as defined in (c), has adopted or hereafter adopts a defined benefit plan and a Participant hereunder is also a Participant thereunder, then the sum of the defined benefit plan fraction (as defined below) and the defined contribution plan fraction (as defined below) for any year may not exceed 1.0.

For purposes of this Plan, the defined benefit plan fraction is a fraction:

- i) The numerator of which is the projected annual benefit of the Participant under the defined benefit plan (determined as of the close of the year), and
- ii) The denominator of which is the lesser of: (a) the product of 1.25 multiplied by \$90,000 (or an adjusted figure determined in accordance with regulations issued by the Secretary of the Treasury), or (b) the product of 1.4 multiplied by an amount equal to the average of the Participant's highest three consecutive calendar years' Compensation.

For purposes of this part, the defined contribution plan fraction for any year is a fraction:

- iii) The numerator of which is the sum of the annual additions to the Participant's accounts under the Employer's defined contribution plan(s) as of the close of the year; and
- iv) The denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the Employer: (a) the product of 1.25 multiplied by the dollar limit in effect under Code Section 415(c)(1)(A) for each such year (determined without regard to Code Section 415(c)(6)), or (b)

the product of 1.4, multiplied by 25% of a Participant's Compensation from the Employer for each such year.

If with respect to any Participant under this Plan, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any year exceeds 1.0, and the defined benefit plan does not by its terms reduce the benefit due the participant at retirement to an amount which would reduce the sum of the fractions to 1.0, then the annual addition for that year to the Participant's account hereunder shall be reduced to a level at which the sum of the fractions equals 1.0.

F. FORFEITURES AND REINSTATEMENT OF FORFEITURES. On each Anniversary Date, the nonvested Accrued Benefit of each Participant with respect to whom an Event of Forfeiture has occurred and who is not in the employ of the Employer on the Anniversary Date shall be forfeited. If a Participant terminates employment with the Employer, incurs an Event of Forfeiture, is thereafter reemployed, and has not incurred five consecutive One-Year Breaks in Service as of the Anniversary Date coinciding with or following the date of his reemployment, his forfeited Accrued Benefit shall be reinstated as if that nonvested Accrued Benefit had not been forfeited. Such a reinstatement shall occur on the Anniversary Date coinciding with or following such Participant's date of reemployment by allocating the required amount to the Participant's Employer Discretionary Contribution Account, first, from forfeitures occurring on such Anniversary Date, second, from Trust earnings allocated as of such Anniversary Date, and third, from extraordinary Employer contributions as required.

Forfeitures shall be applied to reduce future Employer contributions.

ARTICLE VI.

Nonforfeitable Accrued Benefit

A. ALLOCATIONS NOT VESTED. Allocations to Participants in accordance with the

provisions of Article V shall not vest any right or title to any part of the assets of the Trust.

B. VESTING PERIOD. A Participant's Tax-Deferred Contribution Account shall be 100% vested at all times. A Participant's Employer Discretionary Contribution Account and Employer Matching Contribution Account shall vest in accordance with the following schedule:

Completion of 1 Year of Service	0%
Completion of 2 Years of Service	50%
Completion of 3 Years of Service	75%
Completion of 4 Years of Service	100%

In crediting Years of Service to determine a Participant's nonforfeitable Accrued Benefit, the Committee shall apply the following rules using the Vesting Computation Period for purposes of determining Years of Service and One-Year Breaks in Service:

1. Except as specifically hereinafter provided, all of an Employee's Years of Service with the Employer both prior to becoming a Participant and thereafter shall be taken into account.
2. In the case of a Participant who terminates employment with the Employer and has no nonforfeitable right to an Accrued Benefit derived from Employer contributions, the Employer shall not give credit for Years of Service occurring before a One-Year Break in Service if, on the date the Participant first completes an Hour of Service following the date of termination, the number of his consecutive One-Year Breaks in Service equals or exceeds the aggregate number of Years of Service (whether or not consecutive) prior to the last such break if the number of consecutive One-Year Breaks in Service is five or more. Years of Service before the break shall not include Years of Service not required to be taken into account by reason of any other rule under this Paragraph B.
3. The Employer shall not give credit for Years of Service which are not disregarded under subparagraph 2 until the Participant has completed a Year of Service upon his

return during the Vesting Computation Period.

4. The nonforfeitable percentage of a Participant's Accrued Benefit derived from Employer contributions made prior to five consecutive One-Year Breaks in Service shall be determined without regard to Years of Service occurring after such five consecutive One-Year Breaks in Service. Separate accounting shall be maintained for the pre-break Accrued Benefit.

C. AMENDMENT TO VESTING COMPUTATION PERIOD OR VESTING SCHEDULE. The Employer may amend the Plan to provide for a different Vesting Computation Period so long as the new Vesting Computation Period, as amended, begins prior to the last day of the preceding Vesting Computation Period. No Plan amendment shall reduce a Participant's nonforfeitable Accrued Benefit. If the Plan vesting schedule is amended or the Plan is amended in any way that directly or indirectly affects the computation of a Participant's nonforfeitable percentage, or if a different vesting schedule is applicable because a previously Top-Heavy Plan is no longer Top-Heavy, each Participant with at least three (3) Years of Service with the Employer may elect, within a reasonable period after the adoption of the amendment, to have his nonforfeitable Accrued Benefit (accrued before and after the amendment) computed under the Plan without regard to such amendment. The period during which the election may be made shall commence with the date the amendment is adopted and shall end on the later of:

1. Sixty (60) days after the amendment is adopted;
2. Sixty (60) days after the amendment becomes effective; or
3. Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Committee.

D. FULL VESTING. Upon a Participant's death, disability or attainment of age normal retirement age, the full amount credited to the Participant's Employer Contribution Account pursuant to Article V shall become fully vested and nonforfeitable.

E. PARTICIPANT'S COMMENCEMENT OF EXCLUDED EMPLOYMENT. In the event a Participant transfers to an employment category excluded under Article III, the following shall control:

1. For purposes of determining the Participant's right to, and the amount of an allocation of the Employer contribution, Hours of Service performed and Compensation received while the Participant was in a category excluded under Article III hereof shall not be counted.
2. For purposes of determining the Participant's nonforfeitable Accrued Benefit, Hours of Service performed while the Participant was in an excluded category shall be counted.

ARTICLE VII.

DISTRIBUTION OF BENEFITS

A. RETIREMENT AGE AND OPTIONS. The normal retirement age shall be age 65 for all Participants, and each Participant or former Participant shall be entitled to retire upon the Valuation Date coinciding with or following attainment of normal retirement age.

1. EMPLOYMENT AFTER NORMAL RETIREMENT AGE. If a Participant continues in the employ of the Employer beyond his Normal Retirement Date, he shall, pursuant to the terms of this Plan, continue to share in Employer contributions, forfeitures and increases and decreases in value, including fees and expenses until actual retirement and may elect tax-deferred contributions hereunder.

a. ELECTION TO RECEIVE BENEFITS WHILE STILL EMPLOYED. A Participant who has attained normal retirement age may elect in writing to receive his Accrued Benefit prior to his actual retirement date in accordance with procedures established by the Committee; such a Participant shall continue to share in Employer contributions, forfeitures, and

increases and decreases in value, including fees and expenses, until actual retirement, and may elect tax-deferred contributions hereunder.

b. **REQUIRED RECEIPT OF BENEFITS IF AGE 70 1/2.** Distribution of benefits shall commence to a Participant upon the later of his attaining age 70 1/2 or termination of employment. The required distribution shall commence no later than April 1 of the calendar year following the calendar year in which the later event occurs. Provided, in the case of a Participant who is a five percent (5%) owner of the Employer, the required distribution shall commence no later than April 1 of the calendar year following the calendar year in which occurs the earlier of the Participant's retirement or attainment of age 70 1/2.

A Participant who is still employed by the Employer and to whom this subparagraph b. applies shall, until actual retirement, continue to share in any Employer contributions, forfeitures, and increases and decreases in value, including fees and expenses, until actual retirement, and may elect tax-deferred contributions hereunder.

2. **DATE OF RETIRED PARTICIPANT'S FIRST PAYMENT.** A Participant who retires hereunder shall begin receiving his benefits as soon as is reasonably possible after his retirement date but no later than the date sixty (60) days after the close of the Plan Year in which the Participant retires, unless he elects to defer payment pursuant to subparagraph (3) below.

3. **DEFERRAL OF BENEFITS.** A Participant who retires hereunder or terminates employment with a nonforfeitable Accrued Benefit in excess of \$5,000 shall not be required to receive a distribution without his written consent. The Participant may elect to defer the commencement of his Plan benefits to a later date, but not later than April 1 of the calendar year following the calendar year in which he attains age 70 1/2. Such a Participant must make this election in writing on a form provided by the Committee. Such election shall include the current

amount of the Participant's nonforfeitable Accrued Benefit, the form of payment of the benefit, and the date on which payment shall commence. The Participant may change such election prior to the commencement of his deferred benefits, provided payments commence no later than the date required above.

Failure of a Participant to consent to a distribution while a nonforfeitable Accrued Benefit in excess of \$5,000 is immediately distributable shall be deemed an election to defer commencement of payment.

4. FORM OF PAYMENT. A Participant who is eligible to receive benefits under this Paragraph shall receive his nonforfeitable Accrued Benefit in the form of a single payment equal to the Participant's nonforfeitable Accrued Benefit.

The Participant's nonforfeitable Accrued Benefit shall be valued as of the Valuation Date coinciding with or immediately preceding the date of a payment, plus any contributions and minus any withdrawals since such Valuation Date, and adjusted with respect to the Plan Funds to reflect profits and losses since such Valuation Date in accordance with procedures adopted by the Committee from time to time and uniformly applied.

B. DEATH. Each Participant shall designate a beneficiary or beneficiaries on a form to be furnished by the Committee. The beneficiary of a married Participant shall be his Spouse, unless the Spouse consents in writing to the designation of another specific beneficiary and acknowledges the effect of the consent. The consent shall be witnessed by a Committee member or a notary public. Such designation shall be filed with the Committee and may be changed by the Participant from time to time by filing a new designation in writing (together with the Spouse's consent where required). The designation last filed with the Committee shall control.

If any Participant shall fail to designate a beneficiary or if the person or persons designated predecease the Participant and there is no designated successor, the Participant's

beneficiary shall be the following in the order named:

- a. Surviving Spouse at date of death,
- b. Then living issue, PER STIRPES (lawful issue and adopted),
- c. Then living parents, in equal shares,
- d. Brothers and sisters, in equal shares, provided that if any brother or sister is not then living, his or her share shall be distributed to his or her then living issue, per stirpes, and
- e. Estate of the Participant.

DEATH PRIOR TO COMMENCEMENT OF BENEFITS. A Participant's beneficiary shall receive the Participant's Accrued Benefit in a single payment. The beneficiary may select the date of payment, subject to the following rules:

- a. A beneficiary may elect to receive payment on any date that is a reasonable time after the Participant's death.
- b. All payments to the beneficiary shall be completed by December 31 of the calendar year in which the fifth anniversary of the Participant's death occurs, except that such payments may extend beyond that five-year period if the Participant designated a beneficiary who is the Participant's Spouse, and that beneficiary elects to have payments commence not later than the later of (a) December 31 of the calendar year in which the Participant would have attained age 70 1/2 or (b) December 31 of the calendar year in which the fifth anniversary of the Participant's death occurs.

The beneficiary's selection of the date of payment shall be in writing on a form furnished by the Committee. If the beneficiary is the Participant's Spouse and the Spouse elects to postpone payment of the Participant's Accrued Benefit, the Spouse shall designate a beneficiary

or beneficiaries in accordance with the provisions of this Paragraph B as if the Spouse was the Participant. If such Spouse dies before payments commence hereunder, the provisions of this Paragraph B shall be applied as if the Spouse was the Participant.

If the Participant's beneficiary fails to make a written election as to the time of payment before December 31 of the calendar year in which the fifth anniversary of the Participant's death occurs, and the Participant did not designate his Spouse as beneficiary, the Committee shall direct the Trustee to pay the benefit in a single sum to the Participant's beneficiary not later than such December 31. If the Participant's Spouse as designated beneficiary fails to make a written election as to the form and time of payment before the later of (i) December 31 after the Participant would have attained age 70 1/2 or (ii) December 31 of the calendar year in which the fifth anniversary of the death of the Participant occurs, the Committee shall direct the Trustee to distribute the Participant's Accrued Benefit in a single sum on or before the later of December 31 of the calendar year in which the Participant would have attained age 70 1/2 or December 31 of the calendar year in which the fifth anniversary of the death of the Participant occurs.

A payment hereunder shall be valued as of the Valuation Date coinciding with or preceding the date of such payment, plus any contributions and minus any withdrawals since such Valuation Date, and adjusted to reflect profits and losses since such Valuation Date in accordance with procedures adopted by the Committee from time to time and uniformly applied.

C. **DISABILITY.** Disability means that a Participant, by reason of mental or physical disability, is incapable of performing the duties of his customary position with the Employer for an indefinite period which, in the opinion of the Committee, is expected to be of a long continual duration. In the event of disability, said Participant's Accrued Benefit shall be distributed to him if he so elects in the same manner as if he had attained full retirement age as provided in Paragraph A above. Such benefit shall be valued as of the Valuation Date coinciding with or

immediately preceding the date of distribution, plus any tax-deferred and minus any withdrawals since such Valuation Date. Disability shall be established to the satisfaction of the Committee. If the Participant shall disagree with the Committee's findings, disability shall be established by the certificate of a physician, selected by the Participant and approved by the Committee, or if the physician selected by the Participant shall not be approved by the Committee, then by a majority of three physicians, one selected by the Participant (or his Spouse, child, parent, or legal representative in the event of his inability to select a physician), one by the Committee, and the third by the two physicians selected by the Participant and the Committee.

D. TERMINATION OF EMPLOYMENT. In the event a Participant voluntarily or involuntarily terminates employment with a nonforfeitable Accrued Benefit of \$5,000 or less, the Participant shall be paid such Accrued Benefit in a single payment as soon as is reasonably possible after the date he terminates employment. If the Participant's nonforfeitable Accrued Benefit exceeds \$5,000 at the time it first becomes available for distribution, such benefit shall be paid as provided in Paragraph A(4) of this Article within 60 days after the close of the Plan Year in which the Participant attains Normal Retirement Age, unless the Participant consents to an earlier distribution or elects to defer payments as provided in Paragraph A(3) of this Article.

If, at the time a Participant terminates employment, the Participant has completed 1,000 Hours of Service in the Plan Year, the vesting percentage used to compute his distribution shall reflect an additional Year of Service.

The Committee shall file such reports with the Secretary of Labor and Treasury and provide such information to a terminated Plan Participant as is required by law and regulations.

Anything in this Article VII, Paragraph D to the contrary notwithstanding, the forfeitable portion of a Participant's account shall be subject to the forfeiture provisions of Article V, Paragraph F.

E. TIME OF FIRST PAYMENT. Upon death, attainment of normal retirement age by a Participant who has separated from service with the Employer, termination of employment with a vested Accrued Benefit of less than \$5,001, or receipt by the Committee of a disabled Participant's election to receive disability benefits, distribution of an affected Participant's nonforfeitable Accrued Benefit shall commence as soon as is reasonably possible, but in no event shall distribution commence later than sixty (60) days following the Plan Year during which such aforementioned event occurs, provided that if a Participant or beneficiary is entitled to elect to defer receipt of such a distribution pursuant to the provisions of Paragraphs A(3) or B of this Article VII and such an election is made, commencement of benefits shall be deferred to the date elected by the Participant or beneficiary.

F. DISTRIBUTION OF ALLOCATION ATTRIBUTABLE TO LAST YEAR OF PARTICIPATION. The amount, if any, allocated to the Participant's account for the Plan Year in which an event described in Paragraph E occurs shall be paid no later than sixty days after the end of such Plan Year, unless the Participant or beneficiary elects to defer the commencement of benefits in accordance with Paragraph A(3) or B of this Article VII, or fails to consent to the distribution as required by this Article.

G. DISTRIBUTION TO PERSONS UNDER DISABILITY. Distributions to minors or incompetents may be made by the Trustee either (1) directly to the minor, (2) to the legal guardians of the minor or incompetent, or (3) to the parent of the minor. The Trustee shall not be required to see to the application of any such distribution so made to any of said persons, but his or their receipts therefor shall be a full discharge of the Trustee.

H. NO REDUCTION IN BENEFITS BY REASON OF INCREASE IN SOCIAL SECURITY BENEFITS. Notwithstanding any other provision of the Plan, in the case of a Participant who is receiving benefits under the Plan, or in the case of a Participant who has terminated employment with the

Employer and who has a nonforfeitable Accrued Benefit, such benefits will not be decreased by reason of any increase in the benefit levels payable under Title II of the Social Security Act.

ARTICLE VIII.

PROVISION AGAINST ANTICIPATION

A. **NO ALIENATION OF BENEFITS.** Until distribution pursuant to the terms hereof and except as hereinafter provided in this Article VIII, no Participant shall have the right or power to alienate, anticipate, commute, pledge, encumber, or assign any of the benefits, proceeds, or avails of the funds set aside for him under the terms of this Plan, and no such benefits, proceeds, or avails shall be subject to seizure by any creditor of the eligible Employee under any writ or proceedings at law or in equity.

B. **QUALIFIED DOMESTIC RELATIONS ORDERS.** Notwithstanding any other Plan provision, the following procedures shall apply when any domestic relations order (entered on or after January 1, 1985) is received by the Plan with respect to a Participant.

1. The Committee shall promptly notify the Participant, and (a) each person named in the order as entitled to payment of Plan benefits, and (b) any other person entitled to any portion of the Participant's Plan benefits (persons referred to in (a) and (b) are hereafter alternate payees) of the receipt of such order and of the Committee's procedures for determining the qualified status of the order. The Committee shall permit each alternate payee to designate a representative for receipt of copies of notices.

2. Immediately upon receipt of such order, the Committee shall direct the Trustee to segregate in a separate account the amounts which are in pay status and which are payable to the alternate payee under the order.

3. The Committee shall meet promptly after receipt of the order and determine whether the order is a Qualified Domestic Relations Order. The Committee shall

promptly notify the Participant and each alternate payee of its decision. A Qualified Domestic Relations Order is any judgment, decree or order (including approval of a property settlement agreement) that:

- a. Relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a Participant;
 - b. Is made pursuant to a State domestic relations law (including a community property law);
 - c. Creates or recognizes the existence of an alternate payee's right to receive all or a portion of a Participant's Plan benefits;
 - d. Clearly specifies (i) the name and last known mailing address, if any, of the Participant, and the name and mailing address of each alternate payee covered by the order; (ii) the amount or percentage of the Participant's benefits to be paid by the Plan to each alternate payee, or the manner in which the amount or percentage is to be determined; (iii) the number of payments or period to which the order applies; and (iv) the plan to which the order applies;
 - e. Does not require the Plan to provide any form of benefit not otherwise provided by the Plan or any increased benefits, and does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a Qualified Domestic Relations Order.
4. The Committee's decision shall be final unless the Participant or an alternate payee gives written notice of appeal within 60 days after receipt of the Committee's decision.
5. If within 18 months an order is finally determined to be a Qualified Domestic Relations Order, the segregated amounts plus interest (if any) shall be paid to the

persons entitled thereto, and thereafter the alternate payee shall receive payments pursuant to the terms of the order. Amounts subject to the order which are not in pay status shall be transferred to a separate account in the name of the alternate payee and thereafter held for such payee's benefit pursuant to the terms of the order. If within 18 months the order is determined not to be a Qualified Domestic Relations Order, or if the issue has not been finally determined, the Committee shall pay the segregated amounts to the person who would have been entitled thereto if there had been no order. Any determination that an order is qualified after the close of the 18 month period shall be applied prospectively only.

6. The Committee's procedures shall generally conform to the Plan's claims procedures.

ARTICLE IX.

ADMINISTRATIVE COMMITTEE - NAMED

FIDUCIARY AND ADMINISTRATOR

A. APPOINTMENT OF COMMITTEE. The Board of Directors of the Employer shall appoint an Administrative Committee of one or more persons (herein referred to as the "Committee"). The Committee shall perform administrative duties set forth in part hereinafter and serve for such terms as the Board of Directors may designate or until a successor has been appointed or until removal by the Board of Directors. The Board of Directors shall advise the Trustee in writing of the names of the members of the Committee and any changes thereafter made in the membership of the Committee. Vacancies due to resignation, death, removal, or other causes shall be filled by the Board of Directors. Members shall serve without compensation for service. All reasonable expenses of the Committee shall be paid by the Employer. The number of Committee members may be changed by the Board of Directors of the Employer at any time.

B. COMMITTEE ACTION. The Committee shall choose a secretary who shall keep minutes of the Committee's proceedings and all data, records, and documents pertaining to the Committee's administration of the Plan. The Committee shall act by a majority of its members at the time in office, and such action may be taken either by a vote at a meeting or in writing without a meeting. The Committee may by such majority action authorize its secretary or any one or more of its members to execute any document or documents on behalf of the Committee, in which event the Committee shall notify the Trustee in writing of such action and the name or names of those so designated. The Trustee thereafter shall accept and rely conclusively upon any direction or document executed by such secretary, member, or members as representing action by the Committee until the Committee shall file with the Trustee a written revocation of such designation. A member of the Committee who is also a Participant hereunder shall not vote or act upon any matter relating solely to himself.

C. RIGHTS AND DUTIES. The Committee shall be the Plan administrator and named fiduciary of the Plan and shall have the power and authority in its sole, absolute and uncontrolled discretion to control and manage the operation and administration of the Plan and shall have all powers necessary to accomplish these purposes. The responsibility and authority of the Committee shall include but shall not be limited to the following:

1. Determining all questions relating to the eligibility of Employees to participate;
2. Computing and certifying to the Trustee the amount and kind of benefit payable to Participants, Spouses and beneficiaries;
3. Authorizing all disbursements by the Trustee from the Trust;
4. Establishing and reducing to writing and distributing to any Participant or beneficiary a claims procedure, and administering that procedure including the processing and

determination of all appeals thereunder;

5. Maintaining all necessary records for the administration of the Plan other than those which the Trustee has specifically agreed to maintain pursuant to this Plan and Trust Agreement; and

6. Interpretation of the provisions of the Plan and publication of such rules for the regulation of the Plan as in the Committee's sole, absolute and uncontrolled discretion are deemed necessary and advisable and which are not inconsistent with the terms of the Plan or ERISA.

D. INVESTMENTS. The Committee shall be the named fiduciary with respect to the control and management of the assets of the Plan and may appoint in writing one or more investment managers, including insurance companies, banks or investment advisors registered under the Investment Advisors Act of 1940 to manage and control the investments of the Plan. Alternatively, or in addition, the Committee may instruct the Trustee in writing to invest plan assets in shares of one or more registered investment companies selected by the Committee. Each investment manager selected by the Committee shall acknowledge in writing that it is fiduciary of the Plan and that it has complied with all bonding requirements of ERISA. Any such investment manager shall provide evidence satisfactory to the Committee of its fiduciary liability insurance with limits deemed adequate by the Committee. With respect to a Participant who elects to direct the investment of his or her own account through an individual brokerage account established with the Employer, the Committee shall have no responsibility or authority to control or manage the assets of the Plan allocated to the account.

E. INFORMATION - REPORTING AND DISCLOSURE. To enable the Committee to perform its functions, the Employer shall supply full and timely information to the Committee on all matters relating to the compensation of all Participants, their continuous regular employment,

their retirement, death, or the cause for termination of employment, and such other pertinent facts as the Committee may require, and the Committee shall furnish the Trustee such information as may be pertinent to the Trustee's administration of the Plan. The Committee as Plan Administrator shall have the responsibility of complying with the reporting and disclosure requirements of ERISA to the extent applicable.

F. STANDARD OF CARE IMPOSED UPON THE COMMITTEE. The Committee shall discharge its duties with respect to the plan solely in the interest of the participants and beneficiaries and (1) for the exclusive purpose of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of the Plan; (2) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; (3) by diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (4) in accordance with the Plan and Trust Agreement.

G. ALLOCATION AND DELEGATION OF RESPONSIBILITY. The Committee may by written rule promulgated under Paragraph C above allocate fiduciary responsibilities among Committee members and may delegate to persons other than Committee members the authority to carry out fiduciary responsibilities under the Plan, provided that no such responsibility shall be allocated or delegated to the Trustee without its written consent.

In the event that a responsibility is allocated to a Committee member, no other Committee member shall be liable for any act or omission of the person to whom the responsibility is allocated except as may be otherwise required by law. If a responsibility is delegated to a person other than a Committee member, the Committee shall not be responsible or liable for an act or omission of such person in carrying out such responsibility except as may

otherwise be required by law.

H. BONDING. Where required by law, each fiduciary of the Plan and every person handling Plan funds shall be bonded. It shall be the obligation of the Committee to assure compliance with applicable bonding requirements. The Trustee shall not be responsible for assuring compliance with the bonding requirements.

I. CLAIMS PROCEDURE. As required by Paragraph C, the Committee shall establish a claims procedure which shall be reduced to writing and provided to any Participant or beneficiary whose claim for benefits under the Plan has been denied. The procedure shall provide for adequate notice in writing to any such Participant or beneficiary and the notice shall set forth the specific reasons for denial of benefits written in a manner calculated to be understood by the Participant or beneficiary. The procedure shall afford a reasonable opportunity to the Participant or beneficiary for a full and fair review by the Committee of the decision denying the claim. The Trustee shall have no responsibility for establishing such a procedure or assuring that it is carried out.

J. FUNDING POLICY. The Committee shall be responsible for establishing and carrying out a funding policy for the Employer's Plan. In establishing such a policy, the short-term and long-term liquidity needs of the Plan shall be determined to the extent possible by considering among other factors the anticipated retirement date of Participants, turnover and contributions to be made by the Employer. The funding policy and method so established shall be communicated to the Trustee.

K. INDEMNIFICATION. The Employer does hereby indemnify and hold harmless each Committee member and the Trustee from any loss, claim, or suit arising out of the performance of obligations imposed hereunder and not arising from said Committee member's or Trustee's willful neglect or misconduct or gross negligence.

ARTICLE X.

INVESTMENT OF TRUST FUNDS

A. INVESTMENTS. Each Participant may elect to direct the investment of his account through one (but not a combination of both) of the following:

(1) by establishing an individual brokerage account with a brokerage firm selected by the Committee, or (2) by choosing among the pooled investment funds offered under the Plan, which shall be designated by the Committee and are subject to change from time to time.

To the extent a Participant exercises control over the investment of his account, the Trustee shall have no responsibility or authority to invest or reinvest, manage or control the assets of such account.

Each pooled investment fund offered under the Plan shall consist of a diversified portfolio of securities under the management of an investment manager selected by the Committee or a registered investment company selected by the Committee. Participant direction with respect to the investment of his or her accounts shall be made in accordance with rules adopted by the Committee and uniformly applied. Transfer among the accounts or from the brokerage account to the pooled funds shall be permitted by the Committee pursuant to rules adopted by the Committee and uniformly applied. In the event a participant fails to direct the investment of his account, the account shall be invested in such pooled fund or funds as shall be selected by the Trustee.

Subject to Paragraph C of this Article X, the Trustee is hereby granted full power and authority to invest to reinvest the principal and income of the Trust Fund in such assets as shall be directed by the Committee or the investment manager or managers. Without limiting the generality of the foregoing, the Trustee may invest in common stocks, collective investment funds (the terms of which are incorporated herein by reference), registered investment company

shares, real estate, government, municipal or corporate bonds, debentures or notes, or any other form of income producing property, whether real, personal or mixed, including corporate stock, corporate stock and life insurance policies on key employees or the employer for the benefit of the Trust.

The Trustee shall not be liable for any loss or for any breach of fiduciary responsibility which results from a Participant's exercise of control over all or part of the investment plan accounts.

B. STANDARD OF CARE IMPOSED UPON TRUSTEE. The Trustee shall discharge its responsibilities hereunder solely in the interests of the Participants and beneficiaries and (1) for the exclusive purpose of providing benefits to Participants and their beneficiaries, and defraying reasonable expenses of administering the Plan; (2) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man 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; (3) by diversifying the investments of the Plan so as to minimize the risk of large losses; and (4) in accordance with the terms of this Plan and Trust Agreement.

C. APPOINTMENT OF INVESTMENT MANAGER. The Committee may appoint an Investment Manager or Managers to manage all or any portion of the Plan assets. Such Investment Manager or Managers shall be registered as an investment advisor under the Investment Advisor Act of 1940 or shall be a bank or insurance company exempt from registration. If an Investment Manager or Managers is appointed to manage and control all or any portion of the Plan assets, the Trustee and the Committee shall exercise no authority or discretion in the management and control of such assets. The Trustee shall invest and reinvest such assets in accordance with the instructions of the Investment Manager or Managers appointed by the Committee.

The Committee may terminate the appointment of any Investment Manager or modify the terms of such appointment by written notice to the Trustee and the Investment Manager. No appointment of any Investment Manager shall be effective until the Investment Manager has acknowledged in writing that it is a fiduciary of the Plan and has complied with all applicable bonding requirements of ERISA.

An Investment Manager appointed by the Committee shall discharge its duties in accordance with the standard of care imposed by Paragraph B of this Article.

The Trustee and the Committee shall not be liable for the acts or omissions of such Investment Manager or Managers appointed by the Committee nor be under any obligation to invest or otherwise manage any asset of the Trust Fund which is subject to the management of such Investment Manager or Managers.

ARTICLE XI.

POWERS AND DUTIES OF TRUSTEE

A. POWERS OF TRUSTEE. The Trustee shall have the power with regard to Trust property:

1. to sell, convey, transfer, mortgage, pledge, lease, or otherwise dispose of the same without the approval of any court and without obligation upon any person dealing with the Trustee to see to the application of any money or other property delivered to it;
2. to exchange property or securities for other property or securities;
3. to keep any or all securities or other property in the name of a nominee;
4. to vote, either in person or by proxy, any shares of stock held as part of the assets of this Trust;
5. to collect the principal or income of the Trust as the same shall become due and payable and, if necessary, to take such legal action as it determines to be in the best

interest of the Trust to collect any sum of money due the Trust. The Trustee shall be under no obligation to commence suit unless it shall have been first indemnified by the Trust Fund with respect to expenses or losses to which it may be subjected through taking such action;

6. to borrow money for Trust purposes and to have power to execute and deliver notes, mortgages, pledges, or other instruments as may be necessary in connection therewith;

7. to pay the expenses of the Trust out of the Fund, including any taxes and reasonable compensation for its services as Trustee, if and to the extent that the Employer does not pay such expenses and compensation; provided, however, all expenses incurred by a Participant in directing the investment of his individual Plan Account(s) shall be paid from such Account(s);

8. generally to do all such acts, execute all such instruments, take all such proceedings, and exercise all such rights and privileges with relation to the assets of the Trust as it deems necessary to carry out its obligations hereunder to the extent consistent with the rights of Participants and beneficiaries and the standard of care imposed by Paragraph B of Article X.

B. ANNUAL ACCOUNTS. The Trustee within a reasonable period following the close of each Plan Year of the Trust (not to exceed 120 days) shall render to the Employer and to the Committee a certified account of its administration of the Trust during the preceding year which shall include such information maintained by the Trustee which is necessary to enable the Plan Administrator to comply with the reporting requirements of federal law. The Trustee is hereby relieved of all obligations of the Trustees Accounting Act of the State of Washington.

C. NOTICES AND DIRECTIONS. Whenever a notice or direction is given to the Trustee, the instrument shall be signed in the name of the Committee as authorized in Paragraph B of Article X. The Trustee shall be protected in acting upon any such notice, resolution, order,

certificate, opinion, telegram, letter, or other document believed to be genuine and to have been signed by the proper party or parties and may act thereon without notice to any Participant and without considering the rights of any Participant. The Trustee shall not be required to determine or make any investigation to determine the identity or mailing address of any person entitled to benefits under the Plan and shall send checks and other papers to such persons at addresses as may be furnished it by the Committee. Provided, that, a notice or direction by a Participant who has elected to direct the investment of his individual Plan Accounts shall be signed by the Participant, and the Trustee shall be protected in acting upon any such notice, resolution, order, certificate, opinion, telegram, letter or other document believed to be genuine and to have been signed by the Participant and may act thereon without notice to any Participant.

ARTICLE XII.

TRUST CONSTRUCTION

This agreement shall be construed in accordance with ERISA and regulations issued thereunder and, to the extent applicable, the laws of the State of Washington.

ARTICLE XIII.

LIABILITY OF TRUSTEE

A. **ACTIONS OF TRUSTEE CONCLUSIVE.** In the performance of its duties under this Trust, the Trustee shall exercise good faith and comply with the standard of care imposed upon it and with the terms of this agreement. The Trustee shall have the authority to interpret its responsibilities hereunder and in the absence of fraud or breach of fiduciary responsibility, the Trustee's interpretation shall be conclusive. In case any dispute or doubt arises as to the Trustee's rights, liabilities or duties hereunder, the Trustee may employ counsel and take the advice of such counsel as it may select and shall be fully protected in acting upon and following such advice except to the extent otherwise provided by law.

B. DISTRIBUTIONS BY TRUSTEE. Until the Trustee receives written notice of any agreement or occurrence having effect upon any rights hereunder, including but not limited to birth, marriage, divorce, death, and/or agreements between Spouses, the Trustee shall incur no liability for distributions made pursuant to the Committee's instructions.

ARTICLE XIV.

RESIGNATION OR REMOVAL OF TRUSTEE

A. RESIGNATION. The Trustee may resign at any time by giving the Employer sixty (60) days' written notice of such resignation, sent by registered mail, addressed to the last known offices of the Employer, and in such event the Employer shall designate a successor Trustee within sixty (60) days, failing in which the Trustee shall petition the Superior Court of the State of Washington to designate a successor Trustee, which successor Trustee may be a corporate Trustee or an individual Trustee.

B. REMOVAL. The Employer may, by action of its Board of Directors, remove a Trustee, with or without cause, by giving the Trustee at least sixty (60) days' written notice and by appointing a successor Trustee or Trustees, corporate or individual, or any combination of Trustees.

C. WAIVER. The Trustee and the Employer may agree to waive such written notice or may cause a resignation or removal to become effective before the running of the notice period.

D. SETTLEMENT OF ACCOUNT. In the case of the resignation or removal of the Trustee, the Trustee shall have the right to a settlement of its account, which may be made, at the option of the Trustee, either (1) by judicial settlement in an action instituted by the Trustee in a court of competent jurisdiction, or (2) by agreement of settlement between the Trustee, Committee, and the Employer. Upon such settlement, all right, title, and interest of such Trustee in the assets of

the Trust and all rights and privileges under this agreement theretofore vested in such Trustee shall vest in the successor Trustee, and thereupon all of such Trustee's responsibility hereunder shall terminate, provided, however, that the Trustee shall execute, acknowledge, and deliver all documents and written instruments which are necessary to transfer and convey the right, title, and interest in the trust assets and all rights and privileges to the successor Trustee.

E. DUTIES BEFORE AND AFTER SUCCESSOR'S APPOINTMENT. Pending appointment of any successor Trustee and acceptance of such appointment, the remaining Trustee or Trustees shall have full power and authority to take any action hereunder. Upon accepting appointment as a successor Trustee, the successor Trustee shall have the same duties and obligations as those imposed upon the Trustee by this Agreement, provided, however, no successor Trustee shall be liable or responsible for anything done or omitted in the administration of the Fund prior to the date he became Trustee.

ARTICLE XV.

SUITS

If any person or party to this agreement shall request the Trustee to bring any action at law or suit in equity to determine any of the provisions or rights arising out of this agreement, the Trustee shall not be obligated to bring such suit unless the Trustee is fully indemnified for all costs of such action, including a reasonable sum for attorneys' fees.

ARTICLE XVI.

MERGERS AND CONSOLIDATIONS

In the case of any merger or consolidation with any other plan or a transfer of assets or liabilities to any other plan, each Participant shall be entitled to receive a benefit immediately after such a merger, consolidation or transfer, which is equal to the benefit he would have been entitled to immediately before if the Plan had been terminated.

ARTICLE XVII.

AMENDMENT AND TERMINATION OF PLAN AND TRUST

A. **RIGHT TO AMEND AND TERMINATE.** The Employer represents that the Plan is intended to be a continuing and permanent program for Participants, but reserves the right to terminate the Plan and Trust at any time. The Employer may, by action of the Board, modify, alter, or amend this Plan and Trust in whole or in part, provided that no such modification, alteration, or amendment shall enlarge the duties or liabilities of the Trustee without its consent, nor reduce the Participant's Accrued Benefit hereunder, except to the extent permitted by Code Section 412(c)(8). For purposes of this Article, a Plan amendment which has the effect of (1) eliminating or reducing an early retirement benefit or retirement-type subsidy, or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment, shall be treated as reducing the Accrued Benefit. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy.

B. **NO REVESTING.** No termination, modification, alteration, or amendment shall have the effect of revesting in the Employer any part of the principal or income of the Trust, except as otherwise permitted by the Plan.

C. **EXCLUSIVE BENEFIT OF EMPLOYEES.** At no time during the existence of this Plan and Trust or at its termination may any part of the Trust corpus or income be used for or directed to purposes other than for the exclusive benefit of the Participants hereof or their beneficiaries.

D. **TERMINATION.**

1. This Plan and Trust shall terminate upon the occurrence of any of the following:

a. Written notice of the Employer to the Trustee;

b. Complete discontinuance of contributions by the Employer;

c. The dissolution or merger of the Employer unless a successor to the business agrees to continue the Plan and Trust by executing an appropriate agreement, in which event such successor shall succeed to all the rights, powers and duties of the Employer.

2. In the event that the Employer is taken over by a successor who agrees to continue the Plan, the employment of any Employee who is continued in the employ of such successor shall not be deemed to have been terminated or severed for any purpose hereunder.

3. Notwithstanding any provision hereof to the contrary, upon termination or partial termination of the Plan and Trust, or upon complete discontinuance of contributions to the Plan, the interest of all affected Participants and all unallocated units, shares, or amounts shall fully vest and become nonforfeitable. Upon termination, the Trust Fund shall be liquidated by the Trustee as promptly as shall then be reasonable under the circumstances, and each Participant shall receive his Accrued Benefit in the form described in Article VII, Paragraph A(4), provided that a Participant shall not receive his Tax-Deferred Contribution Account or any qualified nonelective contributions under Code Section 401(m)(4) (C), and any income thereon, on account of Plan termination unless the Plan termination occurs without the establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan).

ARTICLE XVIII.

TOP HEAVY PLANS DEFINED AND OTHER DEFINITIONS

A. TOP HEAVY PLAN. The Plan is Top Heavy and subject to the requirements of this Article and Article XIX if for a Plan Year, as of the Determination Date, the Accrued Benefits of Key Employees in the Plan aggregated with the Accrued Benefits of Key Employees in all qualified plans maintained by the Employer and each member of the Controlled Group exceed 60% of the Accrued Benefits of all employees (excluding Non-Key Employees who were Key

Employees in a prior plan year) in all qualified plans maintained by the Employer and all members of the Controlled Group which are in the Required Aggregation Group (the Top Heavy Test). Provided, the foregoing shall not apply and the Plan shall not be Top Heavy if the Plan is Permissively Aggregated and as a result the Top Heavy Test results in a percentage of 60% or less.

B. ADDITIONAL DEFINITIONS FOR USE IN THIS ARTICLE AND ARTICLE XIX.

1. ACCRUED BENEFITS. Accrued Benefits means:

a. for each defined contribution plan, the Employee's account balances as of the Valuation Date coinciding with the Determination Date, adjusted for contributions required to be made under Code Section 412, and to be allocated as of a date not later than the Determination Date, although not yet contributed; and

b. for each defined benefit plan, the present value as of the Valuation Date coinciding with the Determination Date of the employee's accrued benefits determined pursuant to the plan's provisions.

In computing a. and b., all benefits attributable to Employer contributions and all benefits attributable to Employee contributions (excluding deductible Employee contributions, if any) are to be taken into consideration. All such benefits of individuals who have not performed services for the Employer or a member of the Controlled Group maintaining this Plan any time during the five-year period ending on the Determination Date are not taken into consideration. All distributions made in the Plan Year including the Determination Date and in the four preceding Plan Years are to be added back, including distributions from a terminated plan of a member of the Controlled Group, and excluding amounts which were rolled over or transferred to a plan of a member of the Controlled Group under circumstances which require such amounts to be considered part of the accrued benefit under the recipient plan. Rollovers and transfers to this

Plan or a plan of a member of the Controlled Group initiated by an Employee and made after December 31, 1983, are not to be taken into consideration in computing a. and b. above. Such rollovers and transfers on or prior to such date are to be considered. No accrued benefits of a Non-key Employee with respect to this Plan or any plan aggregated under subparagraph 7 or 8 below) for a Plan Year shall be taken into consideration if the Non-Key Employee was a Key Employee with respect to such plan for any prior Plan Year.

2. CONTROLLED GROUP. Controlled Group means all employers required to be aggregated under Code Section 414(b), (c) or (m).

3. DETERMINATION DATE. Determination Date means the last day of the plan year preceding the plan year in question or, in the first plan year, the last day thereof. Where plans other than this Plan are in question, the Determination Date for each plan shall be the last date of the plan year that falls within the same calendar year.

4. KEY EMPLOYEE. Key Employee means any employee or former employee of an employer (including the beneficiary of any such deceased person) who at any time during the Plan Year or any of the four preceding Plan Years is or was:

a. an officer receiving annual Compensation greater than 50% of the dollar limit in effect under Code Section 415(b)(1)(A) for any such plan year. The number of officers of all members of the Controlled Group required to be taken into account shall be limited to 50 employees (or, if lesser, the greater of three or ten percent of employees) and shall not include employees described in Code Section 414(q)(8);

b. one of the ten employees (i) receiving annual Compensation greater than the dollar limit in effect under Code Section 415(c)(1)(A) for any such plan year and (ii) owning the largest interest of the employer; provided that if two employees own the same interest in the employer, the employee receiving greater annual Compensation shall be treated as

having a larger interest;

c. an employee owning more than five percent of the Employer;

d. an employee receiving annual Compensation in excess of \$150,000 and owning more than one percent of the employer.

In determining ownership of an employer, the rules of Code Section 318 shall be applied substituting 5 percent for 50 percent in subparagraph (C) of Code Section 318(a)(2). In the case of an unincorporated employer, ownership shall be determined in accordance with regulations promulgated by the Secretary of the Treasury. Code Section 414(b),(c) and (m) shall not apply for purposes of determining ownership of an employer.

5. **MINIMUM BENEFIT ACCRUAL.** Minimum Benefit Accrual means a benefit payable in the form of a life annuity at normal retirement age under a defined benefit plan which equals not less than the lesser of (1) 20% of average Compensation or (2) 2% of average Compensation times Years of Service. Average Compensation means the average of the employee's Compensation for the five consecutive years when the employee had the highest aggregate Compensation. Years of Service prior to January 1, 1984 are not taken into account. A Year of Service is disregarded if the Plan is not Top Heavy for the Plan Year ending during the Year of Service. Compensation in years following the last Plan Year in which the Plan is top heavy is not taken into account.

6. **NON-KEY EMPLOYEE.** Non-key Employee means any employee who is not a Key Employee.

7. **PERMISSIVELY AGGREGATED.** Permissively Aggregated means:

a. the Required Aggregation Group; and

b. such additional plans which may be aggregated without violating the requirements of Code Sections 410 and 401(a)(4).

8. Required Aggregation Group. Required Aggregation Group means:

- a. all qualified plans of the employer and each member of the Controlled Group in which a Key Employee is a participant; and
- b. each other qualified plan which must be considered along with the plans in a. in order for the Plan to meet the requirements of Code Sections 410(b) and 401(a)(4).

9. SUPER TOP HEAVY PLAN. A Super Top Heavy Plan is a Top Heavy Plan as defined in this Plan with 90% substituted for 60% in the Top Heavy Test.

ARTICLE XIX.

ADDITIONAL REQUIREMENTS APPLICABLE TO TOP HEAVY PLANS

A. **MINIMUM VESTING REQUIREMENTS.** For each Plan Year that the Plan is subject to the provisions of this Article, a Participant's nonforfeitable Accrued Benefit in his Employer Contribution Account, shall be determined in accordance with the schedule in Article VI.

B. MINIMUM EMPLOYER CONTRIBUTIONS.

1. **GENERAL RULE.** Except as provided in subparagraphs 2. and 3. hereof, for each Plan Year that the Plan is subject to the provisions of this Article, each Non-key Employee Participant shall receive an allocation, without regard to any Social Security contribution, to his Employer Contribution Account of the lesser of:

- a. three percent of his Compensation (as defined in Article II, Paragraph F), or
- b. the highest percentage of Compensation (as defined in Article II, Paragraph F) allocated to the account of a Key Employee. This subparagraph b. shall not apply and the required contribution shall be 3% if exclusion of the Plan from the Required Aggregation Group would cause a defined benefit plan in the Required Aggregation Group to fail to meet the

requirements of Code Section 401(a)(4) or 410.

In applying this subparagraph 1., failure of a Participant to complete a Year of Service, make mandatory contributions, if required, or receive Compensation sufficient to justify an allocation during the Plan Year shall not render such Participant ineligible to receive a minimum employer contribution under this Paragraph B.

2. EXCEPTIONS. Subparagraph 1. does not apply with respect to a Participant who

a. terminates employment with the Employer and all members of the Controlled Group prior to the last day of the Plan Year, or

b. is a participant in another defined contribution plan which is in the Required Aggregation Group and receives an allocation to his employer contribution account in such plan equal to the above (for the plan year ending on or before the Determination Date), or

c. is a participant in a defined benefit plan which is in the Required Aggregation Group and receives thereunder for the plan year the Minimum Benefit Accrual for the plan year ending on or before the Determination Date.

3. EMPLOYEE PARTICIPATING IN DEFINED BENEFIT PLAN. For each Non-Key Employee Participant who is also a participant in a defined benefit plan which is in the Required Aggregation Group and which does not provide the Minimum Benefit Accrual for the plan year ending on or before the Determination Date, subparagraph 1. shall be applied substituting 5% of compensation for subparagraphs 1.a. and b.

4. SPECIFIC RULES. In determining the Minimum Employer Contribution hereunder, the following rules shall govern:

a. Compensation in excess of \$200,000 (as adjusted pursuant to Code Section 416(d) (2)) shall not be considered.

b. The Non-key Employee's account will receive the Minimum Employer Contribution notwithstanding a waiver of the minimum funding requirements of Code Section 412.

c. Tax-deferred contributions by Non-Key Employees to a qualified plan shall be disregarded; tax-deferred contributions by Key Employees shall be taken into account in determining the minimum required employer contribution hereunder.

C. ADJUSTMENT TO MAXIMUM PERMISSIBLE BENEFITS WHERE EMPLOYER MAINTAINS A DEFINED CONTRIBUTION PLAN AND A DEFINED BENEFIT PLAN. If the Plan is subject to the provisions of this Article for a Plan Year, the number "1" shall be substituted for the number "1.25" in the definition of defined benefit fraction and defined contribution fraction as defined in Article V, Paragraph E.3. hereof. The Plan shall be subject to the requirements of this Paragraph for any Plan Year unless (1) the Minimum Employer Contribution required by Paragraph B hereof is not less than 4% or the Minimum Benefit Accrual is not less than the lesser of 3% per Year of Service or 30%, and (2) the Plan is not a Super Top-Heavy Plan.

ARTICLE XX.

RIGHT TO DISCHARGE EMPLOYEES

Neither the establishment of the Plan and Trust nor any modification thereof, nor the creation of any funds or accounts nor the payment of any benefit, shall be construed as giving any Participant, or any other person whomsoever, any legal or equitable right against the Employer, the Trustee, or the Committee unless the same shall be specifically provided for in this agreement or conferred by affirmative action of the Committee or the Employer in accordance with the terms and provisions of this agreement or as giving any Employee or Participant the right to be retained in the service of the Employer, and all Employees shall remain subject to discharge by the Employer to the same extent as if this Plan and Trust had never been

adopted.

ARTICLE XXI.

**RETURN OF CONTRIBUTIONS;
DECLARATION OF TRUST CONTINGENT
ON INTERNAL REVENUE SERVICE APPROVAL**

Contributions made hereto are conditioned on deductibility by the Employer under Section 404 of the Code, and such contributions may not be made under a mistake of fact.

Contributions may be returned to the Employer, in the amount involved, within one year of the mistaken payment of the contribution, or disallowance of a deduction, as the case may be.

This Plan and Trust shall be contingent upon a favorable Internal Revenue Service ruling as to the initial acceptability under Section 401(a) of the Internal Revenue Code, as amended, and exemption from income taxation under Section 501(a) of the Internal Revenue Code. In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, and if the Employer does not effect an amendment which will cure the defect, then this Plan and Trust will thereupon terminate and be of no further force or effect, and the Trustee shall forthwith return to the Employer the current value of all contributions made incident to that initial qualification by the Employer (plus income, less any fees or expenses allocable thereto) within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

ARTICLE XXII.

ROLLOVER CONTRIBUTIONS; TRUST TO TRUST TRANSFERS

A. ROLLOVER CONTRIBUTIONS TO THIS PLAN. Subject to such terms and conditions as may from time to time be established by the Committee, an Employee of the Employer, whether

or not a Participant, may make a rollover contribution to the Plan, provided that the rollover contribution does not result in this Plan becoming a transferee plan as defined in Code Section 401(a) (11)(B)(iii)(III). If a rollover contribution is to be made to this Plan directly from another plan that is subject to the qualified joint and survivor annuity requirements, the proper participant waiver and required spousal consent to that waiver must be obtained by the other plan prior to the direct rollover contribution to this Plan. The Committee shall be provided evidence to its satisfaction that the distribution is an eligible rollover distribution as defined in Paragraph C.1. below.

If an Employee has received an eligible rollover distribution from another qualified plan, or from an IRA that holds only assets from a qualified plan, the distribution must be contributed to this Plan within sixty (60) days following receipt of such amount by the Employee. All rollover contributions shall be accounted for separately but shall be invested and reinvested along with the assets of the Plan and treated in all respects as other assets of the Plan. The rollover contributions shall be credited to a special Rollover Account on behalf of the Employee. The Rollover Account shall, at all times, be 100% vested and nonforfeitable.

B. TRUST TO TRUST TRANSFERS. Paragraph C of this Article applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

C. DEFINITIONS.

1. **Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an

eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under

Section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

2. **ELIGIBLE RETIREMENT PLAN.** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

3. **DISTRIBUTEES.** A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in

Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

4. **Direct Rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

IN WITNESS WHEREOF, the parties hereto have caused this Plan and Trust to be executed the day and year first above mentioned.

F5 LABS, INC.

TRUSTEE:

/s/ Brian Dixon

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**FIRST AMENDMENT TO THE
F5 LABS, INC.**

401(k) PROFIT SHARING PLAN AND TRUST

F5 Networks, Inc., formerly F5 Labs, Inc., (the "Employer"), pursuant to Article XVII of the F5 Labs, Inc. 401(k) Profit Sharing Plan and Trust (the "Plan"), does hereby amend the Plan as follows, effective March 9, 1999:

1. The preamble to the Plan is hereby amended to change the name of the Employer to F5 Networks, Inc., and all internal references are also changed accordingly.
2. Article I is hereby amended in its entirety to read as follows:

The Plan and Trust shall be known as the F5 Networks, Inc.
401(k) Profit Sharing Plan and Trust (the "Plan").

IN WITNESS WHEREOF, the Employer has caused this Plan amendment to be executed this 1st day of June, 1999.

F5 NETWORKS, INC.

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**SECOND AMENDMENT TO THE
F5 NETWORKS, INC.**

401(k) PROFIT SHARING PLAN AND TRUST

F5 Networks, Inc. (the "Employer"), pursuant to Article XVII of the F5 Networks, Inc. 401(k) Profit Sharing Plan and Trust (the "Plan"), does hereby amend the Plan as follows, effective June 1, 1999:

1. Article II is amended to add, in alphabetical order, a new definition of "Employer Security" to read as follows and to reletter the paragraphs that follow and all internal references thereto correspondingly:

I. "Employer Security" means shares of the Employer's Common Stock.

2. Article VII, Paragraph A(4) is amended by adding thereto the following additional text at the end thereof:

A Participant entitled to receive a distribution whose account contains Employer Securities may elect to receive such securities in kind subject to the Committee's discretion to require by rule that the distribution be of a minimum number of shares.

3. Article IX is amended by adding a new Paragraph L to read as follows:

L. VOTING EMPLOYER SECURITIES. Each Participant may direct the Trustee with respect to the manner in which Employer Securities credited to his or her account shall be voted. Such instructions shall be provided pursuant to rules and procedures promulgated by the Committee. Any shares of Employer Securities with respect to which the Trustee receives no instructions shall not be voted by the Trustee, provided, the Committee may direct the Trustee to vote such shares if the Committee determines that such action is consistent with its fiduciary obligations under ERISA. The Committee shall establish procedures to assure the confidentiality of voting instructions received by Participants to assure that the same shall not be divulged or released to any person including officers and employees of any Employer.

4. Article X, Paragraph A, is amended to read as follows:

A. INVESTMENTS. Each Participant may elect to direct the investment of his accounts through one (but not a combination of both) of the following: (1) by establishing an individual brokerage account with a brokerage firm selected by the Committee, or (2) by choosing among the pooled investment funds offered under the Plan, which shall be designated by the Committee and are subject to change from time to time.

To the extent a Participant exercises control over the investment of his account, the Trustee shall have no responsibility or authority to invest or reinvest, manage or control the assets of such account.

Each pooled investment fund offered under the Plan shall consist of a diversified portfolio of securities under the management of an investment manager selected by the Committee or a registered investment company selected by the Committee. Participant direction with respect to the investment of his or her accounts shall be made in accordance with rules adopted by the Committee and uniformly applied. Transfer among the accounts or from the brokerage account to the pooled funds shall be permitted by the Committee pursuant to rules adopted by the Committee and uniformly applied. In the event a Participant fails to direct the investment of his account, the account shall be invested in such pooled fund or funds as shall be selected by the Trustee.

A Participant who has established an individual brokerage account may acquire Employer Securities either directly from the Employer or in the open market. No brokerage fees or commissions shall be charged by the Employer. Shares of Employer Securities acquired from the Employer in the initial public offering shall be at the offering price. Any shares thereafter purchased from the Employer shall be at the closing price of the Employer Securities on the previous day as reported by NASDAQ. Shares purchased on the open market shall be at the price obtained by the broker. Dividends on Employer Securities credited to the Participant's account will be paid in cash and credited to the Participant's individual brokerage account.

Subject to Paragraph C of this Article X, the Trustee is hereby granted full power and authority to invest to reinvest the principal and income of the Trust Fund in such assets as shall be directed by the Committee or the investment manager or managers. Without limiting the generality of the foregoing, the Trustee may invest in Employer Securities, common stocks, collective investment funds (the terms of which are incorporated herein by reference), registered investment company shares, real estate, government,

municipal or corporate bonds, debentures or notes, or any other form of income producing property, whether real, personal or mixed, including corporate stock, corporate stock and life insurance policies on key employees or the employer for the benefit of the Trust.

The Trustee shall not be liable for any loss or for any breach of fiduciary responsibility which results from a Participant's exercise of control over all or part of the investment plan accounts.

IN WITNESS WHEREOF, the Employer has caused this amendment to be executed this 1st day of June, 1999.

F5 NETWORKS, INC.

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SUMMARY PLAN DESCRIPTION

OF THE

F5 LABS, INC.

401(k) PROFIT SHARING PLAN AND TRUST

As in Effect: January 1, 1998

F5 Labs, Inc. 200 First Avenue West, Suite 500 Seattle, WA 98119

EIN: 91-1714307 Plan No. 001

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SECTION I. INTRODUCTION.

WHY DOES THE EMPLOYER HAVE A 401(k) SAVINGS PLAN?

F5 Labs, Inc. (the "Employer") has a 401(k) Savings Plan to help you save for your retirement. The Plan was originally effective January 1, 1998.

Please read this summary carefully. Its purpose is to explain how the Plan works, how you qualify for and ultimately receive Plan benefits, what benefits are available to you and what your rights are as a Plan participant.

Because this is only a Plan summary, you may have questions or wish additional information. To obtain further information about the Plan, please contact any member of the Administrative Committee. The Administrative Committee members are named in Section II of this booklet.

This summary describes the Plan as of January 1, 1998. If the language of this summary conflicts with the language of the Plan, the language of the Plan will control.

SECTION II. PLAN ADMINISTRATION.

1. HOW IS THE PLAN ADMINISTERED?

The Plan is administered by the Administrative Committee (the Plan Administrator) selected by the Board of Directors of the Employer. The Administrative Committee is responsible for arranging all services necessary to operate the Plan, including accounting, legal and investment advisory services. The Administrative Committee has the power in its sole discretion to manage and operate the administration of the Plan, including interpreting the provisions of the Plan, and making required administrative decisions regarding eligibility, right to benefits and similar decisions.

You will be advised of any changes in the names and addresses of the members of the Administrative Committee. Currently, the members are Jeffrey S. Hussey, Brian R. Dixon, and Steven Goldman. Inquiries to the Administrative Committee should be addressed to Brian R. Dixon, 200 First Avenue West, Suite 500, Seattle, WA 98119. Telephone inquiries may be made by dialing (206) 505-0800 and asking for Brian R. Dixon.

2. WHO IS THE PLAN SPONSOR?

The sponsor of the Plan is F5 Labs, Inc.. The Employer's employer identification number assigned by the Internal Revenue Service is 91-1714307. The Plan Number is 001.

3. WHAT IS THE PLAN YEAR?

The Plan Year is the 12-month period ending December 31. All records of the Plan are maintained on this Plan Year.

SECTION III. ELIGIBILITY.

1. HOW DO I BECOME ELIGIBLE TO PARTICIPATE?

To be eligible and to make tax-deferred 401(k) contributions, you must be at least age 21 and be paid on a salaried basis. Hourly-paid employees are not eligible to participate.

You will become eligible for Employer Matching Contributions beginning the first day of the month following completion of six (6) months of service.

You will become eligible for Employer Discretionary Contributions beginning in the calendar year following the year in which you complete six (6) months of service. To share in Employer Discretionary Contributions, you generally must also be employed as of the last day of the Plan Year. See Section IV for further information.

2. WHEN AM I ENROLLED IN THE PLAN?

If you are an eligible employee on January 1, 1998, you will be immediately enrolled as a Participant in the Plan on that date. Otherwise, you will be enrolled as a Participant in the Plan on the first day of the month which coincides with or follows your date of hire, or if later, your attainment of age 21.

3. IF I TERMINATE EMPLOYMENT AND AM REHIRED, DO I HAVE TO SATISFY THE ELIGIBILITY REQUIREMENTS AGAIN?

If you terminate employment with the Employer after having been a Plan Participant, you will become a Participant again on the first day of the month coinciding with or following your rehire date as a salaried employee. There is an exception to this rule. If at the time you terminate employment you are entitled to no amount of your Employer Discretionary Contribution Account or Employer Matching Contribution Account (your vested percentage under Section VII is zero), then upon rehire you must complete the eligibility requirements for Employer discretionary contributions and Employer discretionary matching contributions again if the number of your consecutive one-year breaks in service is five years or more. A one-year break in service is a Plan Year in which you are credited with less than 501 Hours of Service. You may avoid a one-year break in service if you are absent from work because of pregnancy, birth of a child, placement of a child for adoption or caring for a child immediately after birth or

placement. You must provide the Administrative Committee with proof that the absence was for one of these reasons.

SECTION IV. EMPLOYER CONTRIBUTIONS.

1. WHAT DOES THE EMPLOYER CONTRIBUTE?

The Employer currently does not intend to make any contributions to the Plan. However, the Plan provides for two types of Employer contributions which the Board of Directors may, in its discretion, determine to make to the Plan. You will be notified if the Employer intends to make contributions. The two types of contributions are Employer Matching Contributions and Employer Discretionary Contributions. To share in Employer Matching Contributions you must contribute. To share in Employer Discretionary Contributions you are not required to contribute.

2. WHAT MUST I DO TO SHARE IN THE EMPLOYER DISCRETIONARY CONTRIBUTION?

If you have met the eligibility requirements outlined in Section III and you are employed on the last day of the Plan Year (December 31), you are an "Active Participant" and you are entitled to share in the Employer Discretionary Contribution for that Plan Year. In the Plan Year you die, retire, or are permanently disabled, you will not be required to be employed on the last day of the Plan Year to share in the Employer Discretionary Contribution. Employer Discretionary Contributions will be allocated to your Employer Discretionary Contribution Account in the trust fund.

If Employer Discretionary Contributions are made, the Employer will contribute the same percentage of compensation for all participants based on the compensation they receive while they are participants.

3. HOW ARE EMPLOYER MATCHING CONTRIBUTIONS MADE TO THE PLAN?

Each year the Board of Directors will determine if F5 Labs, Inc. will make an Employer Matching Contribution. If an Employer Matching Contribution is made, the Board of Directors will also determine the maximum amount of the Matching Contribution. You will be notified of the amount of the maximum Employer Matching Contribution at the beginning of the year.

The total of your 401(k) contributions, the Employer Matching Contributions, Forfeitures, and any Employer Discretionary Contributions allocated to your accounts for any Plan Year cannot exceed 25% of your compensation or \$30,000, if less. You will be notified if your contributions exceed these limits. In addition, if you are a highly compensated employee, the Administrative Committee may be required by law to reduce your Employer Matching Contributions if the IRS limits on those contributions for highly compensated employees are exceeded. The Administrative Committee will notify you if this occurs.

SECTION V. EMPLOYEE CONTRIBUTIONS.

1. WHAT ARE TAX-DEFERRED CONTRIBUTIONS?

Tax-deferred 401(k) contributions are contributions you make by electing to have a percentage of your compensation withheld from your pay and paid directly to the Plan trust fund. These contributions reduce your current compensation. Tax-deferred contributions are withheld before federal income taxes are taken from your compensation. No federal income taxes on these contributions are due until they are distributed to you from the Plan. Your 401(k) tax-deferred contributions are subject to Social Security tax in the year you make the contributions.

Your 401(k) tax-deferred contributions are deposited to your 401(k) Tax-Deferred Contribution account in the plan trust fund.

a. How Much Can I Contribute Through 401(k) Tax-Deferred Contributions?

You may elect to contribute up to the percentage of compensation established by the Administrative Committee, but not more than the dollar limit set by law. For 1998, the dollar limit set by law is \$10,000. These limits may be adjusted annually. Additionally, it may be necessary to reduce these contribution levels to comply with other applicable law. If this affects you, you will be notified by the Administrative Committee.

When you become a Plan participant, the Administrative Committee will provide you with the instructions and any forms necessary to elect to make tax-deferred contributions.

b. Can I Change the Amount I Contribute Through Tax-Deferred Contributions?

You may increase or decrease your 401(k) tax-deferred contributions as of January 1 or July 1. For initial enrollments, a participant may enroll as of the first day of the month following completion of the eligibility requirements. An employee who does not elect to make 401(k) tax-deferred contributions when first eligible may elect to begin making these contributions as of any January 1 or July 1.

Your initial election and any change in your election must be received by the Administrative Committee before the day on which it becomes effective. You may revoke your election as to future 401(k) contributions as of the first day of any subsequent pay period as long as the Administrative Committee receives your revocation before its effective date. If you revoke your election, you may not elect to begin 401(k) contributions again until the next January 1 or July 1 after your 401(k) contributions stop, provided you sign a new agreement or provide instructions in another manner as provided by the Administrative Committee before deferrals begin.

If you terminate employment and are rehired, you may elect to begin making 401(k) tax-

deferred contributions again on the first of the month which follows your date of rehire and thereafter on any January 1 or July 1.

You may not elect to contribute more than \$10,000 in 1999, and whatever adjusted amount is permitted by law in each future calendar year. In addition to this 401(k) contribution limit, strict limits are imposed by the Internal Revenue Code on the amount of 401(k) contributions that may be made by highly compensated employees. To meet these limits, the Administrative Committee may be required to reduce the amount contributed by any highly compensated employee or to repay any excess 401(k) contributions and earnings to a highly compensated employee. If the Administrative Committee is required to repay any amount contributed by a highly compensated employee, it will direct the Employer to pay that amount from the Plan plus earnings on that amount in cash to the employee.

Your 401(k) tax-deferred contributions are 100% vested and nonforfeitable at all times.

2. MAY I MAKE ROLLOVER CONTRIBUTIONS TO THE PLAN?

You may roll over a distribution from another qualified pension or profit sharing plan to this Plan if certain conditions are met. You may roll over an IRA account to this Plan if the IRA account holds only a distribution from another qualified plan, and you have made no contributions to that IRA. An ordinary IRA to which you contribute cannot be rolled over to this Plan. You should consult a member of the Administrative Committee as to the conditions and procedures for making a rollover contribution. The amount of any rollover contribution will be invested along with the other assets of the Plan, but will be held for you in a special rollover account and will be at all times 100% vested (nonforfeitable).

3. MAY I CONTRIBUTE TO AN IRA AND TO THE PLAN TOO?

As described in this section, you may be able to use both an individual retirement account (an "IRA") and the Plan in saving for your retirement. However, there are differences to consider. The \$2,000 maximum that limits the amount of your annual IRA contribution does NOT apply to your pre-tax contributions under the Plan. Instead, your pre-tax contributions are limited to a percentage of your annual compensation determined by the Administrative Committee or, if less, the indexed annual IRS maximum amount, which is \$10,000 for 1998.

As with an IRA, when you make pre-tax contributions to the Plan, you pay no current federal income taxes on the contributions or on investment earnings. But the Plan currently has an advantage over an IRA, I.E., if funds are paid from the Plan after you retire or die, special tax benefits may be available. IRA payments are always taxed at ordinary income rates (along with other taxable income you receive in the same year).

The following describes the IRA rules in effect beginning in 1998. For more information on the tax rules regarding IRAs, please refer to Internal Revenue Service Publication 590, "Individual Retirement Arrangements". IRS Publication 590 is available free, by calling

1-800-TAX-FORM (1-800-823-3676).

As described in further detail below, your ability to make contributions in the same tax year both to the Plan and to a tax-deductible IRA depends on your income. Even if your income is above the allowable amount for your own tax-deductible IRA contribution, your spouse may be able to make a tax-deductible contribution to an IRA if he or she does not participate in an employer-sponsored retirement plan. You may also be able to make a non-deductible contribution to a "Roth IRA," in which the earnings are permanently free from federal income tax if certain conditions are met.

TAX-DEDUCTIBLE IRA CONTRIBUTIONS. Your ability to make a tax-deductible IRA contribution and the allowable amount of that contribution depend upon your income and your tax filing status.

- If your adjusted gross income (AGI) is **BELOW** a certain dollar amount "threshold" (for 1998, \$50,000 if married filing jointly; \$30,000 if single), you will be able to make the maximum annual tax-deductible IRA contribution.

- If your AGI is **ABOVE** a certain dollar amount "ceiling" (for 1998, \$60,000 if married filing jointly; \$40,000 if single), you will not be able to make any tax-deductible IRA contribution.

- If your AGI is **BETWEEN** the dollar amount threshold and ceiling, you will be able to make a tax-deductible IRA contribution, but your contribution will be limited to a pro rata portion of the maximum annual contribution amount.

EXAMPLE: Jill is single and has an AGI of \$35,000 in 1998. Because \$35,000 is between the \$30,000 income threshold and the \$40,000 income ceiling for single taxpayers, Jill is entitled to make a tax-deductible IRA contribution equal to a pro rata portion of the maximum contribution amount. For 1998, the maximum tax-deductible contribution amount for an individual is \$2,000. Based on Jill's AGI, she is eligible to make up to one-half of the maximum tax-deductible contribution, or \$1,000.

The income thresholds and ceilings are scheduled to increase gradually over the next several years. By 2005, the income threshold for single taxpayers will be \$50,000, and the ceiling will be \$60,000. By 2007, the income threshold for married taxpayers filing jointly will be \$80,000, and the ceiling will be \$100,000.

TAX-DEDUCTIBLE IRA CONTRIBUTIONS FOR SPOUSES WHO DO NOT PARTICIPATE IN AN EMPLOYER-SPONSORED RETIREMENT PLAN. If: (1) you are married; (2) your spouse does not participate in an employer-sponsored retirement plan; and (3) your AGI is below \$150,000; your spouse will be able to make the maximum tax-deductible IRA contribution for an individual (currently \$2,000). Assuming the same facts as above, except that your AGI is between

\$150,000 and \$160,000, your spouse will be able to make a tax-deductible contribution equal to a pro rata portion of the \$2,000. If your AGI is over \$160,000, your spouse will not be able to make a tax-deductible IRA contribution.

ROTH IRAS. For tax years beginning after 1997, a new type of IRA called a "Roth IRA" is available. While contributions to a Roth IRA are not tax-deductible (regardless of your income), the earnings on your contributions are permanently free from federal income tax if certain conditions are met.

You may make a contribution to a Roth IRA if your income falls within certain limits:

- If you are single, you may make the maximum annual contribution to a Roth IRA if your adjusted gross income (AGI) is less than \$95,000. The maximum contribution amount is phased-out if your AGI is between \$95,000 and \$110,000. You may not make any contribution if your AGI is above \$110,000.

- If you are married filing jointly, you and your spouse may make the maximum annual contribution to a Roth IRA if your AGI is less than \$150,000. The maximum contribution amount is phased-out if your AGI is between \$150,000 and \$160,000. You may not make any contribution if your AGI is above \$160,000.

In the event of a "qualified distribution" from a Roth IRA, the entire amount of the distribution is exempt from federal income tax, including the portion attributable to investment earnings on which you have never paid any taxes. To be considered a "qualified distribution," the distribution may not be made before the end of the five tax year period beginning with the first tax year in which a contribution was made. Additionally, the distribution must be:

- (1) made on or after the date on which you attain age 59 1/2;
- (2) made to your beneficiary (or to your estate) after your death;
- (3) attributable to your qualifying disability; or
- (4) used for a qualified first-time home purchase (up to a lifetime maximum aggregate amount of \$10,000).

Your combined contributions to all IRAs (tax-deductible, Roth, and other non-tax-deductible IRAs) may not exceed the annual IRA \$2,000 contribution maximum. Unlike other kinds of IRAs, contributions to Roth IRAs may be made after the age of 70 1/2 and are not subject to the mandatory age 70 1/2 distribution rules.

SECTION VI. WITHDRAWAL OF CONTRIBUTIONS.

1. MAY I WITHDRAW THE EMPLOYER'S CONTRIBUTIONS TO THE PLAN?

You do not have the right to withdraw the Employer Discretionary Contributions or Employer Matching Contributions to the Plan on your behalf. The Employer's contributions and the earnings thereon will only be distributed to you or your beneficiary in the event of your death, disability, termination of employment or retirement. You may, however, elect to receive your Plan benefits after age 65 even if you are still working. (See Section X, Distribution of Benefits).

2. MAY I WITHDRAW MY 401(k) TAX-DEFERRED CONTRIBUTIONS TO THE PLAN?

Amounts in your 401(k) Tax-Deferred Contribution Account under the Plan may not be distributed to you earlier than your retirement, death, disability, termination of employment, attainment of age 59 1/2, or hardship.

The Administrative Committee has established a program for hardship withdrawals and the method for determining whether a participant is entitled to a distribution by reason of hardship. A hardship exists if a Participant has an immediate and heavy financial need, and no other financial resources to meet that need. Hardship is limited to:

- a. Uninsured medical expenses (described in Internal Revenue Code Section 213(d)) that have already been incurred by the Participant, or the Participant's dependents, or expenses that have not already been incurred, but which must be prepaid in order to allow those persons to obtain medical treatment;
- b. Purchase of a principal residence of the Participant (excluding mortgage or loan payments);
- c. Tuition, room and board, and related educational fees of post-secondary education for the next twelve months for the Participant, spouse, children or dependents, including graduate school and any approved trade or technical school;
- d. Payment to prevent eviction of the Participant from his principal residence, or foreclosure on the mortgage of the Participant's principal residence.

Hardship withdrawals made prior to your attainment of age 59 1/2 will be subject to a 10% penalty tax unless the hardship withdrawal is applied to pay deductible medical expenses. In addition, a hardship withdrawal may not include income earned on your 401(k) contributions. A hardship withdrawal may include the amount necessary to pay taxes and penalties on the hardship distribution.

SECTION VII. INVESTMENTS.

1. HOW ARE CONTRIBUTIONS INVESTED?

The Employer Discretionary Contributions, Employer Matching Contributions, and Tax-Deferred Contributions are placed in the Plan trust fund. Brian R. Dixon is currently the Plan Trustee.

What you will ultimately receive under the Plan depends in great part upon the investment performance of the assets of the trust. While the Employer believes the assets will appreciate in value, there are no guarantees in this regard.

You determine how your contributions are to be invested. You have the choice of establishing an individual brokerage account with a brokerage firm selected by the Administrative Committee or selecting from among mutual funds offered by the Plan. Employer contributions will be invested in the same manner in which you direct the investment of your contributions.

2. HOW DO I SHARE IN THE RETURN ON INVESTMENTS?

Since you direct the investment of your contributions (and Employer contributions), the ultimate return which you receive will be dependent upon how you manage your accounts. Mutual funds are valued daily and the values are reported in the financial pages of publications such as the WALL STREET JOURNAL.

3. YOUR EXERCISE OF CONTROL OVER YOUR ACCOUNT.

Under the terms of the Plan, you are entitled to give investment instructions to the Administrative Committee who is obligated to comply with these instructions concerning the investment of your plan assets. On request, you are entitled to written confirmation regarding the carrying out of these instructions. You may change your instructions during the time periods established by the Committee by providing written notice or using other means as designated by the Committee. Currently, these changes may be made on a quarterly basis.

Upon request to the Administrative Committee, you may receive additional information including the following which will be based on the latest information available:

- A description of the annual operating expenses of each of the investment alternatives offered under the Plan (I.E., investment management fees, trustees fees, administrative fees and transaction costs) which are charged to your account expressed as a percentage of average net assets.

- Copies of any prospectuses, financial statements and reports or other materials relating to the investment alternatives available under the Plan to the extent provided the Plan Administrator.

- A list of the assets comprised in the portfolio of each fund, the value of each asset and the percentage of the overall fund which it represents. With respect to an asset which is a fixed rate investment contract, the name of the bank or insurance company issuing the contract, the term of the contract and the rate of return under the contract.

- Current information about the value of the shares or units in mutual funds offered under the Plan together with current investment performance information determined net of expenses.

- Information concerning the value of shares or units in your account.

This Plan is intended to constitute a Plan described in Section 404(c) of the Employee Retirement Income Security Act and Title 29 of the Code of Federal Regulations Section 2550.404(c)-1. It is intended that the fiduciaries of the Plan (I.E., the Trustee, Employer and Administrative Committee) will be relieved of liability for any loss occurring as the direct and necessary result of your investment instructions.

SECTION VIII. VESTING.

1. WHEN ARE MY BENEFITS VESTED?

You are not immediately entitled to the Employer contributions credited to your Employer Discretionary Contribution and Employer Matching Contribution Accounts under the Plan. Your vested and nonforfeitable right to the amount in your Employer Discretionary Contribution and Employer Matching Contribution Accounts is determined by your Years of Service. Years of Service are Plan years in which you are credited with at least 1,000 Hours of Service, including Years of Service performed for the Employer before the inception of the Plan.

You complete a Year of Service for vesting purposes when you complete 1,000 Hours of Service during the Plan Year. You receive credit for one Hour of Service for each hour you are paid by the Employer for work you perform. You also receive credit for one Hour of Service for time you are paid by the Employer for reasons other than work (such as vacation, illness or disability) up to a maximum of 501 hours for any continuous period. If you are a salaried

employee and you work one or more hours during a calendar month, you will receive credit for 190 Hours of Service for that month.

All of your Years of Service with F5 Labs, including those performed before the Plan began on January 1, 1998, are counted for vesting purposes under the Plan.

If you terminate employment before the end of the Plan Year, and are credited with 1,000 Hours of Service for that Plan Year, you will receive credit for that Plan Year for vesting purposes.

After you have completed four (4) Years of Service, all of your Employer Discretionary Contribution and Employer Matching Contribution Accounts will be 100% vested. Here is how the vesting schedule works:

YEARS OF SERVICE	PERCENTAGE NONFORFEITABLE (VESTED)
Completion of 1 Year of Service	0%
Completion of 2 Years of Service	50%
Completion of 3 Years of Service	75%
Completion of 4 Years of Service	100%

The amount, if any, in your 401(k) Tax-Deferred Contribution Account is always 100% vested and nonforfeitable.

The amount in your Employer Discretionary Contribution and Employer Matching Contribution Accounts will become 100% vested and nonforfeitable regardless of the above vesting schedule if you die, become permanently and totally disabled, or reach the Plan's normal retirement age (age 65). In addition, in the event that the Plan should be terminated by the Employer, your accounts would become 100% vested and nonforfeitable.

EXAMPLE. Joe has been a Participant has three (3) Years of Service for vesting purposes. His Employer Discretionary Contribution and Employer Matching Contribution Account balances under the Plan have a combined value of \$4,000. If Joe terminates employment, he will receive 75% of this amount, or \$3,000. Joe will also receive the balance of his 401(k) Tax-Deferred Contribution Account.

2. WHAT HAPPENS TO AMOUNTS THAT ARE FORFEITED BY THE PARTICIPANTS?

On each Anniversary Date, December 31, nonvested amounts in the Employer Contribution and Employer Matching Contribution Accounts of terminated employees are forfeited. There are two circumstances that result in a forfeiture of benefits.

(1) FIVE YEAR BREAK IN SERVICE. If you terminate employment before completing two (2) Years of Service and your vested 401(k) Tax-Deferred Contribution Account is more than \$5,000, and you elect NOT to receive a distribution of your vested benefits, you will not forfeit your Employer Discretionary and Employer Matching Contribution Accounts, which will be 0% vested, until you incur a five (5) consecutive one-year break in service. A one-year break in service occurs each Plan Year in which you complete less than 501 Hours of Service.

(2) CASH-OUT OF BENEFITS. If you terminate employment and your vested benefits are LESS than \$5,000, you will receive a distribution of your vested benefits in a single lump sum payment as soon as administratively feasible. If you have less than two (2) Years of Service for vesting purposes when you terminate, and your 401(k) Tax-Deferred Contribution Account is less than \$5,000, you will receive such account and forfeit the nonvested benefits in your Employer Discretionary Contribution and Employer Matching Contribution Accounts on the December 31 coinciding with or following your date of termination. If you are rehired before incurring five consecutive Breaks in Service, your nonvested forfeited benefits will be reinstated.

Forfeited amounts do not go back to the Employer. Rather, amounts forfeited on December 31 are used first to reinstate any previously forfeited amounts that are required to be reinstated in rehired Participants' Plan accounts, and then to make Employer contributions for the Plan Year.

3. WHAT HAPPENS IF I AM REHIRED?

If you are rehired AFTER you have five consecutive one-year breaks in service, your nonvested benefits will be permanently forfeited. If you are rehired BEFORE you incur five consecutive one-year breaks in service, and you received your vested benefits when you terminated employment, the nonvested amount in your Employer Contribution Accounts which you previously forfeited will be reinstated.

EXAMPLE. On December 31, 1998, Marilyn has been a Participant in the Plan for one (1) year and has one (1) Year of Service for vesting purposes. Her Employer Discretionary Contribution Account and Employer Matching Contribution Account balances under the Plan are \$1,000. Her 401(k) Tax-Deferred Contribution Account balance is \$3,000. If Marilyn terminates employment on December 31, 1998, she will receive her \$3,000 in her 401(k) Tax-Deferred Contribution Account. However, in accordance with the Plan's vesting schedule, she will not receive her Employer Discretionary and Employer Matching Contribution Accounts, because she is 0% vested in these accounts. The Employer Contribution Accounts will be forfeited on December 31, 1998. If Marilyn is rehired before she has five consecutive one-year breaks in service, the \$1,000 she forfeited will be reinstated.

Whether or not you have forfeited any balance in your Employer Discretionary and Employer Matching Contribution Accounts, your prior Years of Service credited for vesting

purposes will be reinstated when you complete a Year of Service. **THERE IS AN EXCEPTION TO THIS RULE.** If at the time you terminate employment you are entitled to no amount of your Employer Discretionary Contribution Account and Employer Matching Contribution Account (your vested percentage is zero), you will lose credit for your past service if you had at least five (5) consecutive one-year breaks in service, and your consecutive one-year breaks in service are at least equal to your Years of Service prior to the break.

EXAMPLE. Assume you leave the employ of the Employer after completing one (1) Year of Service and you are 0% vested in your Employer Discretionary and Employer Matching Contribution Accounts. If you are rehired seven (7) years later, you will lose your prior service credit because none of your benefits were vested (I.E., you were 0% vested when you quit), you have incurred more than five consecutive one-year breaks in service, and your number of consecutive one-year breaks in service, which is seven (7), is greater than your Years of Service before you terminated, which is one (1).

SECTION IX. BENEFICIARY DESIGNATION.

HOW DO I DESIGNATE A BENEFICIARY TO RECEIVE MY BENEFITS IN THE EVENT OF MY DEATH?

You may designate a beneficiary or beneficiaries, who are persons who will receive any benefits payable at your death. If you are married and you do not designate a beneficiary, the benefits will be payable to your spouse. If you are married, and your designated beneficiary is to be someone other than your spouse, your spouse must consent to the designation. Your spouse's consent must be on a form provided by the Administrative Committee and must be witnessed by a notary public or a member of the Administrative Committee. The beneficiary may be changed at any time by written designation filed with the Administrative Committee. If you don't name a beneficiary or if the beneficiary you name is not alive, the amount in your accounts will be paid to your surviving spouse, or if none, as provided in the Plan. Your beneficiary may be changed at any time by written designation filed with the Administrative Committee.

SECTION X. DISTRIBUTION OF BENEFITS.

1. WHEN DO I RECEIVE RETIREMENT BENEFITS?

Normally, you will receive your vested Plan benefits upon your retirement when you reach age 65 (the Plan's normal retirement age). You may receive your benefits earlier if you are permanently disabled, die, or terminate employment.

If you retire on or after age 65, payment of your benefit will be made as described in Section XI. If you do not wish to receive your vested Plan benefits and their value exceeds \$5,000, the Plan permits you to elect to defer the payment of your Plan benefits to a date later than your retirement date. You will be provided forms on which to make this election and, prior to receiving your benefits, you may change your election at any time. You must begin receiving your retirement benefits no later than April 1 of the taxable year following the year in which you

reach age 70 1/2.

If you work past age 65, you may elect to receive your Plan benefits. You will continue to share in any Employer Discretionary Contributions and Employer Matching Contributions and may continue to elect 401(k) tax-deferred contributions.

2. WHAT HAPPENS IF I DIE?

If you die, any amounts in your account(s) will be paid to your beneficiary.

3. WHAT HAPPENS IF I TERMINATE EMPLOYMENT?

If you terminate employment prior to normal retirement and your vested benefit is \$5,000 or less, you will receive that amount in a single payment. You will receive that distribution within a reasonable time after the end of the Plan Year in which you terminate employment. If your vested Plan benefit is more than \$5,000, you will receive that amount when you reach age 65, unless you elect to receive your vested benefit when you terminate employment or on any later date. You must begin receiving your vested Plan benefits upon the later of your termination of employment or the April 1 of the tax year following the year in which you attain age 70 1/2.

If you terminate employment prior to age 55, the distribution will be subject to a 10% income tax penalty on early withdrawals unless you are permanently disabled or unless your distribution is rolled over or transferred to an IRA or another qualified pension or profit sharing plan. If you terminate employment after age 55 and elect to receive a distribution of your benefits after age 55, the distribution will not be subject to the 10% tax penalty.

4. WHAT HAPPENS IF I AM DISABLED?

In the event of mental or physical disability, which renders you incapable of performing the ordinary duties of your job, you may receive your benefits under the Plan regardless of age. Payment will begin as soon as possible after the Administrative Committee determines you are disabled and you elect to receive payment.

5. WHAT HAPPENS IF I DIVORCE?

Benefits provided under this Plan are for you and your beneficiary. Your benefits cannot be assigned to someone else in order to settle a debt. However, the Plan will pay amounts to a former spouse or to a child as ordered by a court pursuant to the terms of a Qualified Domestic Relations Order. If the Administrative Committee receives an Order that relates to you, they will notify you immediately.

SECTION XI. FORM OF DISTRIBUTION.

IN WHAT FORM WILL MY BENEFITS BE PAID?

When you retire, terminate employment, or become permanently disabled, you will receive the vested amount in your account in a single lump sum payment.

If you die BEFORE your benefits begin, your beneficiary will receive the vested amount in your accounts in a single lump sum payment. Payment must be made within one year after the date of your death if your beneficiary is not your spouse. If your beneficiary is your spouse, your spouse may elect to defer payments until a date no later than the date you would have attained age 70 1/2.

SECTION XII. TOP-HEAVY PROVISIONS.

1. WHAT IS A TOP-HEAVY PLAN?

The Plan will be top-heavy if more than 60% of the account balances under the Plan belong to key employees. Key employees of the Employer are certain highly compensated officers and certain owners of the Employer.

2. WHAT HAPPENS IF THE PLAN IS TOP-HEAVY?

The Plan is not currently top-heavy. If the Plan becomes top-heavy, the Employer may be required to make a contribution on your behalf equal to a minimum of 3% of your compensation during the Plan Year even if you do not complete 1,000 Hours of Service in the Plan Year. The Administrative Committee will advise you if the Plan becomes top-heavy.

SECTION XIII. TERMINATION OF THE PLAN.

WHAT HAPPENS IF THE PLAN TERMINATES?

The Employer expects to continue the Plan indefinitely but reserves the right to terminate it or to amend it. If the Plan is terminated, you will become 100% vested in your Employer Discretionary Contribution Account and Employer Matching Contribution Account. All of the assets of the Plan will be used to pay benefits to participants. No part of the assets will be returned to the Employer.

SECTION XIV. RIGHTS OF PARTICIPANTS.

1. TO WHOM SHOULD LEGAL NOTICES BE ADDRESSED?

Legal notices should be directed to Brian R. Dixon, whose address is printed on the front

of this booklet. However, service of legal process may also be made upon any Plan Trustee or any member of the Administrative Committee.

2. IF I BELIEVE I AM ENTITLED TO PLAN BENEFITS, WHAT SHOULD I DO?

If you are entitled to benefits under the Plan, you need not make a claim to the Administrative Committee in order to receive your benefits. However, if you disagree with the information or computations in connection with any of your benefits, you may make claim to the Administrative Committee. This claim should be in the form of a letter stating why you disagree and should include all facts and information you want the Administrative Committee to consider. You will be advised of the acceptance or rejection of your claim within 90 days after your claim is received, unless special circumstances require an extension of time for processing the claim. If the Administrative Committee requires an extension, written notice of the extension will be furnished to you prior to the end of the initial 90-day period. The extension will not exceed an additional period of 90 days. The extension notice from the Administrative Committee will state the special circumstances requiring the extension of time and the date by which the Administrative Committee expects to make a final decision.

In the event your claim is denied, it must be denied in writing and the denial must state in detail the specific reasons for the denial, the specific Plan provisions upon which the denial is based, any additional material or information which you may provide which would entitle you to the benefits you claim, and an explanation of why such material or information is necessary. The notice of denial must also explain the steps to be taken if you or your beneficiary wish to submit a claim for review. If notice of denial of your initial claim is not furnished within the time period allowed above, your claim will be deemed denied and you may proceed to request a review of your denied claim. If you choose to submit a claim for review by the Administrative Committee, then within 60 days after the date your claim is denied, you or your authorized representative must make a written request to the Administrative Committee for review. Your request for review of your denied claim should include a statement of the reasons your claim should be allowed. You or your representative may examine any documents the Administrative Committee has in its files and will use in reaching a decision, and you may also submit additional written comments to the Administrative Committee which support your claim.

The Administrative Committee will advise you of its decision in writing within 60 days following receipt of your request for review, unless special circumstances require an extension of time for processing. If an extension is necessary, a decision will be made as soon as possible, but not later than 120 days after the Administrative Committee receives your request for review. If an extension of time for review is required because of special circumstances, written notice of the extension and the Administrative Committee's reasons for needing more time will be furnished to you prior to the commencement of the extension. The decision on review will be in writing and will include specific reasons for the decision, as well as specific references to the plan provisions upon which the decision is based. The Administrative Committee has the absolute discretion to decide all issues of fact and/or law. The decision of the Administrative Committee will be final.

and will be subject to no further appeal or review. Any decision of the Administrative Committee that is not an abuse of discretion must be upheld by a court of law.

3. ARE MY BENEFITS INSURED BY THE FEDERAL GOVERNMENT?

Because this is a defined contribution profit sharing plan, your benefits are not insured by the Pension Benefit Guaranty Corporation (PBGC), an agency of the federal government. The PBGC does not require or provide insurance for the Plan.

4. WHAT ARE MY RIGHTS UNDER ERISA?

This statement of ERISA rights is required by federal law and regulation. As a participant in the Employer's Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan participants shall be entitled to:

1. Examine, without charge, at the Employer's office and at other locations, such as worksites, all Plan documents, including insurance contracts, collective bargaining agreements and copies of all documents filed by the Plan with the U.S. Department of Labor, such as annual reports and Plan descriptions.
2. Obtain copies of all Plan documents and other Plan information upon written request to the Committee. The Committee may make a reasonable charge for the copies.
3. Receive a summary of the Plan's annual financial report. The Committee is required by law to furnish each participant with a copy of this summary financial report.
4. Obtain a statement of your total plan benefits (your account balance) and your vested plan benefits, if any, or if you have no vested benefits, a statement of how many more years you will have to work to have a vested right to plan benefits. This statement must be requested in writing and is not required to be given more than once a year. The Plan must provide the statement free of charge.

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a Plan benefit or exercising your rights under ERISA. If your claim for a Plan benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the Plan review and reconsider your claim. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the Plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court

may require the Committee to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Committee. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous. If you have any questions about your plan, you should contact the Committee. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

[DAVIS WRIGHT TREMAINE LLP LETTERHEAD]

June 1, 1999

F5 Networks, Inc.
Attention: Joann Reiter
200 First Avenue West, Suite 500
Seattle, Washington 98119

Re: 401(k) Profit Sharing Plan and Trust

Dear Ladies and Gentlemen:

We have acted as counsel to F5 Networks, Inc., a Washington corporation (the "Corporation"), in connection with its Registration Statement on Form S-8 (the "Registration Statement"). Capitalized terms used herein that are not otherwise defined have the meanings ascribed thereto as set forth in the Registration Statement and the exhibits thereto.

We have examined such documents, papers, statutes and authorities as we have deemed necessary to form a basis for the opinions hereinafter expressed. We have assumed the genuineness of all signatures, the authenticity of documents, certificates and records submitted to us as originals, the conformity to the originals of all documents, certificates and records submitted to us as copies, the legal capacity of all natural persons executing documents, certificates and records, and the completeness and accuracy as of the date of this opinion letter of the information contained in such documents, certificates and records.

Based upon the foregoing, we are of the opinion that:

1. The Corporation is duly formed and validly existing under the laws of the State of Washington.
2. The Plan and the Shares have been duly authorized and, after receipt of the consideration for such shares as specified in the Underwriting Agreement and when appropriate certificates have been duly executed by the proper officers of the Corporation, the Shares will be validly issued, fully paid and nonassessable.

This opinion is limited to the laws of the State of Washington and the federal laws of the United States of the type typically applicable to transactions contemplated by the Registration Statement. We express no opinion with respect to the laws of any other country, state or jurisdiction.

This opinion letter is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated. This letter speaks only as of the date hereof and is limited to present statutes, regulations and administrative and judicial interpretations. We undertake no responsibility to update or supplement this letter after the date hereof.

We consent to being named in the Registration Statement as counsel who are passing upon the validity of the shares of common stock to be issued pursuant to the Registration Statement. Subject to the foregoing, this opinion letter may be relied upon by you only in connection with the Offering and may not be used or relied upon by you for any other purpose or by any other person for any purpose whatsoever without, in each instance, our prior written consent.

Sincerely,

Davis Wright Tremaine LLP

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EXHIBIT 23.2

CONSENT OF ACCOUNTANTS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated April 6, 1999 relating to the financial statements and financial statement schedule of F5 Networks, Inc., which appear in the Registration Statement on Form S-1 (File No. 333-75817).

PricewaterhouseCoopers LLP

Seattle, Washington
June 4, 1999

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End of Filing

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