

**ABC COMPANY 401(K) PLAN**

**SUMMARY PLAN DESCRIPTION**

September 30, 2012

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SAMPLE

## INTRODUCTION

ABC Company (the "Company") established the ABC 401(K) Plan (the "Plan") effective January 01, 2000. This Summary Plan Description describes the Plan as amended and restated effective September 30, 2012.

This revised Summary Plan Description supersedes all previous Summary Plan Descriptions. Although the purpose of this document is to summarize the more significant provisions of the Plan, the Plan document will prevail in the event of any inconsistency. In addition, the terms of the Plan cannot be modified by written or oral statements made to you by the Plan Administrator or other personnel.

## ELIGIBILITY FOR PARTICIPATION

### Eligible Employee

You are an "Eligible Employee" if you are employed by ABC Company or any affiliate who has adopted the Plan. However, you are not an "Eligible Employee" if you are a member of any of the following classes of employee:

For purposes of Elective Deferrals, Matching Contributions and Profit Sharing Contributions, any Employee who is included in a unit of Employees covered by a collective bargaining agreement, if retirement benefits were the subject of good faith bargaining, and if the collective bargaining agreement does not provide for participation in this Plan.

For purposes of Elective Deferrals, Matching Contributions and Profit Sharing Contributions, any leased employee.

For purposes of Elective Deferrals, Matching Contributions and Profit Sharing Contributions, any Employee who is a non-resident alien who received no earned income which constitutes income from services performed within the United States.

### Elective Deferrals

You will become a Participant eligible to make Elective Deferrals on the first day of each plan quarter coincident with or next following the date you attain age 21 and you complete six (6) months of eligibility service, provided that you are an Eligible Employee at the end of that period.

### Matching Contributions

You will become a Participant eligible to begin receiving Matching Contributions on the first day of each plan quarter coincident with or next following the date you attain

age 21 and you complete one (1) Year of eligibility service, provided that you are an Eligible Employee at the end of that period.

### Profit Sharing Contributions

You will become a Participant eligible to begin receiving Profit Sharing Contributions on the first day of each plan quarter coincident with or next following the date you attain age 21 and you complete six (6) months of Eligibility Service, provided that you are an Eligible Employee on that date.

### Computing Service

With respect to eligibility to make Elective Deferrals, Matching Contributions and Profit Sharing Contributions, "Year of Eligibility Service" means a twelve month period of time beginning on an Employee's Employment Commencement Date and ending on the date on which eligibility service is being determined. In order to determine the number of whole Years of Eligibility Service under the elapsed time method, nonsuccessive periods of service and less than whole year periods of service will be aggregated on the basis that 12 months of service (30 days are deemed to be a month in the case of the aggregation of fractional months) or 365 days of service are equal to a whole year of service. An Employee will also receive credit for any Period of Severance of less than 12 consecutive months. If less than one year of eligibility service is required in Article 3, such service will be determined by substituting such period for "twelve month" and "Year" where they appear in this paragraph.

All eligibility service with the Employer is taken into account except the following:

Rule of Parity. If you do not have any nonforfeitable right to the Account balance derived from Employer contributions, service before a period of five (5) consecutive One-Year Breaks in Service will not be taken into account in computing eligibility service.

A "One-Year Break in Service" means an eligibility computation period during which you are credited with 500 or fewer hours of service. If the plan uses the elapsed time method, a "One-Year Break in Service" means a Period of Severance of at least 12 consecutive months (special rules exist for absence from work for maternity or paternity reasons).

## **CONTRIBUTIONS TO THE PLAN**

### Elective Deferrals

You may elect to reduce your Compensation (defined below) and make a contribution to the Plan on a pre-tax basis. These pre-tax contributions are known as

Elective Deferrals. You may elect to defer up to one hundred percent (100%) of your Compensation on a pre-tax basis. Federal law also limits the amount you may elect to defer under this Plan and any other retirement plan permitting Elective Deferrals during any calendar year (\$17,000 in 2012). However, if you are age 50 or over, you may defer an additional amount up to \$5,500 (in 2012). Complicated provisions of the Internal Revenue Code may further restrict elective deferrals by "highly compensated" Participants.

You may elect to start, increase, reduce or totally suspend your elections to contribute to the Plan effective as of each pay period.

The Plan Administrator may establish rules regarding the manner in which your elections are made. The rules may also require that certain advance notice be given of any election. Your election regarding Elective Deferrals is only effective for Compensation you will receive in the future. The Plan Administrator may also reduce or totally suspend your election if the Plan Administrator determines that your election may cause the Plan to fail to satisfy any of the requirements of the Internal Revenue Code.

#### Roth Contributions

Effective January 01, 2007, the Plan allows a newer type of employee contribution to the Plan. This new type of contribution is known as a Roth Contribution and is very much like a contribution to a Roth IRA. Like a Roth IRA, the Roth Contribution to the Plan is made by you on an after-tax basis, but if certain requirements are met, a "qualified distribution" from your Roth Contribution Account in the Plan will not be taxed. However, unlike a Roth IRA, there are no income limitations on who may make a Roth Contribution.

Roth Contributions are Elective Deferrals that are made in the same manner as your pre tax Elective Deferrals. You must designate how much you would like to contribute on a pre-tax basis (normal 401(k) contribution) and how much you would like to contribute as an after-tax Roth Contribution. You are not required to make any Roth Contributions. You may continue to designate all of your elective deferrals as normal pre-tax contributions.

The sum of your Roth Contributions and regular pre-tax 401(k) contributions may not exceed the annual limit on regular 401(k) contributions mentioned above.

As was mentioned above, a "qualified distribution" of your Roth Contributions (and earnings) is not taxable. A "qualified distribution" must be made more than five years after the first Roth Contribution is made and must meet at least one of the following requirements:

- (i) the distribution must be made after you attain age 59-1/2;

(ii) the distribution must be made to your beneficiary after your death; or

(iii) the distribution must be made on account of your disability.

Please note that Roth Contributions are not suitable for everyone. Please consult with your tax advisor before making any Roth Contributions to the Plan.

#### Saver's Credit

If your adjusted gross income is below certain levels, you may be eligible for a nonrefundable income tax credit of up to \$1,000 (the "Saver's Credit"). The Saver's Credit is equal to a specified percentage of your contributions to certain employer-sponsored plans and to certain IRAs. You are eligible for the credit only if you are age 18 or over, are not a full-time student, and are not claimed as a dependent on another person's tax return. The Saver's Credit is subject to other restrictions. Please consult your tax advisor for more information.

#### Amount of Matching Contributions

The Company may make a Matching Contribution on your behalf if you make a "Matched Employee Contribution" during the Plan Year. A "Matched Employee Contribution" is any Elective Deferral or Catch-up Contribution that you may make.

If you make a "Matched Employee Contribution" the Company may contribute to your Matching Contribution Account in an amount and allocation formula as determined by the Company.

#### Allocation of Matching Contributions

Matching Contributions will be made to the Plan and allocated to the Matching Contribution Accounts of Participants who meet the requirements of the previous paragraph as soon as administratively feasible after the end of each pay period. Any service requirements specified in the previous paragraph will be applied pro rata and any last day rule specified in the previous paragraph will be applied as of the end of each period provided in the preceding sentence.

Complicated provisions of the Internal Revenue Code may also further restrict matching contributions for highly compensated employees.

#### Profit Sharing Contributions

The Company may, in its sole discretion, make a Profit Sharing Contribution to the Plan on your behalf if you are employed by the Company on the last day of the Plan Year. Please note that if you are an Eligible Employee and terminate employment with

the Company due to death, Disability or attainment of Normal Retirement Age you will be eligible to receive a Profit Sharing Contribution regardless of whether you meet any service requirement and/or last day requirement described in this Section.

Profit Sharing Contributions will be allocated to the Profit Sharing Contribution Accounts of each Participant eligible to share in such allocations after the end of the Plan Year. Such Contributions will be allocated in an amount designated by the Company to be allocated to each eligible Participant.

#### Safe Harbor Contributions

The Company may make safe harbor contributions to the Plan in an amount not less than three percent (3%) of Participants' Compensation but only if the Company amends the Plan for that Plan Year. If the Qualified Nonelective Contributions will be made to the Plan in accordance with the foregoing, the contributions will be made on behalf of each Employee who is eligible to make Elective Deferrals during the Plan Year. Safe Harbor contributions described in this paragraph will be allocated to the Account of each Participant eligible to share in such allocations in the ratio that such Participant's Compensation bears to the Compensation of all eligible Participants. Note that Safe Harbor contributions have the same treatment as a Qualified Nonelective Contribution for purposes of inservice distributions.

#### Qualified Nonelective Contributions

In addition to the contributions described above, the Company may make additional Qualified Nonelective Contributions for the benefit of all Participants eligible to make Elective Deferrals who are Nonhighly Compensated Employees and who are employed by the Company during the Plan Year. The additional Qualified Nonelective Contributions will be allocated first to the Qualified Nonelective Contribution Account of Participants eligible to share in such allocations who are not "highly compensated" employees. The nonhighly compensated employees with the lowest Compensation will be the first to receive an allocation. Other Participants may also be able to receive allocations of Qualified Nonelective Contributions. The allocations will be either a uniform percentage of compensation or a uniform dollar amount.

#### Rollovers

The Plan may accept a Rollover Contribution made on behalf of any Eligible Employee who has met the age and service requirements of the Plan. The Plan Administrator may establish procedures that regulate the method by which Rollovers will be accepted.



### Military Service

If you serve in the United States armed forces and must miss work as a result of such service, you may be eligible to receive contributions, benefits and service credit with respect to any qualified military service. In addition, you or your survivors may be eligible to receive contributions, benefits and service credit if you die or become disabled while performing qualified military service.

### Limits on Contributions

The amount that may be contributed to the Plan on your behalf in any year is limited to a fixed dollar amount (\$50,000 in 2012). In addition, contributions cannot exceed 100% of your total compensation.

### Compensation

"Compensation" means wages that are shown as taxable wages on your IRS Form W-2. For any self-employed individual, Compensation will mean earned income. For purposes of Elective Deferrals, Matching Contributions and Nonelective Contributions, Compensation will also include any amount you elect to defer on a tax-preferred basis to any Company benefit plan. For purposes of Matching Contributions, Compensation will include only that compensation which is actually paid to you by the Company during that part of the Plan Year that you are eligible to participate in the Plan.

No more than \$250,000 (in 2012) of Compensation may be taken into account in determining your benefits under the Plan.

Effective for limitation years beginning on or after January 01, 2007, for purposes of Elective Deferrals, Matching Contributions and Nonelective Contributions Compensation will include certain amounts that are paid to you after you terminate employment.

## **VESTING**

### Participant Contributions

You will have a fully vested and nonforfeitable interest in your Elective Deferral Account, Rollover Contribution Account and Qualified Matching Contribution Subaccount (if applicable).

### Matching Contributions

Your interest in your Matching Contribution Account will vest based on your Years of Vesting Service (defined below) in accordance with the following schedule:

<u>Years of Vesting Service</u>	<u>Vesting Percentage</u>
Less than Two Years	0%
Two Years but less than Three Years	20%
Three Years but less than Four Years	40%
Four Years but less than Five Years	60%
Five Years but less than Six Years	80%
Six or More Years	100%

#### Qualified Nonelective Contributions

You will have a fully vested and nonforfeitable interest in your Qualified Nonelective Contribution Account described above.

#### Safe Harbor Contributions

You will have a fully vested and nonforfeitable interest in your safe harbor contribution Account described above.

#### Profit Sharing Contributions

Your interest in your Profit Sharing Contribution Account will vest based on your Years of Vesting Service (defined below) in accordance with the following schedule:

<u>Years of Vesting Service</u>	<u>Vesting Percentage</u>
Less than Three Years	0%
Three or More Years	100%

#### Special Vesting Rules

Notwithstanding the foregoing, you will become fully (100%) vested upon your attainment of Normal Retirement Age while an Employee, your death while an Employee, or suffering a Disability while an Employee.

#### Forfeitures

If You Receive a Distribution. If you receive a distribution of the entire vested portion of your Account, you will forfeit the nonvested portion of such Account. If the value of your vested Account balance is zero, you will be deemed to have received a distribution of your Account.

If You Do Not Receive a Distribution. If you terminate employment and do not receive a complete distribution of the vested portion of your Account, you will forfeit the nonvested portion of your Account after the date you incur five consecutive One-Year Breaks in Service.

Reemployment. If you receive or are treated as receiving a distribution and you resume employment, the amounts you have forfeited (if any) will be restored if you repay the full amount of the previous distribution before the earlier of 5 years after the first date on which you are subsequently reemployed, or the date you incur 5 consecutive One-Year Breaks in Service following the date of the distribution.

### Year of Vesting Service

"Year of Vesting Service" means a vesting computation period during which you complete 1,000 hours of service.

All of your Years of Vesting Service with the Company are counted except Years of Vesting Service before age 21.

The following service will be disregarded in determining Years of Vesting Service:

If you have five consecutive One-Year Breaks in Service, all periods of service after such One-Year Breaks in Service will be disregarded for the purpose of vesting your Account balance that accrued before such Breaks in Service, but both the service before and after such Breaks in Service will count for purposes of vesting your Account balance that accrues after such One-Year Breaks in Service.

If you are zero percent vested, Years of Vesting Service before a period of five (5) consecutive One-Year Breaks in Service will not be taken into account in computing vesting service.

A "One-Year Break in Service" means a vesting computation period during which you are credited with 500 or fewer hours of service. The vesting computation period is the Plan Year.

## **DISTRIBUTIONS**

### Commencement of Distributions

Termination of Employment. You are entitled to receive a distribution from your Account after you terminate employment. This includes termination due to disability. The distribution will start at the time specified in the section titled "Timing and Form of Payment" below.

Late Retirement. If you continue working for the Company after your Normal Retirement Age, your participation under the Plan will continue, and your benefits will begin following the date you terminate employment. The distribution will start at the time specified in the section titled "Timing and Form of Payment" below.

Death. If you die, your Beneficiary will become entitled to receive your vested Account balance. The distribution will start at the time specified in the section titled "Timing and Form of Payment" below.

#### Normal Retirement Age

"Normal Retirement Age" means the later of: (i) the date you reach age 65, and (ii) 5 Years of Vesting Service (see the section regarding "VESTING" for more information on what is a Year of Vesting Service)

#### Timing and Form of Payment

Distribution for Reasons Other Than Death. If you become entitled to receive your benefit for any reason other than death, payment of your vested Account may start as soon as administratively feasible with a final payment made consisting of any allocations occurring after your termination of employment. Your account is payable, in cash, under a continuous right of withdrawal where you may withdraw such amounts at such times as you choose. If you do not choose a form of payment, the payment will be made in the form of a lump sum distribution.

Distribution on Account of Death. If you die before distribution of your Account begins, distribution of your entire Account must be completed by December 31 of the calendar year containing the fifth anniversary of your death.

If you die after distribution of your Account has begun, the remaining portion of your Account will continue to be distributed under the method of distribution being used prior to your death. If your Account was not being distributed in the form of an annuity at the time of your death, the remaining balance must be distributed by December 31 of the calendar year containing the fifth anniversary of your death.

#### Cash Out

If the vested amount of your Account does not exceed \$1,000, your vested Account will be paid in a lump sum.

If the vested amount of your Account exceeds \$1,000, you must consent to any distribution of your Account. However, the Plan Administrator may distribute your vested Account in a lump sum without consent at the time that payments must begin

under applicable federal law - generally the April 1 following the later of the calendar year in which you attain age 70-1/2 or you terminate employment. Special rules apply to persons who are deemed to own more than 5% of the Company.

### Beneficiary

You have the right to designate one or more primary and one or more secondary Beneficiaries to receive any benefit becoming payable upon your death. Your spouse must be your sole primary beneficiary unless he or she consents to the designation of another beneficiary. You may change your Beneficiaries at any time and from time to time by filing written notice of such change with the Plan Administrator.

If you fail to designate a Beneficiary, or in the event that all designated primary and secondary Beneficiaries die before you, the death benefit will be payable to your spouse or, if there is no spouse, to your children in equal shares or, if there are no children to your estate.

## **INSERVICE DISTRIBUTIONS AND LOANS**

### Hardship Withdrawals

General Rule. You may receive a distribution on account of hardship from the following Accounts but only if you are fully vested in such Account.

Elective Deferral Account, except earnings on the Elective Deferral Account credited after the later of December 31, 1988, and the end of the last Plan Year ending before July 1, 1989.

Your Roth Contributions may be withdrawn on account of financial hardship in the same manner as your regular 401(k) contributions. Please note however, that the income on the Roth contributions may be taxable (and subject to penalties for early withdrawal) if the withdrawal is not a "qualified distribution."

Immediate and Heavy Financial Need. You may receive a hardship distribution only if the Plan Administrator finds that you have an immediate and heavy financial need where you lack other available resources. The following are the only financial needs considered immediate and heavy:

- (1) Expenses incurred or necessary for medical care, described in Code section 213(d), for you or your spouse, children, or dependents;
- (2) The purchase (excluding mortgage payments) of a principal residence for the Participant;

- (3) Payment of tuition and related educational fees for the next 12 months of post-secondary education for you or your spouse, children or dependents;
- (4) The need to prevent the eviction of you from your principal residence (or a foreclosure on the mortgage on your principal residence);
- (5) Payments for burial or funeral expenses for your deceased parent, spouse, children or dependents; or
- (6) Expenses for the repair of damage to your principal residence that would qualify for the casualty deduction.

Effective August 17, 2006, Hardship distributions may be made for certain expenses of your primary beneficiary in addition to your dependents. These expenses include those for medical, tuition, and funeral expenses. A person is your "primary beneficiary" if that person is named as a beneficiary under the Plan and has an unconditional right to all or a portion of your Account Balance upon your death.

Amount Necessary to Satisfy Need. A distribution will be considered as necessary to satisfy your immediate and heavy financial need only if:

- (1) You have obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Company;
- (2) Your Elective Deferrals and Voluntary Contributions, if applicable will be suspended for six months after the receipt of the hardship distribution; and
- (3) The distribution is not in excess of the amount of an immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution).

#### Attainment of Age 59-1/2

You may receive a distribution after you reach age 59-1/2 from all of your Accounts that are fully vested.

Your Roth Contributions may be withdrawn on account of attainment of age 59-1/2 in the same manner as your regular 401(k) contributions. Please note however, that the income on the Roth contributions may be taxable (and subject to penalties for early withdrawal) if the withdrawal is not a "qualified distribution."

### Withdrawals at Any Time

You may receive a distribution from your Rollover Contribution Account at any time.

### Reservist Distributions

Effective January 01, 2009, if you were a military reservist called to active duty for a period in excess of 179 days or for an indefinite period, you may receive a distribution from the plan while still employed from amounts attributable to elective deferrals and catch-up contributions. You must make the distribution during the period beginning on the date of your call-up and ending at the close of the active duty period. In addition, you must have been called to active duty after September 11, 2001.

### Rules Regarding Inservice Distributions

The Plan Administrator may establish uniform procedures that include, but are not limited to, prescribing limitations on the frequency and minimum amount of withdrawals. All distributions will be made in the form of a single sum as soon as practicable following the Valuation Date as of which such withdrawal is made. Such distributions will be paid in cash. Only Employees are eligible to receive inservice distributions.

### Loans

If you are an active Employee you may apply for a loan from the Plan. Loans will only be made to persons who the Plan Administrator determines have the ability to repay the loan. You may not receive a loan if the sum of your new loan and the outstanding balance of all of your other loans would exceed the lesser of:

- (1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the plan on the date the loan is made, or
- (2) one-half the present value of your vested account balance.

Loans must be repaid over a period not extending beyond five years from the date of the loan, unless such loan is used to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as your principal residence.

The minimum loan amount is \$1,000 and the maximum number of loans outstanding at any one time is 2.

Loan fees may be charged against the Account of the Participant to whom the loan is granted and the Plan Administrator may adopt any administrative rules or procedures that it deems necessary or appropriate with respect to the granting and administering of loans.

## **INVESTMENTS**

### Participant Self Direction

In General. The Plan Administrator may permit you to direct the investment of your Accounts. The Plan Administrator may establish uniform guidelines and procedures relating to Participant self direction. You may direct the investment of all of your Accounts.

Investment Elections. You may direct the percentage of your Accounts to be invested in one or more of the available Investment Funds. Your elections will be subject to such rules and limitations as the Plan Administrator may prescribe. After your death, your Beneficiary may make investment elections as if the Beneficiary were the Participant. Notwithstanding the foregoing, the Plan Administrator may restrict investment transfers to the extent required to comply with applicable law.

Investment Decisions. The Plan is intended to constitute a plan described in section 404(c) of ERISA. This means that Plan fiduciaries may be relieved of liability for any of your losses that are the result of your investment elections.

### Qualifying Employer Securities

The Trustee may not invest the assets of the Trust Fund in "qualifying employer securities" or "qualifying employer real property".

### Voting Rights

You may not direct the Trustee as to the exercise of voting rights with respect to any Trust Fund Investment.

### Valuation Dates

Accounts are valued each business day. The Plan Administrator may in its sole discretion declare a special Valuation Date for that portion of the Plan that is not daily-valued in extraordinary situations to protect the interests of Participants in the Plan or the Participant receiving the distribution. Such extraordinary circumstances include a significant change in economic conditions or market value of the Trust Fund.



## **SPECIAL TOP HEAVY RULES**

### Minimum Allocations

If the Plan is Top Heavy, the Company will generally allocate a minimum of 3% of your Compensation to the Plan if you are a Participant who is (i) employed by the Company on the last day of the Plan Year and (ii) not a key employee.

### Minimum Vesting

If you complete an hour of service while this Plan is top-heavy, your vested percentage will be determined under the following schedule to the extent that it is more favorable than the vesting schedule provided for the section entitled "Vesting":

<u>Years of Vesting Service</u>	<u>Vesting Percentage</u>
Less than Two Years	0%
Two Years but less than Three Years	20%
Three Years but less than Four Years	40%
Four Years but less than Five Years	60%
Five Years but less than Six Years	80%
Six or More Years	100%

## **CLAIM PROCEDURES**

**Application for Benefits.** You or any other person entitled to benefits from the Plan (a "Claimant") may apply for such benefits by completing and filing a claim with the Plan Administrator. Any such claim must be in writing and must include all information and evidence that the Plan Administrator deems necessary to properly evaluate the merit of and to make any necessary determinations on a claim for benefits. The Plan Administrator may request any additional information necessary to evaluate the claim.

**Timing of Notice of Denied Claim.** The Plan Administrator will notify the Claimant of any adverse benefit determination within a reasonable period of time, but not later than 90 days (45 days if the claim relates to a disability determination) after receipt of the claim. This period may be extended one time by the Plan for up to 90 days (30 additional days if the claim relates to a disability determination), provided that the Plan Administrator both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the Claimant, prior to the expiration of the initial review period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If the claim relates to a disability determination, the period for making the determination may be extended for up to an additional 30 days if

the Plan Administrator notifies the Claimant prior to the expiration of the first 30-day extension period.

**Content of Notice of Denied Claim.** If a claim is wholly or partially denied, the Plan Administrator will provide the Claimant with a written notice identifying (1) the reason or reasons for such denial, (2) the pertinent Plan provisions on which the denial is based, (3) any material or information needed to grant the claim and an explanation of why the additional information is necessary, and (4) an explanation of the steps that the Claimant must take if he wishes to appeal the denial including a statement that the Claimant may bring a civil action under ERISA.

**Appeals of Denied Claim.** If a Claimant wishes to appeal the denial of a claim, he must file a written appeal with the Plan Administrator on or before the 60th day (180th day if the claim relates to a disability determination) after he receives the Plan Administrator's written notice that the claim has been wholly or partially denied. The written appeal must identify both the grounds and specific Plan provisions upon which the appeal is based. The Claimant will be provided, upon request and free of charge, documents and other information relevant to his claim. A written appeal may also include any comments, statements or documents that the Claimant may desire to provide. The Plan Administrator will consider the merits of the Claimant's written presentations, the merits of any facts or evidence in support of the denial of benefits, and such other facts and circumstances as the Plan Administrator may deem relevant. The Claimant will lose the right to appeal if the appeal is not timely made. The Plan Administrator will ordinarily rule on an appeal within 60 days (45 days if the claim relates to a disability determination). However, if special circumstances require an extension and the Plan Administrator furnishes the Claimant with a written extension notice during the initial period, the Plan Administrator may take up to 120 days (90 days if the claim relates to a disability determination) to rule on an appeal.

**Denial of Appeal.** If an appeal is wholly or partially denied, the Plan Administrator will provide the Claimant with a notice identifying (1) the reason or reasons for such denial, (2) the pertinent Plan provisions on which the denial is based, (3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits, and (4) a statement describing the Claimant's right to bring an action under section 502(a) of ERISA. The determination rendered by the Plan Administrator will be binding upon all parties.

**Determinations of Disability.** If the claim relates to a disability determination, determinations of the Plan Administrator will include the information required under applicable United States Department of Labor regulations.

## **YOUR RIGHTS UNDER ERISA**

As a participant, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). This federal law provides that you have the right to:

Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites and union halls, all documents governing the Plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.

Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The Plan Administrator may make a reasonable charge for the copies.

Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

Obtain, once a year, a statement from the Plan Administrator regarding your Accrued Benefit under the Plan and the nonforfeitable (vested) portion of your Accrued Benefit, if any. This statement must be requested in writing and is not required to be given more than once every twelve (12) months. The Plan must provide the statement free of charge.

In addition, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the 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, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining your benefits or exercising your rights under ERISA.

If your claim for a benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report 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 Plan Administrator 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 Plan Administrator.

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. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a domestic relations order, you may file suit in 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 the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

## **MISCELLANEOUS**

### Domestic Relations Orders

Your benefits under the Plan may be assigned to other people in accordance with a qualified domestic relations order. You may obtain, without charge, a copy of the Plan's procedures regarding qualified domestic relations orders from the Plan Administrator.

### Disability

Under this Plan, you are disabled if you have been determined disabled by the Social Security Administration and you are eligible to receive disability benefits under the Social Security Act.

### Loss of Benefit

Except as provided below, your account is not subject to any form of attachment, garnishment, sequestration or other actions of collection afforded creditors and your benefits are free from attachment, garnishment, trustee's process, or any other legal or equitable process. You may not alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments which you may expect to receive, contingently or otherwise, under the Plan, except that you may designate a Beneficiary.

However, you may lose all or part of your balance:

Under the terms of a qualified domestic relations order.

To comply with any federal tax levy.

To comply with the provisions and conditions of a judgment, order, decree or settlement agreement between you and the Secretary of Labor or the Pension Benefit Guaranty Corporation relating to your violation (or alleged violation) of ERISA fiduciary responsibilities.

If we cannot locate you when your benefit becomes payable to you.

### Amendment and Termination

The Company may amend, terminate or merge the Plan at any time. However, no such action may permit any part of Plan assets to be used for any purpose other than the exclusive benefit of participants and beneficiaries or cause any reduction in the amount credited to your account. If the Plan is terminated, all amounts credited to your accounts will become 100% vested.

### Fees

Your account may be charged for some or all of the costs and expenses of operating the Plan. Such expenses include, but are not limited to, investment expenses and costs to process loans, plan distributions and domestic relations orders.

### Insurance

Your account is not insured by the PBGC because the Plan is not a defined benefit pension plan.

### Administrator Discretion

The Plan Administrator has the authority to make factual determinations, to construe and interpret the provisions of the Plan, to correct defects and resolve ambiguities in the Plan and to supply omissions to the Plan. Any construction, interpretation or application of the Plan by the Plan Administrator is final, conclusive and binding.

### **ADMINISTRATIVE INFORMATION**

1. The Plan Sponsor and Plan Administrator is ABC Company  
  
Its address is 601 Congress Street, Attn: JHRPS Marketing @ Bloor,  
Boston, MA 02210  
  
Its telephone number is 555-555-4901.  
  
Its Employer Identification Number is 00-9999999.
2. The Plan is a 401(k) profit-sharing plan which has been designated by the sponsor as its plan number 001.
3. The Plan's designated agent for service of legal process is the President of the corporation named in item 1. Any legal papers should be delivered to him or her at the address listed in item 1. However, service may also be made upon the Plan Administrator or a Trustee.
4. The Plan's assets are held in a trust created under the terms of the Plan. The Trustee is John Hancock Trust Company. Its principal place of business is 101 Huntington Avenue Boston, MA 02199-7603.
5. The Company's fiscal year ends on 12/31 and the Plan Year ends on December 31.
6. If the Plan is established or maintained by two or more employers, you can obtain a complete list of the employers sponsoring the plan upon written request to the plan administrator (this list is also available for examination by participants and beneficiaries); you may also receive from the plan administrator, upon written request, information as to whether a particular employer is a sponsor of the plan and, if the employer is a plan sponsor, the sponsor's address.