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# COMMITTEE CHARTER: 401(K) PLAN

This Committee Charter is designed to illustrate criteria that may be relevant to support fiduciary decisions relating to the management and administration of a 401(k) plan. Should the Plan Fiduciaries decide to adopt this Charter, they may do so by having each member sign the Member Acknowledgment. It may also be advisable to adopt a board/corporate resolution in order to confirm the adoption of this Charter and to have the process reviewed by an experienced ERISA attorney

## PURPOSE & ACKNOWLEDGEMENTS:

This Charter is designed to serve as a guide for the retirement plan committee ("Committee") of the above-referenced employer-sponsored 401(k) plan ("Plan"). It is not intended to be a legally binding document; however, the undersigned voting Committee members (the "Fiduciaries") hereby acknowledge their fiduciary responsibilities under the Employee Retirement Income Security Act ("ERISA") and agree to follow this Charter to the extent it complies with applicable laws and regulations.

The Fiduciaries further acknowledge that, when exercising discretion over the management or administration of the Plan, they may be held personally liable under ERISA to restore any losses to the Plan attributable to a breach of their fiduciary duties. Among other things, the Fiduciaries are legally obligated to follow the Plan document and to consider information that is relevant (or that which they should know to be relevant) in order to make well-informed decisions that are solely in the interests of Plan participants and beneficiaries (collectively, "Participants"). Where the Fiduciaries lack the expertise to do so, they hereby acknowledge their duty to seek guidance and assistance from qualified third-party professionals ("Service Providers").

## COMMITTEE STRUCTURE:

The Committee's day-to-day responsibilities may be classified into three areas of responsibilities:

1) Investments – Selection/Monitoring/Replacement;[1]

2) Administration – Documentation/Reporting; and

3) Service Providers – Selection/Monitoring/Replacement.

At least one Fiduciary must be responsible for making decisions with respect to each of the three areas of fiduciary responsibility. These duties may be assumed collectively or allocated among the Fiduciaries by indicating the role of each member in the Member Acknowledgment(s) below.

## STATUS OF COMMITTEE MEMBERS:

The Committee may also be comprised of one or more non-voting members. The sole responsibility of such individuals is to facilitate the gathering and analysis of information necessary to enable the Fiduciaries to make well-informed decisions.

[1]If an investment manager, as that term is defined under ERISA 3(38), is properly appointed and periodically monitored, the Fiduciaries will not be responsible for the selection or replacement of any Plan investments over which such investment manager exercises discretion pursuant to the terms and conditions of the investment advisory or management agreement between the investment manager and the Plan. The Fiduciaries may, however, remain responsible for ensuring that the investment policy adopted by the Plan is reasonable based upon the needs and demographics of the Plan's participants. This Committee Charter is designed to illustrate criteria that may be relevant to support fiduciary decisions relating to the management and administration of a 401(k) plan. Should the Plan Fiduciaries decide to adopt this Charter, they may do so by having each member sign the Member Acknowledgment. It may also be advisable to adopt a board/corporate resolution in order to confirm the adoption of this Charter and to have the process reviewed by an experienced ERISA attorney.

While non-voting member(s) may recommend a particular course of action to the Fiduciaries, they may do so only in a ministerial capacity; nonvoting members will not have the power to make decisions on behalf of the Plan and will, therefore, not be considered to be fiduciaries under ERISA.

No Service Provider may serve as a voting Committee member and shall not be presumed to be a fiduciary with respect to the management or administration of the Plan. A Service Provider may, however, serve the Plan in a fiduciary capacity (e.g., by providing investment advisory or management services) if such status is acknowledged in writing pursuant to ERISA 408(b)(2).

The Committee may also appoint a Secretary, who may or may not be a Fiduciary, to maintain documentation relating to information considered by the Fiduciaries and the basis for the Fiduciaries' decisions.

## APPOINTMENT OF COMMITTEE MEMBERS:

Unless otherwise indicated below, the Fiduciaries may only be appointed by the board of directors of the company sponsoring the Plan or the person(s) named in the Plan document who jointly or severally have authority to control and manage the operation and administration of the Plan. No appointment will be effective to confer fiduciary status under ERISA to a Committee member prior to the date at which the member accepts such appointment by signing the attached Member Acknowledgment.

No Fiduciary shall be held responsible for any breach of fiduciary duty or other act of non-compliance that occurred prior to the Fiduciary's acceptance of his/her appointment.[2]

The Fiduciaries may appoint any non-voting Committee members as deemed necessary.

## POLICIES & PROCEDURES:

The Fiduciaries may consider the processes described in any Investment Policy Statement ("IPS") adopted by the Plan, as well as any supplemental policies attached as an Appendix to this Charter, when evaluating information required to make informed decisions regarding the above-referenced areas of fiduciary responsibilities. In the event this Charter conflicts with the terms of the IPS or any supplemental policies, such IPS or supplemental policies shall control.

## COMMITTEE MEETINGS:

The Committee will meet at such times and places as the Fiduciaries deem appropriate to carry out their duties. Members may attend a meeting electronically or telephonically, and any member so participating shall be counted as present. A majority of the Fiduciaries shall constitute a quorum.

[2]However, any Fiduciary signing below acknowledges that Section 405(a) of ERISA provides that a fiduciary of a plan may be liable for a breach of fiduciary responsibility committed by another fiduciary of the plan: (1) if he knowingly participates in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (2) if, by his failure to comply with section 404(a)(1) of ERISA in the exercise of his fiduciary obligations, he has enabled such other fiduciary to commit a breach; or (3) if he has knowledge of the breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

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## VOTING PROCEDURES:

A majority of the Fiduciaries must agree before making any decisions affecting the management or administration of the Plan; however, so long as at least one Fiduciary is capable of making an informed decision on a particular issue that is put to a vote, the other Fiduciaries may abstain. If at any time, the Fiduciaries are unable to agree, the Committee may refer the decision to the company's board of directors or the person(s) named in the Plan document who jointly or severally have authority to control and manage the operation and administration of the Plan.

## INDEMNIFICATION

The Company (❑ agrees / ❑ does not agree) to indemnify and to defend, to the fullest extent permitted by law, any current or former Committee member against all liabilities, damages, costs and expenses (including attorneys' fees and amounts paid in settlement of any claims approved by the company) occasioned by any act or omission relating to a member's performance of his/her responsibilities under this Charter and/or any law or regulation governing the management or administration of the Plan – provided, however, that it is determined (in the company's sole discretion) that the member acted in good faith.

## MEMBER ACKNOWLEDGMENT:

By signing below as a Fiduciary to the Plan, I acknowledge that I will be held to a fiduciary standard of care under ERISA when exercising discretion over matters affecting the management or administration of the Plan or the investment of Plan assets. By signing below in a non-voting, non-Fiduciary capacity, the Plan Fiduciaries and the Company agree that will not be held to a fiduciary standard of care under ERISA and that my sole responsibility will be to assist the Plan Fiduciaries on a ministerial or administrative basis. The Committee will use reasonable efforts to obtain and maintain education necessary to understand and execute their duties under this Charter and applicable laws and regulations, including ERISA.

| NAME/TITLE | FIDUCIARY STATUS | ROLE | SIGNATURE | DATE |
|---|---|---|---|---|
| | Y/N | | | |
| | Y/N | | | |
| | Y/N | | | |
| | Y/N | | | |
| | Y/N | | | |
| | Y/N | | | |

ACCEPTED BY:________________ ON BEHALF OF COMPANY ON:____/____/____