

**University of San Francisco  
Retirement Healthcare Savings Plan  
Document**

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## Article I. Definitions

**Account:** The bookkeeping account maintained for the benefit of any Member and their Dependents which includes the contributions made on behalf of the Member, the investment gains or losses on those amounts and any forfeitures which have been allocated to the account.

**Adoption Agreement:** The document completed by the Employer in order to elect the optional features which will apply to this Plan, as now in effect or hereafter amended. A copy of the Adoption Agreement is attached hereto and incorporated in its entirety to this document and together comprise the Plan. In the event of any conflict between the provisions of this document and those of the Adoption Agreement, the Adoption Agreement will control.

**Benefit:** The payment from a Member's Account for the Qualified Medical Care of the Member and/or Dependent.

**Break in Service:** Any period of absence from active service with the Employer that is not an Authorized Leave of Absence, paid holiday, paid vacation, or regularly scheduled paid or unpaid summer absence, or a period required to be credited in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

**Code:** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended, renumbered, or recodified. References herein to specific Code Sections shall include the applicable Treasury Regulations and Internal Revenue Service guidance issued thereunder which is currently in effect or as amended or recodified in corresponding provisions of the future.

**Dependent:** Unless the Adoption Agreement provides for a different definition, the spouse of a Member and any other individual who is defined as a dependent under the Employer's basic medical plan is a Dependent under this Plan.

**Effective Date:** The date elected in the Adoption Agreement on which the terms and provisions of the Plan become effective.

**Elapsed Time Method:** A method under which service time is used to determine a Year of Continuous Service. Service is calculated from the date on which an Employee performs one hour of service until the date on which the Employee has Severance from Employment or the first anniversary of absence from service for any other reason other than a Severance from Employment.

**Employee:** Each individual who is a common law employee of the Employer performing services for Employer.

**Employee Contribution:** Amount contributed to the Employee's Account from net wages and/or other compensation received by Employee from Employer.

**Employer:** An organization specifically identified in the Adoption Agreement. To the extent that Employer elects to include Employees of other entities which are affiliated with the Employer in this plan, all references to Employer shall include all entities so identified in the Adoption Agreement.

**Employer Contributions:** Contributions made by the Employer in accordance with the schedule set out in the Adoption Agreement.

**EIN (Employer Identification Number):** The number which was assigned to the Employer by the Internal Revenue Service for tax identification purposes.

**Entry Date:** The first date after meeting the eligibility requirements that contributions can be made to a Member's Account.

**Equivalency Basis:** A method of calculating hours of service based on a formula related to the Employee's work schedule or assigned job duties.

**ERISA:** The Employee Retirement Income Security Act of 1974. References herein to specific ERISA Sections shall include the applicable Department of Labor Regulations and Department of Labor guidance issued thereunder which is currently in effect or as amended in any future Department of Labor Regulations or guidance.

**HCE (Highly Compensated Employee):** One of the five highest-paid officers or an employee who is among the highest-paid 25% of all employees other than the following: employees under age 25, employees with less than three years of service, employees subject to collective bargaining, and non-resident aliens with no US income who are excluded from participation in the plan.

**Hour of Service:** Hour of Service means one hour of actual service for the Employer for which the Employee is compensated. If elected in the Adoption Agreement, an Hour of Service can also be calculated on an equivalency basis or under the elapsed time method permitted under the Code.

**Member:** An individual Employee for whom contributions are currently being made under the Plan, or for whom contributions have previously been made, and whose Account has a balance of funds remaining.

**Named Fiduciary:** The person, entity or committee named in the Adoption Agreement who is responsible for the fiduciary obligations under the Plan.

**Plan:** This document and the Adoption Agreement constitute the Plan. In the event of any conflict between the provisions of this document and those of the Adoption Agreement, the Adoption Agreement will control.

**Plan Administrator:** The person, entity or committee designated in the Adoption Agreement. If no designation is made, the Employer is the Plan Administrator.

**Plan Year:** The calendar year unless another Plan Year has been elected under the Adoption Agreement.

**Qualified Medical Care:** The term "Qualified Medical Expenses" means those expenses incurred by the Member or Dependents, on or after the date the Member becomes eligible for reimbursement under the Plan, for "medical care" as defined in Section 213(d) of the Code [as may be amended by future legislation and as further described in IRS regulations governing Section 213(d)]. As of the date of the adoption of the Plan, Section 213(d) Qualified Medical Care generally includes:

- (1) Amounts not otherwise covered by insurance or by some other means**, paid on or after the Eligible Benefit Date by Members and/or Dependents, and reasonably verified by a provider's receipt, bill or other documentation produced in the ordinary course of business —
  - (A)** for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,
  - (B)** for transportation primarily for and essential to medical care referred to in subparagraph (A),
  - (C)** for qualified long-term care services (as defined in Section 7702B(c) of the Code), or

(D) for insurance premiums covering medical care referred to in subsections (A), (B) and (C) above or for any qualified long-term care insurance contract (as defined in Section 7702B(c) of the Code).

(2) **Amounts paid for certain lodging away from home treated as paid for medical care.** Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for, and essential to, medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if:

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

**Retiree:** A former Employee who has met the requirements designated in the Adoption Agreement for payment of Benefits under this Plan.

**Severance from Employment:** For purposes of the Plan, Severance from Employment means termination of the employment relationship from the Employer and any related entity.

**Year of Continuous Service:** Each twelve (12)-month period of employment with the Employer as determined by the Plan Sponsor based on the terms elected in the Adoption Agreement, provided that such service includes any period: (1) required to be credited under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended; (2) prior to Severance from Employment if the Employee ceases work, but is re-employed prior to incurring a one-year Break in Service; (3) prior to incurring a one-year Break in Service if the Employee had already satisfied the applicable requirements set forth in the Adoption Agreement when the Break in Service commenced. Unless otherwise elected in the Adoption Agreement, all Years of Service with the Employer shall be counted, including years before Member was 18 years old, years before the Plan was in existence, and years in which the Member declined to make contributions to the Plan. Employer may elect in the Adoption Agreement to use an elapsed time method or to use equivalency periods for calculating hours.

## Article II. General

### Section 2.01 – Membership, Benefits, Prohibited Inurement

- (a) Membership in the Plan is voluntary.
- (b) The Plan provides for the payment of Benefits for the Qualified Medical Care of its Members and their Dependents in accordance with the terms of the Plan and in compliance with the Internal Revenue Code, ERISA and related regulations.

### Section 2.02 – Reservation of Employer's Rights

Nothing in the Plan shall be construed to confer any vested benefit on any Member or other person. The Employer reserves the right to terminate or change benefits at any time. The Plan Administrator reserves the discretionary authority to interpret the Plan's terms and provisions.

## Article III. Membership and Contributions

### Section 3.01 – Eligibility to Make Voluntary Employee Contributions

- (a) Except as provided in the Adoption Agreement, all Employees are eligible to become Members in the Plan

by making Employee Contributions pursuant to an after-tax salary deduction agreement.

- (b) Once the conditions for eligibility set forth in the Adoption Agreement are met, there is no requirement that the Member be employed on the last day of the year or work a minimum number of hours during a Plan Year in order to make Employee Contributions during that year.
- (c) The portion of a Member's Account attributable to Employee Contributions will be vested immediately, subject to the provisions of Article V governing entitlement to Benefits.

### **Section 3.02 – Eligibility for Employer Contributions**

- (a) Employees who are not excluded by the Adoption Agreement and who meet the criteria set forth in the Adoption Agreement for Employer Contributions may become Members in the Plan by having Employer and/or Matching Contributions made to their Accounts.
- (b) Employer Contributions are subject to the Entry Date provision of Section 3.03 and to the schedule of contributions set forth in the Adoption Agreement.
- (c) Once the eligibility requirements set forth in the Adoption Agreement are met, an Employee becomes a Member in the Plan. There is no requirement that a Member be employed on the last day of the year or work a minimum number of hours during the year in order to receive Employer Contributions once they have become a Member in the Plan, unless otherwise stated in the Adoption Agreement.

### **Section 3.03 – Vesting of Employer Contributions**

Notwithstanding the foregoing provisions of this Section, the portion of the Member's Account attributable to Employer Contributions shall be subject to the provisions of Article V governing entitlement to Benefits and to additional vesting requirements, if any, stated in the Adoption Agreement.

### **Section 3.04 – Entry Date**

The earliest date that contributions can be made to the Account of an eligible Employee is the first administratively practicable day of the month following the day the Employee becomes eligible, unless a different Entry Date is provided in the Adoption Agreement.

### **Section 3.05 – Duration of Membership/Retiree Members**

After a Member becomes a Retiree, he/she shall remain a Member until all of the funds in his or her Account have been distributed. Upon receipt of the final disbursement from the Member's Account, his/her membership in the Plan shall terminate automatically.

### **Section 3.06 – Corrections**

Note to Plan Sponsors: The exclusive benefit rule under ERISA requires that funds contributed to the plan be used only for participant benefits and eligible plan expenses.

If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then the mistaken contribution (adjusted for any income or loss in value, if any allocable thereto) shall be allocated to the Plan's forfeiture account.

## Article IV. Investments

### Section 4.01 – Investment Decisions

The Named Fiduciary will select the available investments under the Plan. The Named Fiduciary will enter into all agreements necessary to establish investment of contributions. Subject to the terms of the investment, the Named Fiduciary may terminate an investment at any time. Subject to the terms of the VEBA Trust in which all Plan investments are held, the Member shall be entitled to provide investment direction for amounts held in account in their name. When the Plan Administrator is notified of the death of a Member, the spouse or domestic partner of the Member shall be entitled to provide investment direction. Other Dependents shall not be entitled to provide investment direction following a Member's death. In the event there is no surviving spouse or domestic partner, all funds in the Member's account shall be transferred to the money market account unless those funds are forfeitable.

### Section 4.02 – No Private Inurement

All amounts contributed to the Plan, and all income attributable to such amounts, will be held for the sole benefit of Members and their Dependents. Each investment shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Members and their Dependents, for any part of the assets and income held by such investment to be used for, or diverted to, purposes other than for the exclusive benefit of Members and their Dependents.

## Article V. Payment of Benefits

### Section 5.01 – Entitlement to Benefits

- (a) Disbursement of funds in a Member's Account shall commence in accordance with the provisions set forth in the Adoption Agreement.
- (b) Benefits in any form will commence only when the request is submitted in good order in accordance with the rules promulgated from time to time by the Plan Administrator.
- (c) The Plan Administrator is authorized to make Benefit payments from a Member's Account pursuant to a court order in marital separation or dissolution or child custody proceedings to the extent payments under the order are consistent with the terms of the Plan. No separate account will be created for the benefit of the spouse or dependents.
- (d) It is the Member's duty to notify the Plan Administrator, or its designee, of any loss of qualifying dependent status of any person classified as a Dependent under the Plan.
- (e) In the event of the death of a Member, payment of Benefits from the deceased Member's Account will be made in accordance with the terms set forth in the Adoption Agreement.

### Section 5.02 – Termination of Benefits

- (a) Disbursement of the funds in a Member's Account shall permanently cease when:
  - 1. There are no more funds in the Account; or
  - 2. Member, or the Member's Dependent, is no longer qualified to receive Benefits in accordance with the terms and conditions set forth in the Adoption Agreement; or

3. Upon termination of the Plan as described in Section 7.02 below.
- (b) Disbursement of the funds in a Member's Account shall permanently cease upon prior approval of the Employer when:
1. Member is deceased and there are no Dependents qualified to receive a Benefit in accordance with the terms and conditions set forth in the Adoption Agreement; or
  2. Member cannot be located by the means set forth in Section 8.02 below and is no longer a Member pursuant to that Section; or
  3. Member's Account balance has become a Small Account Balance pursuant to Section 8.03 below.

### **Section 5.03 – Disposition of Forfeited Funds**

Any funds remaining in the Account of a Member (or former Member) who is no longer entitled to receive Benefits by operation of Section 5.02 above shall be deemed forfeited and shall be used for the benefit of the remaining Members of the Plan. At the discretion of the Plan Administrator, forfeited funds may be:

- (a) Reallocated to offset future Employer Contributions,
- (b) Used to pay direct expenses of the Plan, or
- (c) Reallocated to remaining Accounts. Any reallocation of forfeitures, whether attributed to Employee Contributions or Employer Contributions, will be reallocated to the Accounts of remaining Members in a manner which does not favor the Highly Compensated Employees.

## **Article VI. Administration**

### **Section 6.01 – Plan Administrator**

The Plan Administrator has the obligation and the unfettered discretionary authority to manage the operation of the Plan in accordance with the terms stated herein, in the Adoption Agreement, and in accordance with the requirements of ERISA and the Code.

- (a) The Plan Administrator may delegate any and all responsibilities of the Plan, including any compliance responsibilities, to other people or entities. This delegation must be in writing, and the party to whom the responsibility was delegated must accept this delegation in writing in order for the delegation to be effective.
- (b) Factual determinations and interpretations of the Plan Document provisions by the Plan Administrator shall be final and binding on all Members and their Beneficiaries.
- (c) The Plan Administrator may adopt rules and procedures deemed necessary to administer the Plan.

### **Section 6.02 – Plan Expenses and Fees**

- (a) Direct Expenses of the Plan. All direct expenses of the Plan shall be paid by the Employer, except that, at the Plan Administrator's discretion, direct expenses of the Plan may be paid with forfeited funds.
- (b) Expenses related to an Individual Account. Fees that are related to a particular Member Account may be assessed against that Account.



### Section 6.03 – Contributions Made Promptly

Employee contributions shall be transmitted to the trust as soon as they can be reasonably segregated but in any event no later than fifteen (15) days following the close of the month when the contribution is made. Employer Contributions shall be remitted no later than eight and one-half months after the last day of the Plan Year, although the Employer may choose to remit at an earlier date.

### Section 6.04 – Allocation of Fiduciary Responsibility

The Named Fiduciary is elected in the Adoption Agreement. Plan fiduciaries shall have those responsibilities given to them under the Plan. They may delegate those responsibilities to the extent it does not violate the Plan rules or ERISA. Any such delegation must be in writing and the party to whom the responsibility was delegated must accept this delegation in writing in order for the delegation to be effective.

### Section 6.05 – Indemnification

The Employer shall indemnify and hold harmless any fiduciary under the Plan from all claims, liabilities, losses, damages, and expenses, including reasonable attorneys' fees, incurred in connection with their fiduciary duties under the Plan to the extent these amounts are not covered by insurance. However, the Employer shall not indemnify or hold harmless any fiduciary for any gross negligence, willful misconduct, bad faith, or breach of fiduciary duty. Although it is possible for vendors, funding vehicles, third-party administrators, and other service providers to be a Plan fiduciary, this Section does not extend to those fiduciaries.

### Section 6.06 – Claims Procedure

- (a) **Filing a Claim:** Requests for Benefits are normally made directly to the Plan Administrator under the Plan, or to a party designated by the Plan Administrator to be the claim administrator, and must be made in accordance with the rules promulgated from time to time by the administrator. If a request for a benefit is denied or the Plan Administrator refuses to make a payment, the Member or Dependent can file a claim in writing with the Plan Administrator. The claim should explain the reasons that the Member or Dependent is entitled to the Benefit. The Plan Administrator has the unfettered discretionary authority to conduct an investigation and to determine the merits of the claim.
- (b) **Denial of a Claim:** If the claim is fully or partially denied, the Plan Administrator will provide the claimant with a written explanation within 90 days stating:
  - (i) The reason for the denial;
  - (ii) The Plan provisions upon which the denial is based;
  - (iii) Any additional information that would be needed to grant the claim and why it is needed; and
  - (iv) The procedure for appealing the denial.
- (c) **Appeal of a Denial:** If the claim is denied, the claimant can within 60 days request a review by the Plan Administrator. Within 60 days following the request for review, the Plan Administrator will render their final decision in writing stating specific reasons for the decision. If special circumstances require an extension of the review period, the Plan Administrator's decision will be rendered as soon as possible but in no event later than 120 days after receipt of the request for review. If the claim is denied after review, then, and not before, the claimant shall have a right, under ERISA, to bring an action, in law or in equity, in Federal court to protect his or her rights to obtain benefits under the Plan. If it should happen that Plan fiduciaries misuse the Plan's money, or the claimant is discriminated against for asserting his rights, the claimant may seek assistance from the U.S. Department of Labor, or the claimant may file suit in a Federal court.

The court will decide who should pay court costs and legal fees. If the claimant is successful, the court may order the person the claimant has sued to pay these costs and fees. If the claimant loses, the court may order the claimant to pay these costs and fees, for example, if it finds the claim is frivolous.

## Article VII. Amendment, Merger and Termination

### Section 7.01 – Right to Amend

The Employer reserves the right to amend the Plan at any time. No oral modification or amendment of the Plan shall be effective. Employer may amend or terminate the Plan by written instrument adopted by its board of directors or other governing body. A Plan amendment will be attached hereto and incorporated into this Plan Document.

### Section 7.02 – Plan Termination

- (a) The Employer has adopted this Plan with the intention and expectation that the Plan will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for such discontinuance.
- (b) In connection with the termination of the Plan, all Accounts will be distributed to Members for permitted uses.
- (c) Any assets remaining in a trust or other funding vehicle for this Plan shall, after satisfaction of all liabilities, be applied to provide benefits in accordance with the Plan pursuant to criteria that do not provide for disproportionate benefits to Highly Compensated Employees of the Employer.

### Section 7.03 – Plan Merger or Consolidation

In the case of a merger or consolidation of the Plan, each Member shall be entitled to benefits after the merger or consolidation that are at least equal to what they were entitled to receive immediately before the merger or consolidation.

## Article VIII. Miscellaneous

### Section 8.01 – Payments to Minors and Incompetents

If the Member or Dependent is a minor or adjudged to be legally incapable of giving valid receipt and discharge for such benefits or is deemed so by the Plan Administrator, benefits will be paid to such person as the Plan Administrator may designate for the benefit of such Member or Dependent. Such payments shall be considered a payment to such Member or Dependent and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

### Section 8.02 – Procedure When Payee Cannot Be Located

- (a) If the Member or Dependent entitled to receive any Benefits hereunder cannot be located, the Plan Administrator shall make all reasonable attempts to determine the identity and address of the Member or the Member's Dependent entitled to Benefits under the Plan. For this purpose, a reasonable attempt means:
  - (1) The mailing by certified mail of a notice to the last-known address(es) shown on Employer's and the Plan Administrator's Records;

- (2) The payee has not responded within six months; then
- (3) Use of the Social Security Administration Reporting Service or other locator tools and services.
- (4) Such other measures as the Plan Administrator deems necessary or advisable.
- (b) If, within 18 months after exhausting the measures described in subsection (a) above, the Plan Administrator fails to locate a person entitled to Benefits hereunder and there has been no claim made for such Benefits, then at the Plan Administrator's discretion, the unpaid benefits may be deemed forfeited and the Adoption Agreement shall determine the disposition of forfeited amounts.
- (c) **Loss of Eligibility to Participate:**
  - (i) A Member payee who cannot be located in accordance with the procedures and time limits of subsections (a) and (b) above shall no longer be deemed a Member of the Plan;
  - (ii) A Dependent payee who cannot be located in accordance with the procedures and time limits of subsections (a) and (b) above shall no longer be deemed a Dependent under the Plan.

### **Section 8.03 – Small Account Balance**

Unless otherwise provided in the Adoption Agreement, any Account balance shall be deemed forfeited under the Plan if:

- (a) The Account balance has become "a Small Account Balance", i.e., \$2,500 or less, or such other amount designated in the Adoption Agreement; **and**
- (b) The Employee is no longer making contributions; **and**
- (c) No claim for Benefits has been made within 365 days after the end of the Plan Year in which the Account balance became a Small Account Balance.

### **Section 8.04 – Non-Alienation**

The Member's sole interest in the Account is the right to receive reimbursements for certain medical expenses in accordance with the Plan's terms while the Plan exists and as long as there are funds in the Account. The Member's Account is not subject to the claims of any creditor of the Employer, Member or any Dependent. No party shall have any right to sell, assign, transfer, or otherwise convey their interest in any Account. Member may assign Benefits payable to him under the Plan to a healthcare provider.

### **Section 8.05 – No Right to Employment**

Neither the existence of this Plan nor any provision of the Plan Document, shall give any Member any right to continued employment.

### **Section 8.06 – Governing Law**

The Plan will be construed, administered, and enforced according to the Code and the laws of the State in which the Employer is organized. The Plan Document shall be interpreted in a manner consistent with the applicable provisions of the Code and ERISA.

#### **Section 8.07 – Severability of Provisions**

If any provision is deemed unenforceable, then it shall be severed from this Plan Document. All other provisions shall be separated and enforced to the full extent of the law. If the terms of the Adoption Agreement conflict with any provision herein, the terms of the Adoption Agreement will control.

#### **Section 8.08 – Headings and Captions**

Headings and captions of the Plan Document have been inserted for the convenience of reference only and are to be ignored in the construction of the provisions hereof.

#### **Section 8.09 – Gender and Number**

Pronouns used in the Plan Document in the masculine or feminine gender include both genders. Any reference to singular or plural shall be deemed to include both.

