


## NOTICE OF AMENDMENT BY VOLUME SUBMITTER PLAN SPONSOR

Pursuant to Section 5.01 of Revenue Procedure 2005-16 and the provisions of the Plan, The Pension Studio, LLC, as sponsor of the Defined Contribution Volume Submitter Plan and Trust ("Volume Submitter Plan"), hereby adopts the following amendment to the Volume Submitter Plan on behalf of all adopting employers. This amendment is being adopted as a "good-faith" amendment to reflect the provisions of the Heroes Earnings Assistance and Relief (HEART) Act of 2008, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) and other IRS guidance. This amendment supersedes any contrary provisions under the Volume Submitter Plan.

Pursuant to Section 5.01 of Revenue Procedure 2005-16, a copy of the following amendment will be provided to all adopting employers of the Volume Submitter Plan.

The Pension Studio, LLC  
Volume Submitter Sponsor

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Signature

December 1, 2009  
Date

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### ARTICLE I PURPOSE OF AMENDMENT

- 1.01 Adoption by Volume Submitter Sponsor.** Pursuant to Section 5.01 of Revenue Procedure 2005-16, the Plan is being amended by the Volume Submitter Sponsor on behalf of all adopting Employers. The provisions of this Interim Amendment and the elective provisions below are intended to qualify as a good-faith amendment to document the Plan's compliance with the requirements under the Heroes Earnings Assistance and Relief (HEART) Act of 2008, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) and other IRS guidance, and the final regulations regarding automatic contribution arrangements. This amendment supersedes any contrary provisions under the Plan. A copy of this amendment will be provided to all adopting Employers of the Volume Submitter Plan.

### ARTICLE II REQUIREMENTS UNDER HEROES EARNINGS ASSISTANCE AND RELIEF (HEART) ACT OF 2008

- 2.01 Death Benefits under Qualified Military Service.** In the case of a Participant who dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as though the Participant resumed and then terminated employment on account of death. This provision is effective with respect to deaths occurring on or after January 1, 2007.
- 2.02 Benefit Accruals.** If elected under §IA-1(a) of the Elective Provisions section below, for benefit accrual purposes, the Plan will treat an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service (as defined in Code §414(u)) with respect to the Employer, as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. This provision is effective with respect to deaths and disabilities occurring on or after January 1, 2007.
- (a) This Section 2.02 shall apply only if all individuals performing qualified military service with respect to the Employer maintaining the plan who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

- (b) The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 2.02 shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of:
  - (1) the 12-month period of service with the Employer immediately prior to qualified military service, or
  - (2) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.

**2.03 Differential Pay.** Effective for years beginning on or after January 1, 2009, in the case of an individual who receives Differential Pay from the Employer:

- (a) such individual will be treated as an Employee of the Employer making the payment, and
- (b) the Differential Pay shall be treated as wages and will be included in calculating an Employee's Total Compensation under the Plan.

If all Employees performing service in the Uniformed Services are entitled to receive Differential Pay on reasonably equivalent terms and are eligible to make contributions based on the payments on reasonably equivalent terms, the Plan shall not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit based on Differential Pay. However, for purposes of applying this subparagraph, the provisions of Code §§410(b)(3), (4), and (5) shall apply. The Employer may elect to exclude Differential Pay from the definition of Plan Compensation under §IA-1(b) of the Elective Provisions section below.

For purposes of this subsection (c), Differential Pay means any payment which is made by an Employer to an individual while the individual is performing service in the Uniformed Services while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Employer if the individual were performing services for the Employer. In applying the provisions of this subsection (c), Uniformed Services are services as described in Code §3401(h)(2)(A).

Notwithstanding the provisions of this subsection (c), an individual shall be treated as having been severed from employment during any period the individual is performing service in the Uniformed Services for purposes of receiving a Plan distribution under Code §401(k)(2)(B)(i)(I). If an individual elects to receive a distribution by reason of this paragraph, the individual may not make Salary Deferrals or Employee After-Tax Contributions under the Plan during the 6-month period beginning on the date of the distribution.

**2.04 Penalty-Free Withdrawals for Individuals Called to Active Duty.** Section C-2.01(k) of the Plan is amended to make the penalty-free withdrawal provisions for qualified reservist distributions permanent. Accordingly, the definition of active duty under Section C-2.01(k)(2) of the Plan is amended to read as follows:

- “(2) **Active duty.** For purposes of this subsection (k), a Qualified Reservist Distribution will only be available for individuals who are ordered or called into active duty after September 11, 2001.”

**ARTICLE III**  
**REQUIREMENTS UNDER WORKER RETIREE AND EMPLOYER RECOVERY ACT OF 2008 (WRERA) AND**  
**OTHER IRS GUIDANCE**

**3.01 Waiver of Required Minimum Distributions.** For calendar year 2009, the Required Minimum Distribution rules under Section 8.12 of the Plan will not apply. In applying the provisions of Section 8.12 of the Plan for the 2009 Distribution Calendar Year,

- (a) the Required Beginning Date with respect to any individual shall be determined without regard to this subsection (a) for purposes of applying this paragraph for Distribution Calendar Years after 2009, and
- (b) required distributions to a beneficiary upon the death of the Participant shall be determined without regard to calendar year 2009.

A Participant or beneficiary who would have been required to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year but for the enactment of Code §401(a)(9)(H) ("2009 RMD), may elect whether or not to receive the 2009 RMD (or any portion of such distribution). A distribution of the 2009 RMD or a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years, will be treated as an Eligible Rollover Distribution. However, if all or any portion of a distribution during 2009 is treated as an Eligible Rollover Distribution but would not be so treated if the Required Minimum Distribution requirements under Section 8.12 of the Plan had applied during 2009, such distribution shall not be treated as an Eligible Rollover Distribution for purposes of Code §§401(a)(31), 402(f) or 3405(c). (See Notice 2009-82 for transitional rules that apply for purposes of applying the rollover rules to the distribution of 2009 RMDs.)

**3.02 Non-Spousal Rollovers after December 31, 2009.** Effective for Plan Years beginning after December 31, 2009, the Plan must permit a non-spouse beneficiary (as defined in Code §401(a)(9)(E)) to make a direct rollover of an eligible rollover distribution to an individual retirement account under Code §408(a) or an individual retirement annuity under Code §408(b) that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11). A non-spouse rollover made after December 31, 2009 will be subject to the direct rollover requirements under Code §401(a)(31), the rollover notice requirements under Code §402(f) or the mandatory withholding requirements under Code §3405(c).

**3.03 Elimination of "Gap Period" Earnings.** The method for determining allocable income or loss attributable to a corrective distribution of Excess Deferrals under Code §402(g) is clarified to provide that only allocable gain or loss through the end of the Plan Year must be taken into account. Thus, "gap period" income need not be included in determining the amount of a corrective distribution of Excess Deferrals.

**3.04 Transfer of Plan to Unrelated Employer.** The Employer may not transfer sponsorship of the Plan to an unrelated employer if the transfer is not in connection with a transfer of business assets or operations from the Employer to the unrelated taxpayer.

**ARTICLE IV**  
**REQUIREMENTS UNDER EMERGENCY ECONOMIC STABILIZATION ACT OF 2008 (EESA)**

**4.01 In General.** This Article IV sets forth the provisions under the Emergency Economic Stabilization Act of 2008 (EESA) relating to Qualified Disaster Recovery Assistance Distributions made to Participants residing in a federally declared Midwestern disaster area between May 20, 2008 and August 1, 2008. The provisions of this Article IV will apply only to the extent a distribution or loan has been made to a qualified individual pursuant to the provisions of this Article IV. If the Plan does not operationally apply the rules under this Article IV, such provisions do not apply to the Plan. To the extent this Article IV applies to the Plan, the provisions of this Amendment supersede any inconsistent provisions of the Plan or loan program.

**4.02 Tax-Favored Withdrawals of Qualified Disaster Recovery Assistance Distributions.**

- (a) **Eligibility for Qualified Disaster Recovery Assistance Distributions.** A Qualified Individual may take a Qualified Disaster Recovery Assistance Distribution without regard to any distribution restrictions otherwise applicable under the Plan. A Qualified Disaster Recovery Assistance Distribution is not subject to the early distribution penalty under Code §72(t).
- (1) **Definition of Qualified Disaster Recovery Assistance Distributions.** A “Qualified Disaster Recovery Assistance Distribution” is a hardship distribution, in-service distribution or a loan that is:
- (i) made on or after a presidentially-declared disaster date (“the applicable disaster date”), and before January 1, 2010;
  - (ii) by an individual whose principal residence on the applicable disaster date was located in a Midwestern Disaster Area; and
  - (iii) who suffered an economic loss due to severe storms, flooding or tornadoes.
- (2) **Limit on amount of Qualified Disaster Recovery Assistance Distributions.** The aggregate amount of Qualified Disaster Recovery Assistance Distributions received by an individual for any taxable year (from all plans maintained by the Employer and any member of a controlled group which includes the Employer) may not exceed the excess (if any) of \$100,000, over the aggregate amounts treated as Qualified Disaster Recovery Assistance Distributions received by such individual for all prior taxable years.
- (b) **Income inclusion spread over 3-year period.** Unless a qualified individual elects not to have this paragraph apply for any taxable year, a Qualified Disaster Recovery Assistance Distribution is not required to be included in gross income for the taxable year of distribution but shall be included in gross income ratably over the 3-taxable year period beginning with the taxable year of the distribution.
- (c) **Repayment of Qualified Disaster Recovery Assistance Distributions.** A Participant who received a Qualified Disaster Recovery Assistance Distribution from the Plan or another eligible retirement plan (as defined in Code §402(c)(8)(B)) may, at any time during the 3-year period beginning on the day after the receipt of such distribution, make one or more rollover contributions to the Plan in an aggregate amount that does not exceed the amount of such Qualified Disaster Recovery Assistance Distribution. This subsection (c) only applies if the Plan permits rollover contributions.

**4.03 Recontributions of Qualified Hardship Distributions.** A Participant who received a qualified hardship distribution to purchase a home in the Midwest disaster area within six months of the applicable disaster date and the home was not purchased due to the disaster, may recontribute such distributions to the Plan (or an IRA) no later than March 3, 2009. This subsection 4.03 only applies if the Plan permits rollover contributions.

**4.04 Special loan rules.**

- (a) **Increased Participant loan limits.** Notwithstanding the Participant loan limitations under the Plan, for purposes of determining the maximum amount of a Participant loan for a qualified individual (as defined in Section 4.02(b) above) during the period from October 3, 2008 through December 31, 2009, the loan limits under Section 13.03 of the Plan shall be applied by substituting “\$100,000” for “\$50,000” under Section 13.03(a) and “the Participant’s vested Account Balance” for “one-half (1/2) of the Participant’s vested Account Balance” under Section 13.03(b).
- (b) **Delayed loan repayment date.** If a qualified individual has an outstanding Participant loan on or after the applicable disaster date and before January 1, 2010:
- (1) the due date for repayment of the Participant loan shall be delayed for 1 year;

- (2) any subsequent repayments with respect to such loan shall be appropriately adjusted to reflect the delay in the due date under subsection (a) and any interest accruing during such delay; and
- (3) in determining the 5-year period and the term of the loan under Section 13.07 of the Plan, the 1-year delay period described in subsection (a) shall be disregarded.

**ARTICLE V  
FINAL AUTOMATIC CONTRIBUTION REGULATIONS**

- 5.01 Definition of Eligible Automatic Contribution Arrangement (EACA).** Section C-2.02(a) of the Plan is amended to modify the definition of an Eligible Automatic Contribution Arrangement (EACA). Section C-2.02(a)(1) of the Plan requires that to qualify as an EACA, the automatic contribution arrangement must apply to all eligible Employees who have not entered into an affirmative deferral election. Under this subsection (a), the definition of an EACA is modified to allow the Employer to designate the Employees eligible to participate in the EACA. Thus, a Plan will not fail to be an EACA merely because an election is made in AA §6A-8 to apply the automatic contribution arrangement only to a limited group of Employees. However, if the Plan otherwise qualifies as an EACA but the automatic contribution arrangement does not apply to all eligible Employees (who have not entered into an affirmative deferral election), the Plan will not qualify for the extended 6-month correction period described in Section C-202(c) of the Plan.
- 5.02 Annual EACA notice.** Section C-2.02(a)(2)(ii) of the Plan is amended to clarify that the annual EACA notice only needs to be provided to those Employees who are covered under the EACA. In addition, Section C-2.02(a)(2)(ii) of the Plan is amended to clarify that if it is impractical to provide the annual EACA notice to a newly eligible Participant before the date such individual becomes eligible to participate under the Plan, the notice will be treated as timely if it is provided as soon as practicable after such date and the Employee is permitted to defer from Plan Compensation earned beginning on the date of participation.
- 5.03 Permissible Withdrawals under Eligible Automatic Contribution Arrangement.** Section C-2.02(b)(2) of the Plan is amended to provide that a permissible withdrawal election must be effective no later than the pay date for the second payroll period that begins after the election is made or, if earlier, the first pay date that occurs at least 30 days after the election is made. The Employer may designate an alternative period for making permissive withdrawals under §IA-3(a) of the Elective Provisions section below. If an Employee does not make automatic deferrals to the Plan for an entire Plan Year (e.g., due to termination of employment), the Plan may allow such Employee to take a permissive withdrawal, but only with respect to default contributions made after the Employee's return to employment.
- 5.04 Automatic increase.** Effective for Plan Years beginning on or after January 1, 2008, Section C-2.03(a) of the Plan is amended to clarify that any required increase in the minimum deferral percentages described under Section C-2.03(a) is applied from the date a Participant first begins making automatic deferrals under a Qualified Automatic Contribution Arrangement (QACA). In addition, Sections 3.03(c) and C-2.03 of the Plan are amended to clarify that an automatic increase in the designated deferral percentage may be effective as of a date during the Plan Year, as long as the increase is uniform based on the number of years or portions of years since an Employee first has automatic contributions made to the Plan. The Employer may designate the date as of which automatic increases are determined under §IA-3(b) of the Elective Provisions section below.
- 5.05 Treatment of rehires.** Effective for Plan Years beginning on or after January 1, 2008, Section C-2.03(a) of the Plan is amended to clarify that the minimum deferral percentages under a QACA are determined based on the date the Participant first begins making automatic deferrals under the Plan, without regard to whether the Employee continues to be eligible to make contributions after such date. Thus, the minimum percentage is generally determined based on the number of years since an Employee first has automatic deferrals made under the QACA. However, if an Employee does not make automatic deferrals to the Plan for an entire Plan Year (e.g., due to termination of employment), the Plan may treat such Employee as having a new initial period for determining the minimum required default percentage under Section C-2.03(a) of the Plan (if such Employee recommences making default contributions under the QACA), regardless of what minimum percentage would otherwise apply to that Employee. The provisions of this Section 5.05 will automatically apply, unless designated otherwise under §IA-3(c) of the Elective Provisions section below.

- 5.06 **Definition of Plan Compensation.** For Plan Years beginning on or after January 1, 2010, the definition of Plan Compensation used for purposes of determining default contributions under a QACA must satisfy the safe harbor requirements under Treas. Reg. §1.401(k)-3(b)(2). For this purpose, if the Plan defines Plan Compensation in a manner that does not satisfy the safe harbor requirements under Treas. Reg. §1.401(k)-3(b)(2), effective for the first Plan Year beginning on or after January 1, 2010, the definition of Plan Compensation used for determining default contributions will automatically be modified so that any exclusions that cause the definition of Plan Compensation to fail the safe harbor requirements will apply only to Highly Compensated Employees

**INTERIM AMENDMENT  
ELECTIVE PROVISIONS**

This Section contains the elective provisions for implementing the interim amendments set forth in this amendment. The interim amendments and any elections under these elective provisions supersede any contrary provisions under the Plan or Adoption Agreement.

**IA-1 HEART Act Provisions**

- (a) **Benefit Accruals.** The benefit accrual provisions under Section 2.02 of this amendment do not apply. To apply the benefit accrual provisions under Section 2.02, check the box below.
- Eligibility for Plan benefits.** Check this box if the Plan will provide the benefits described in Section 2.02 of this amendment. If this box is checked, an individual who dies or becomes disabled in qualified military service will be treated as reemployed for purposes of determining entitlement to benefits under the Plan.
- (b) **Treatment of Differential Pay.** Section 2.03 of this amendment provides that if an individual performing service in the Uniformed Services receives Differential Pay from the Employer, such Differential Pay is treated as Total Compensation under the Plan. In addition, unless designated otherwise below, Differential Pay will be treated as Plan Compensation for purposes of applying the contribution provisions under the Plan. To exclude Differential Pay from Plan Compensation, check the box below.
- Definition of Plan Compensation.** Check this box if Differential Pay will be excluded from the definition of Plan Compensation. If this box is checked, no contribution under the Plan will be made with respect to Differential Pay.

*[Note: The exclusion of Differential Pay from the definition of Plan Compensation may cause the definition of Plan Compensation to fail to satisfy the safe harbor requirements under Treas. Reg. §1.414(s).]*

- IA-2 Required Minimum Distribution.** For purposes of applying the Required Minimum Distribution rules for the 2009 Distribution Calendar Year, as described in Section 3.01 of this amendment, a Participant (including an Alternate Payee or beneficiary of a deceased Participant) who is eligible to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year may elect whether or not to receive the 2009 Required Minimum Distribution (or any portion of such distribution). If a Participant does not specifically elect to leave the 2009 Required Minimum Distribution in the Plan, such distribution will be made for the 2009 Distribution Calendar Year pursuant to Section 3.01 of this amendment.

- No distribution.** If this box is checked, 2009 Required Minimum Distributions will not be made to Participants who are otherwise required to receive a Required Minimum Distribution for the 2009 Distribution Calendar Year under Section 8.12 of the Plan, unless the Participant elects to receive such distribution.

**IA-3 Provisions to Comply with Final Automatic Contribution Regulations**

- (a) **Permissive Withdrawals under Eligible Automatic Contribution Arrangement.** Section C-2.02(b) of the Plan allows a Participant to make a permissive withdrawal of amounts that are automatically contributed to the Plan, provided the Employee requests a withdrawal no later than 90 days after the date the Plan Compensation from which such Salary Deferrals are withheld would otherwise have been included in gross

income. To provide for a shorter period by which a Participant must elect a permissive withdrawal from the Plan, check the box below.

- Time period for electing a permissive withdrawal.** Instead of a 90-day election period, a Participant must request a permissive withdrawal no later than \_\_\_\_\_ [*may not be less than 30 or more than 90*] days after the date the Plan Compensation from which such Salary Deferrals are withheld would otherwise have been included in gross income.
  
- (b) **Effective date of automatic increase.** The automatic increase provisions under AA §6A-8(b) or AA §IA2-6, as applicable, are generally effective as of the beginning of a Plan Year (as set forth in Sections 3.03(c) and C-2.03(a) of the Plan). The first automatic increase occurs as of the appropriate date within the second full Plan Year following the Plan Year in which automatic contributions begin under the Plan. To provide for the automatic increase as of a different date during the Plan Year, check the box below:
  - (1) **Automatic increase during Plan Year.** Instead of becoming effective on the first day of the Plan Year, the automatic increase provisions under AA §6A-8(b) or AA §IA2-6, as applicable, will be effective on \_\_\_\_\_ of each Plan Year.
  - (2) **Timing of first automatic increase.** Instead of applying as of a date within the second full Plan Year following the Plan Year in which automatic contributions begin, the first automatic increase under AA §6A-8(b) or AA §IA2-6, as applicable, will apply as of the appropriate date within the first full Plan Year following the date the automatic contributions begin under the Plan.
  
- (c) **Treatment of rehires.** In applying the provisions of Sections 5.02 and 5.05 of this amendment, a Participant is treated as a new Employee if no automatic deferrals are made to the Plan for a full Plan Year. To override this provision, check the box below.
  - Rehired Employees.** In applying the provisions of Sections 5.02 and 5.05 of this amendment, a Participant who does not make automatic deferrals to the Plan for a full Plan Year will not be treated as a new Employee if such Employee should recommence making automatic deferrals under the Plan. Thus, the Participant's minimum deferral percentage will continue to be calculated based on the date the individual first began making automatic deferrals under the Plan.

#### APPLICATION OF AMENDMENT

Pursuant to Section 5.01 of Revenue Procedure 2005-16, the Plan is being amended by the Volume Submitter Sponsor on behalf of all adopting Employers. This amendment supersedes any contrary provisions under the Plan or Adoption Agreement. This amendment does not replace any prior amendments that were adopted to comply with the remedial amendment requirements applicable to these interim amendments. Thus, the date of adoption of any prior interim amendments will continue to control in determining the date as of which such amendments were first adopted to comply with these rules.