

**AMERICAN CONFERENCE OF CANTORS  
SUPPLEMENTAL RETIREMENT PLAN AND TRUST**

**As Amended and Restated Effective  
January 1, 2015**

**AMERICAN CONFERENCE OF CANTORS**

**SUPPLEMENTAL RETIREMENT PLAN**

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AGREEMENT made on the date last written by and between the American Conference of Cantors (the “ACC”), a not-for-profit corporation organized and existing under the laws of the state of New York, and the individual temples (severally an “Employer” or collectively the “Employers”) whose adoption of this Agreement is evidenced by their continued participation in this plan, which shall be known as the AMERICAN CONFERENCE OF CANTORS SUPPLEMENTAL RETIREMENT PLAN (the “Plan”), and the trust established under a separate written instrument, known as the AMERICAN CONFERENCE OF CANTORS SUPPLEMENTAL RETIREMENT TRUST (the “Trust”).

WHEREAS, the ACC and the School of Sacred Music of the Hebrew Union College – Jewish Institute of Religion have heretofore established the American Conference of Cantors Pension and Insurance Plan (the “403(b) Plan”); and

WHEREAS, the parties hereto adopted an unfunded supplemental retirement plan designed to provide retirement benefits in addition to or in lieu of those provided under the 403(b) Plan; and concurrently, established the Trust designed to conform to the terms of the model trust set forth in Rev. Proc. 92-64, to aid Employers in accumulating the funds necessary to pay benefits under the terms of the Plan; and

WHEREAS, the parties hereto amended and restated the Plan effective as of January 1, 2005 to conform in good faith with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended. The Plan was further amended and restated the Plan effective January 1, 2009 to conform with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended, and in accordance with guidance on Section 409A subsequently issued by the Treasury Department and Internal Revenue Service.

NOW, THEREFORE, effective as of January 1, 2015, the parties hereto hereby amend and restate the AMERICAN CONFERENCE OF CANTORS SUPPLEMENTAL RETIREMENT PLAN with the following benefits, terms and provisions.

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**ARTICLE I.  
DEFINITIONS**

- 1.1 “ACC” means the American Conference of Cantors, Inc.
- 1.2 Active participant” means an Employee who is participating in this Plan.
- 1.3 “Anniversary Date” means December 31st.
- 1.4 “Appropriate Form” means the form prescribed, from time to time, by the Trustees for a stated purpose.
- 1.5 “Beneficiary” means the person designated to receive benefits by the Participant or the person otherwise entitled to receive benefits pursuant to the provisions of the Plan.
- 1.6 “Church Plan” means a plan described in Code Section 414(e) and Section 3(33) of ERISA. It is the intention of the parties that this Plan constitute a Church Plan.
- 1.7 “Code” means the Internal Revenue Code of 1986, as amended.
- 1.8 “Compensation” with respect to any Participant means the total compensation to be received from an Employer during a Plan Year by the Participant.
- 1.9 “Deferred Compensation” with respect to any participant means such participant’s total Compensation which has been deferred under the Plan as either Elective Deferred Compensation or Non-Elective Deferred Compensation.
- 1.10 “Deferred Retirement Date” means the first day of the month coinciding with or next following the date a participant has had a separation from service as defined in Treas. Reg. §1.409A-1(h), if such separation from service occurs after the Participant’s Normal Retirement Date.
- 1.11 “Early Retirement Date” means the first day of the month coincident with or next following the date a Participant has had a separation from service as defined in Treas. Reg. §1.409A-1(h) (on or after age 59 1/2 and before his Normal Retirement Date) as a professional cantor or temple musician (as determined by the Trustees).
- 1.12 “Elective Deferred Compensation” means that portion of an Employee’s total compensation which has been deferred under the Plan pursuant to the Participant’s deferral election provided in Section 4.3.
- 1.13 “Employee” means any person employed by an Employer whom the Executive Board determines, by uniform nondiscriminatory rule, is eligible to participate in this Plan. A person will not fail to be deemed an “Employee” for purposes of this Plan merely because the person is treated as self-employed for purposes of the Federal Insurance Contribution Act.
- 1.14 “Employer” means any temple or other eligible organization employing an Employee, limited to synagogues or temples or associations of synagogues and/or temples, or elementary or

secondary schools which are controlled, operated or principally supported by a synagogue, temple or an association of synagogues and/or temples, or qualified church-controlled organizations (within the meaning of Code Section 3121(w)(3)(B)), which entity has adopted the Plan pursuant to Section 10.1; provided, however, the term “Employer” shall only include organizations exempt from federal income tax pursuant to Code Section 501(c)(3) that permit the Plan to maintain its status as a Church Plan and be exempt from the requirements of Code Section 457 (pursuant to Code Section 457(e)(13)).

1.15 “ERISA” means Title I of the Employee Retirement Income Security Act of 1974, as amended.

1.16 “Excess Plan” means a plan maintained by an Employer solely for the purpose of providing benefits in excess of those which can be provided under the 403(b) Plan because of the limitations imposed by Code Sections 402(g), 403(b) or 415. Notwithstanding any provision contained herein to the contrary, this Plan may only be used as an Excess Plan with respect to any Participant, and shall be administered and liberally construed accordingly.

1.17 “Executive Board” means the ACC’s Executive Board.

1.18 “Fiduciary” means any person who, with respect to the Plan, is a “fiduciary”, using the same definition as would apply under ERISA, if the Plan were not exempt from ERISA as a church plan.

1.19 “Inactive Participant” means a person who is participating in this Plan, but who has ceased to be an Employee for any reason.

1.20 “Non-Elective Deferred Compensation” means that portion of an Employee’s total compensation which has been deferred under the Plan other than pursuant to a deferral election made by the participant under Section 4.3.

1.21 “Normal Retirement Age” means age 65.

1.22 “Normal Retirement Date” means the first day of the month coinciding with or next following the date a Participant attains Normal Retirement Age and has had a separation from service as defined in Treas. Reg. §1.409A-1(h).

1.23 “Participant” means an Active Participant or Inactive Participant.

1.24 “Participant’s Account” means the account established and maintained by the Trustees for each participant with respect to his total interest in the Plan resulting from Deferred Compensation.

1.25 “Permanent Disability” means any physical or mental condition of a Participant that may reasonably be expected to be permanent and which renders the Participant incapable of continuing in employment as a professional cantor or temple musician. If subsequently determined that such Participant is no longer disabled and the Participant enters into employment with an Employer, he shall be eligible to re-enter the Plan as an Active Participant. In determining whether a Participant has incurred a Permanent Disability, the Trustees may select a

physician to examine such Participant. The final determination shall be made by the Trustees on the basis of all the evidence.

1.26 “Plan” means this instrument, including all amendments thereto, which shall be known as the American Conference of Cantors Supplemental Retirement Plan.

1.27 “Plan Year” means the Plan’s accounting year of twelve (12) months commencing on January 1st of each year and ending the following December 31st.

1.28 “Qualified Domestic Relations Order” has the meaning set forth in Code Section 414(p).

1.29 “Retired Participant” means a person who has been a Participant, but who has become entitled to retirement benefits under the Plan.

1.30 “Retirement Date” means a Participant’s Normal Retirement Date, Early Retirement Date, or Deferred Retirement Date, whichever applies to the Participant involved.

1.31 “Terminated Participant” means a person who has been a Participant, but whose employment has been terminated other than by death, disability or retirement.

1.32 “Trust” means the trust established under a separate written instrument known as the American Conference of Cantors supplemental Retirement Trust. The Trust conforms to the terms of the model trust set forth in Rev. Proc. 92-64.

1.33 “Trustee” means the persons and/or entity named as Trustee of the Trust.

1.34 “Unforeseeable Emergency” means a severe financial hardship of the Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant’s or Beneficiary’s spouse, or the Participant’s or Beneficiary’s dependent (as defined in Code Section 152(a)), loss of the Participant’s or Beneficiary’s property due to casualty; imminent foreclosure or eviction from a primary residence, unreimbursed medical expenses, payment of funeral expenses for a spouse or dependent; or similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. Whether a Participant or Beneficiary is faced with an unforeseeable emergency is to be determined by the Trustees in its sole discretion based on all relevant facts and circumstances.

1.35 “Vested” means the portion of a participant’s Account that is nonforfeitable.

## **ARTICLE II. ADMINISTRATION**

### **2.1 POWERS AND RESPONSIBILITIES OF THE EXECUTIVE BOARD**

(a) The Executive Board shall be empowered to appoint and remove a Trustee from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is operated in accordance with its terms and otherwise in a manner which will not result in the income taxation of Plan benefits to Participants or Beneficiaries until their actual receipt thereof.

(b) The Executive Board shall periodically review the performance of any Fiduciary or other Person to whom duties have been delegated or allocated by it under the provisions of the Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Executive Board or by a qualified person specifically designated by the Executive Board, through day-to-day conduct and evaluation, or through other appropriate ways.

### **2.2 ALLOCATION AND DELEGATION OF RESPONSIBILITIES**

If more than one person is appointed to serve as a Trustee, the responsibilities of each Trustee may be specified by the Executive Board and accepted in writing by each Trustee. In the event that no such delegation is made by the Executive Board, the Trustees may allocate the responsibilities among themselves, in which event the Trustees shall notify the Executive Board and the Trustee in writing of such action and specify the responsibilities of each Trustee. The Trustee thereafter shall accept and rely upon any documents executed by the appropriate Trustee until such time as the Executive Board files with the Trustee a written revocation of such designation.

### **2.3 ADMINISTRATIVE POWERS AND DUTIES OF THE TRUSTEES**

The Trustees shall administer the Plan for the exclusive benefit of the participants and their Beneficiaries, subject to the specific terms of the Plan. The Trustees shall administer the Plan in accordance with its terms and shall have the power to determine all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination by the Trustees shall be conclusive and binding upon all persons. The Trustees may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purposes of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and consistent with the intent that this Plan be treated as a Church Plan, which is exempt from the provisions of Code Section 457 and ERISA. The Trustees shall have all power necessary or appropriate to accomplish its duties under this Plan.

The Trustees shall be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

- (a) to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder;
- (b) to compute and certify to an Employer the amount and kind of benefits to which any Participant shall be entitled hereunder;
- (c) to maintain all necessary records for the administration of the Plan;
- (d) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;
- (e) to prepare and implement a procedure to notify Employees that they may elect to have a portion of their compensation deferred hereunder; and
- (f) to assist any Participant regarding such Participant's rights, benefits or elections available under the Plan.

## 2.4 RECORDS AND REPORTS

The Trustees shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Participants, Beneficiaries and others as required by law.

## 2.5 APPOINTMENT OF ADVISERS

The Trustees may appoint counsel, specialists, advisers, and other persons as the Trustees deems necessary or desirable in connection with the administration of this Plan.

## 2.6 REQUIRED INFORMATION

To enable the Trustees to perform its functions, any Employer, Participant, Beneficiary or other person entitled to benefits shall furnish to the Trustees any information or proof requested by the Trustees. The Trustees may rely upon such information as is supplied, and shall have no duty or responsibility to verify such information.

## 2.7 PAYMENT OF EXPENSES

The members of the Board of Trustees shall serve without compensation for service and, except as otherwise required by law or by the Executive Board, without bond. If a Trustee is bonded for whatever reason, the cost of such bond shall be considered an administrative expense of the Trust.

All expenses of administration may be paid out of the Trust unless paid by an Employer. Such expenses shall include any expenses incident to the functioning of the Trustees, including, but not limited to, fees of accountants, counsel and other specialists and their agents, and any other costs of administering the Plan until paid, the expenses shall constitute a liability of the Trust. However, an Employer may reimburse the Trust for any administration expenses incurred.

## 2.8 MAJORITY ACTIONS

The Trustees shall act by majority of their number, or by unanimous approval if there are two or less members in office at the time.

Such action may be taken (a) by vote in a meeting, (b) in writing without a meeting or (c) by telephone or electronic communication if necessary or desirable. In the event of a Trustees deadlock, the Executive Board shall decide the matter in question. If there are two or more members in office at the time, no Trustee shall act upon any question pertaining solely to himself.

## 2.9 INDEMNIFICATION

(a) The ACC shall indemnify and hold the Trustees harmless against any liability it may incur in the administration of the Plan, except each Trustee shall be individually liable for his own gross negligence or willful misconduct. This section shall be construed in all cases to provide protection to the Trustees is supplemental to, and not in lieu of, that provided by any other provision of this Plan and any insurance covering the Trustees;, and shall be applied accordingly.

## 2.10 CLAIMS PROCEDURE

Claims for benefits under the Plan may be filed with the Trustees in the manner prescribed by the Trustees from time to time. Written notice of the disposition of a claim shall be furnished to the claimant and the affected Employer(s) within 90 days after the application is filed. In the event the claim is denied, the reasons for denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

## 2.11 CLAIMS REVIEW PROCEDURE

Any Employee, Participant, or Beneficiary of either, who has been denied a benefit by a decision of the Trustees pursuant to Section 2.11 shall be entitled to request the Trustees to give further consideration to his claim by filing with the Trustees (on the Appropriate Form) a request for a hearing. Such request, together with a written statement of the reasons why the claimant believes his claim should be allowed, shall be filed with the Trustees no later than 60 days after receipt of the written notification provided for in Section 2.11. The Trustees shall conduct a full and fair review within the next 60 days. The claimant or his representative shall have an opportunity to review all documents in the possession of the Trustees which are pertinent to the claim at issue and its disallowance. A final decision as to the allowance of the claim shall be made by the Trustees within 60 days of receipt of the appeal (unless there has been an extension of 60 days due to special circumstances, provided the delay and the special circumstance occasioning it are communicated to the claimant within the 60 day period). Such communication shall be written in a manner calculated to be understood by the claimant and shall include

specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

**ARTICLE III.  
ELIGIBILITY AND PARTICIPATION**

**3.1 ELIGIBILITY**

Each Employee shall be eligible to participate in the Plan as of his or her date of hire by an Employer.

**3.2 APPLICATION FOR PARTICIPATION**

In order to participate in the Plan, each Employee and his or her Employer shall complete and return to the Trustees the Appropriate Forms.

**3.3 EFFECTIVE DATE OF PARTICIPATION**

Participation in the Plan commences with respect to a Participant as of the first day of the Plan Year for which the participant defers Compensation under the Plan. The Trustees shall have no obligation to see to the participation in the Plan by any person, nor to the making of any contributions to the Trust by any Employer.

**3.4 DETERMINATION OF ELIGIBILITY**

The Trustees shall determine the eligibility of each Employee for participation in the Plan. Such determination shall be conclusive and binding upon all persons as long as the same is made pursuant to the Plan. However, such determination shall be subject to review per Section 2.11.

**3.5 ACCEPTANCE OF PLAN**

All Participants shall be deemed to have accepted and agreed to be bound by all of the provisions of the Plan, even though not an actual signatory hereto, as the date the Participant's Account is established hereunder.

**3.6 CHANGE OF EMPLOYMENT STATUS**

An Active Participant becomes an Inactive Participant if he ceases to be an Employee. No subsequent Compensation may be deferred under the Plan by or on behalf of such Inactive Participant. In the event an Inactive Participant subsequently becomes employed by an Employer, the new Employer of the Participant may adopt this Plan (pursuant to Article X hereof) and obligate itself to provide the participant with additional benefits hereunder.

**3.7 TRANSFER OF EMPLOYMENT**

In the event a Participant leaves the employ of one Employer to enter directly into the employ of another Employer, he shall not be deemed to have suspended or terminated his status as an Employee or to have become an Inactive participant hereunder, and such successor Employer may adopt this Plan (pursuant to Article X hereof) and obligate itself to provide the

Participant with additional benefits hereunder.

**ARTICLE IV.  
DEFERRED COMPENSATION AND EXPENSES**

**4.1 PARTICIPANT ACCOUNTS**

The Trustees shall establish and maintain an account in the name of each Participant to which the Trustees shall credit as of each Anniversary Date all amounts allocated to each such Participant as hereinafter set forth in this Article IV.

**4.2 FORMULA FOR DETERMINING DEFERRED COMPENSATION**

For the Plan Year during which the Plan is adopted and each Plan Year thereafter, the Trustees shall credit each Participant's Account with:

(a) The amount of the Participant's total compensation reduction elections made pursuant to Section 4.3(a) or (b), which amount shall be deemed the participant's Elective Deferred Compensation.

(b) The amount of Employer contributions that would have been contributed to the American Conference of Cantors Retirement Plan, A Qualified 403b Plan but excluded from that plan by reason of the limitations applicable to Code Section 403(b) plans by Code Sections 401(a)(17), 415 or similar limitations (excluding the limitation under Code Section 402(g)), which amount shall be deemed the Participant's Non-Elective Deferred Compensation.

(c) A discretionary amount, determined by the Participant's Employer, which amount shall be deemed the Participant's Non-Elective Deferred Compensation.

No compensation shall be considered "Deferred Compensation," "Elective Deferred Compensation" or "Non-Elective Deferred Compensation", as the case may be, under this Plan and credited to a Participant's Account as set forth above until such compensation has been contributed to the Trust by the participant's Employer.

**4.3 PARTICIPANT'S COMPENSATION REDUCTION ELECTION**

(a) Each Participant may elect to defer a portion of his compensation which would have been received in a year (except for the deferral election) provided that such election is irrevocably made no later than the December 31st prior to the year in which the services that are the subject of the deferral are performed. Notwithstanding the foregoing, in the case of an Employer with a fiscal year other than a calendar year, the election to defer Compensation may be made not later than the close of the Employer's fiscal year next preceding the fiscal year in which the services that are the subject of the deferral are performed.

(b) In the first year in which an Employee become eligible to participate in the Plan, the Employee may make an initial election to defer a portion of the portion of Compensation within 30 days after the date the Employee becomes eligible to participate in the Plan, but only with respect to Compensation paid for services performed subsequent to the election.

(c) The amount by which Compensation is reduced shall be that Participant's Elective Deferred Compensation and allocated to that Participant's Account.

(d) Each Employer and the Trustees shall adopt a procedure necessary to implement the compensation reduction elections provided for herein.

(e) Once made, a Participant's compensation reduction election shall remain in effect until modified or revoked. Modifications and revocations shall be permitted only in accordance with the uniform nondiscriminatory rules established by the Trustees and applicable law.

#### 4.4 CREDITS FOR EARNINGS

(a) Each Participant's Account shall be credited with income and appreciation (or losses and depreciation) as though such Participant's Account was invested as described in (b) and/or (c) below. The Trustees shall have the exclusive right to determine the amounts credited under this Section 4.4, and may establish such rules as it deems necessary or appropriate to administer this Section 4.4; provided, that such rules are nondiscriminatory.

(b) Except in the first Plan Year of a Participant, Deferred Compensation, for purposes of this Section 4.4(b), shall be credited to each Participant's Account after income and appreciation (or losses and depreciation) are credited. The crediting of income and appreciation (or losses and depreciation) shall be pro rata on the basis of nonsegregated account balances at the beginning of the year unless an interim valuation and allocation shall have been made at the direction of the Trustees. The Trustees shall determine how nonsegregated account balances shall be deemed invested for purposes of this Section 4.4(b).

(c) (1) The Trustees, in its sole discretion, may determine that all Participants are permitted to direct the Trustees as to how all or a portion of their individual account balances will be deemed invested for purposes of this Plan. If such authorization is given by the Trustees, Participants may, subject to a procedure established and applied in a uniform nondiscriminatory manner, direct the Trustees or its delegate, in accordance with procedures established for this purpose, to treat their account balances as being invested in specific assets and/or funds permitted by the Trustees. Any account balances so directed will thereupon be considered a Directed Investment Account which shall not be credited with earnings under, nor be taken into consideration for purposes of, Section 4.4(b) above.

(2) A separate Directed Investment Account shall be established for each Participant who has given the Trustees investment directions pursuant to Section 4.4(c)(1) above. For administration purposes, transfers from the Participant's regular account and his Directed Investment Account shall be charged and credited as the case may be to each account. A Directed Investment Account shall not be credited with earnings under Section 4.4(b) above, but shall be charged or credited as appropriate with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in market value which would have been earned or incurred by the account during each Plan Year as though such account was invested in accordance with the Participant's directions. Such amounts shall not be considered in determining the gains or losses credited under Section 4.4(b).

(3) Expenses which would have-been incurred in connection with Directed Investment Accounts shall be charged against the balance in such accounts.

#### 4.5 EXPENSES AND TRANSFERS

(a) Any administrative expenses of the Plan and Trust chargeable against the assets of the Trust shall also be taken into account, in accordance with uniform nondiscriminatory rules established by the Trustees, in determining the balance of each Participant's Account.

(b) The balance of a Participant's Account shall be reduced by the amount of any transfer made on the Participant's behalf pursuant to Section 2(d) of the Trust.

#### 4.6 IRREVOCABILITY OF CONTRIBUTIONS

Contributions to the Trust are irrevocable when made, except that if a contribution to the Trust is made by reason of a mistake of fact, the Trustees shall, upon request by the Participating Employer, return to the Participating Employer the excess of the amount contributed over the amount, if any, that would have been contributed had there not occurred a mistake of fact. A mistake of fact is one other than an error as to the legal consequences or legal obligations from an assumed state of facts, such as an arithmetic or computational error. In no event shall the return of a contribution hereunder cause any Participant's Account to be reduced to less than it would have been had the mistaken or nondeductible amount not been contributed. No return of a contribution hereunder shall be made more than one year after the mistaken payment of the contribution.

## **ARTICLE V. VALUATIONS**

### **5.1 VALUATION OF ACCOUNTS**

The Trustees shall, as of each Anniversary Date and at such other date or dates deemed necessary by the Trustees (herein called a “valuation date”), determine the net worth of all Participant Accounts as they exist on the “valuation date” prior to taking into consideration any Deferred Compensation to be credited for the Plan Year. In determining such net worth, the Trustees shall value the accounts at fair market value as of the “valuation date” and shall deduct all expenses for which the Trustees or Trustee have not yet “charged” to Participant Accounts.

### **5.2 METHOD OF VALUATION**

In determining the fair market value of securities deemed held under the Plan which are listed on a registered stock exchange, the Trustees shall value the same at the prices they were last traded on such exchange preceding the close of business on the “valuation date.” If such securities were not traded on the “valuation date”, or if the exchange on which they are traded was not open for business on the “valuation date”, then the securities shall be valued at the prices at which they were last traded prior to the “valuation date.” Any unlisted security deemed held by the Plan shall be valued at its bid price next preceding the close of business on the “valuation date,” which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustees may appraise such assets itself or, in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

**ARTICLE VI.**  
**DETERMINATION AND PAYMENT OF BENEFITS**

**6.1 DETERMINATION OF BENEFITS UPON RETIREMENT**

Upon a Participant's Retirement Date, the Participant shall become a Retired Participant and shall be entitled to a benefit equal to all amounts credited to the Participant's Account. Distribution of any benefits under this Section 6.1 shall commence within 30 days after the Participant's Retirement Date, in accordance with Section 6.4.

**6.2 DETERMINATION OF BENEFITS UPON TERMINATION DUE TO PERMANENT DISABILITY**

Upon a Participant's separation from service (as defined in Treas. Reg. §1.409A-1(h)) prior to Retirement Date on account of a Permanent Disability, the Participant shall be entitled to a benefit equal to all amounts credited to the Participant's Account. Distribution of benefits under this Section 6.2 shall commence within 30 days after the Participant's separation from service on account of Permanent Disability, in accordance with Section 6.4. There are no benefits payable upon termination of employment other than as a result of Permanent Disability prior to the Participant's Early Retirement Date.

**6.3 DETERMINATION OF BENEFITS UPON DEATH**

(a) Upon the death of a Participant (whether before or after his Retirement Date) who was not receiving benefits under this Plan prior to death, the Participant's Beneficiary shall be entitled to a benefit equal to all amounts credited to the deceased Participant's Account. Distribution of any death benefits under this Section 6.3(a) shall commence within 30 days after the death of the Participant, in accordance with Section 6.4.

(b) Upon the death of a Retired participant who was receiving benefits payable under this Plan prior to death, the Participant's Beneficiary shall be entitled to a benefit equal to all remaining amounts credited to the deceased Participant's Account, in accordance with Section 6.4.

(c) The Trustees may require such proper proof of death and such evidence of the right of any person to receive payment of the benefits of a deceased Participant or Retired Participant as the Trustees may deem desirable. The Trustees' determination of death and of the right of any person to receive payment shall be conclusive.

(d) Each Participant shall have the right, by written notice to the Trustees on the Appropriate Form, to designate, revoke or change the Beneficiary to receive any death benefit payable pursuant to this Section; provided, however, the Participant's spouse shall be the Participant's Beneficiary, whether or not designated as such, unless one of the following requirements in subsections (i) through (iv) below is satisfied:

- i. The spouse waives the right to be the Beneficiary in a consent which meets the requirements of subsection (v). The Participant may at any time restore the spouse as the Beneficiary, without spousal consent.
- ii. The Participant is legally separated from his Spouse or has been

abandoned, within the meaning of local law, and provides the Trustees with a court order regarding the applicable circumstance. (However, such a spouse must be considered the spouse to the extent provided in a Qualified Domestic Relations Order.)

- iii. The Participant establishes to the satisfaction of the Trustees that the spouse cannot be located. The Plan Administrator shall adopt procedures to implement this provision, which shall be applied uniformly to all Participants.
- iv. The Participant is unmarried. This "deemed" waiver of spousal rights for an unmarried Participant is null and void if the Participant later marries.
- v. Consent Requirement: The spouse's consent to waive the right to be Beneficiary is valid only if the following requirements are satisfied:
  - vi. The spouse's consent must be in writing and signed, must acknowledge the effect of the election, and must be witnessed by a Plan representative or notary public.
  - vii. To the extent provided by the written form adopted by the Plan, the spouse's consent must expressly permit additional elections of Beneficiaries by the Participant without the further consent of the spouse;
  - viii. The consent required by this subsection may be given by the legal guardian of a legally incompetent Spouse. This applies even if the Participant is the legal guardian.
  - ix. A consent is only valid for the spouse who gives the consent (or for whom the consent is given by a legal guardian).

A valid consent, once given, cannot be revoked. In the event no spouse survives the Participant and no valid designation of a Beneficiary exists at the time of the Participant's death, the death benefit shall be payable to the Participant's estate.

#### 6.4 PAYMENT OF BENEFITS

(a) Except as provided in paragraph (b), benefits under this Plan shall be paid in quarterly installments over a five year period. The amount of each installment shall be determined by multiplying the participant's Account balance by a fraction, the numerator of which is one and the denominator of which is the number of installments remaining to be made from the Participant's Account, provided that the amount of any quarterly installment paid to a Participant pursuant to this Section 6.4 shall in no event be less than \$1,250.

(b) In the event that Participant's Account is valued at \$10,000 or less at the time payment is due under Section 6.1, 6.2 or 6.3, such payment shall be paid in a single lump-sum payment.

#### 6.5 PAYMENT FOR MINOR BENEFICIARY

In the event a payment is to be made hereunder to a minor, then the Trustees may direct

that such payment be made to the legal guardian or, if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his residence, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor Beneficiary shall fully discharge the ACC, the Employer who funded the payment and the Plan from any further liability on account thereof.

#### 6.6 IN-SERVICE DISTRIBUTION FOR UNFORESEEABLE EMERGENCY

A Participant, or the Beneficiary of a deceased Participant, may request a distribution on account of Unforeseeable Emergency. A distribution on account of an Unforeseeable Emergency is limited to the amount reasonably necessary to satisfy the emergency need (which may include amounts necessary to pay any Federal, State, or local income taxes or penalties reasonably anticipated to result from the distribution). A distribution shall not be made under this Section 6.6 to the extent such distribution is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's (or Beneficiary's, if applicable) assets, to the extent such liquidation would not cause severe financial hardship, or by cessation of Elective Deferred Compensation.

#### 6.7 2005 ELECTIVE DISTRIBUTION OF SMALL ACCOUNTS FOLLOWING TERMINATION OF EMPLOYMENT

(a) An Inactive Participant may request a distribution of the entire amount of the Participant's Account if all the following criteria are met:

- (i) the Inactive Participant is no longer an active cantor;
- (ii) no contributions have been allocated to the Participant's Account for a period of two Plan Years;
- (iii) the Participant's Account, when aggregated with his or her account in the American Conference of Cantors Pension and Insurance Plan, is valued at less than \$35,000 at the time of such request, and
- (iv) the Participant's election to have amounts distributed under this Section 6.7 is made, and the amounts are distributed and includible in the income of the Participant, in 2005.

(b) Such distribution shall be distributable in one lump sum.

(c) Notwithstanding any provision in the Plan to the contrary, this Section 6.7 describes the exclusive mean for distributions from the Plan upon severance from service for reasons other than Permanent Disability, Retirement or death.

#### 6.8 QUALIFIED DOMESTIC RELATIONS ORDER

Notwithstanding anything provision of the Plan to the contrary, the Plan shall make any distribution necessary to comply with the terms of a Qualified Domestic Relations Order. A Qualified Domestic Relations Order may provide for the payment of benefits to an alternative payee prior to the time a Participant has terminated employment. Further, such payment can be made even if the affected Participant has not yet reached the

Earliest Retirement Age. For purposes of this paragraph, the term Earliest Retirement Age means the earlier of (1) the date on which the Participant is entitled to a distribution under this Plan, or (2) the later of (i) the date the Participant attains age 50, or (ii) the earliest date on which the Participant could receive benefits under this Plan if the Participant terminated employment with the Employer.

**ARTICLE VII.  
SOURCE AND NATURE OF BENEFITS**

7.1 GENERAL

(a) It is the intention of the parties that this Plan be unfunded for tax purposes. It is also the intention of the parties that this Plan constitute a Church Plan, exempt from the provisions of Code Section 457 and ERISA.

(b) Benefits under the Plan shall be payable in cash from the general assets of each Employer to the extent the Employer has obligated itself to pay benefits hereunder. No Employee or Beneficiary shall have any right, title or interest whatsoever in or to any investments or fund which an Employer may make to aid it in meeting its obligations hereunder, including the Trust. Nothing contained herein, and no action taken hereunder, shall create or be construed to create a trust of any kind, or a fiduciary relationship, between an Employee and an Employer or any other person. To the extent that any person acquires a right to receive benefits from an Employer under this Plan, such right shall be no greater than the right of a general unsecured creditor of the Employer.

(c) This Plan constitutes a mere promise by Participating Employers to make benefit payments in the future.. Neither the ACC nor the Trustees shall in any way be liable for making any benefit payments under this Plan.

7.2 NO ALIENATION OF BENEFITS

No right of a Participant or Beneficiary to benefits under this Plan shall be subject, either voluntarily or involuntarily, in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any act in violation of the foregoing shall be null and void. Additionally, no right of any Participant or Beneficiary to benefits under this Plan shall in any manner be subject to the debts, contracts, liabilities, engagements or torts of any Participant or Beneficiary, nor shall any benefit be subject to attachment, garnishment or legal other process by creditors of any Participant or Beneficiary, and the same shall not be recognized by any party hereto , except for a benefit or interest which becomes payable pursuant to a Qualified Domestic Relations Order or to such extent as may be required by law.

**ARTICLE VIII.  
AMENDMENT AND TERMINATION**

**8.1 AMENDMENT**

The Executive Board, on behalf of the ACC, reserves the right to amend the Plan, subject to the limitations of this section. Any such amendment shall be adopted by formal action of the Executive Board, and executed by a duly authorized officer of the ACC. However, any amendment which affects the rights, duties or responsibilities of the Trustees may only be made with the Trustees' written consent. Any such amendment shall become effective as provided therein upon its execution.

**8.2 TERMINATION**

The ACC expects and hopes to continue the Plan in force indefinitely, but continuance of the Plan is completely voluntary and is not assumed as a contractual obligation. The Executive Board, on behalf of the ACC, reserves the right to terminate the Plan at any time by duly executing a written instrument stating the effective date of termination upon termination of the Plan, the Trustees shall direct a complete payment of benefits under the Plan to Participants and their Beneficiaries.

**ARTICLE IX.  
MISCELLANEOUS**

9.1 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in the Plan shall be deemed to give any Participant or Employee the right to be retained in the service of any Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon them as a Participant of this Plan.

9.2 CONSTRUCTION OF PLAN

The Plan created hereby shall be administered, construed, and enforced according to the laws of the State of New York and applicable federal law.

9.3 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

9.4 LIMITATION OF LIABILITY; LEGAL ACTION

It is expressly understood and agreed by each Employer and each person who' becomes a Participant or Beneficiary hereunder that, except for its or their own gross negligence or willful misconduct, neither the ACC nor the Trustees shall be in any way subject to any suit or litigation, or to any legal liability for any cause or reason or thing whatsoever, in connection with the Plan or its operation, and each such person hereby releases the ACC and all its officers and agents, and the Trustees from any and all liability or obligation.

In any action or proceedings involving the Plan, or any property constituting part or all of the Trust, or the administration thereof, the ACC and the Trustees shall be the only necessary parties. No Employer, Participant or Beneficiary, or any other person having or claiming to have an interest in or under the Plan, shall be entitled to any notice of process, nor shall such persons be entitled to participate in said action or proceedings.

In the event any claim, action or proceeding is brought regarding the Plan established hereunder to which the Trustee maybe a party, and such claim, action or proceeding is resolved in favor of the Trustee, and/or determines that the Trustee was not grossly negligent or did not engage in willful misconduct, they shall be entitled to be reimbursed from the Trust for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

## 9.5 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, his legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary, in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder. This shall include any and all claims against the Trustee, either of whom may require such participant, legal representative, Beneficiary, guardian or committee; as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Trustees.

## 9.6 ACTION BY AN EMPLOYER

Whenever any Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

## 9.7 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY

The “named Fiduciaries” of this Plan are (a) the Employers, (b) the Executive Board and (c) the Trustees. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan and Trust. In general, the Employer shall have the sole responsibility for making the benefit payments provided for hereunder. The Executive Board shall have the sole authority to appoint and remove the Trustees, and to amend or terminate, in whole or in part, the Plan. The Trustees shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the Provision of the Plan authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan. Any person or group may serve in more than one Fiduciary capacity.

## 9.8 HEADINGS

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provision hereof.

## 9.9 UNIFORMITY

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

**ARTICLE X.  
PARTICIPATING EMPLOYERS**

10.1 ADOPTION BY EMPLOYERS

An Employer may participate herein and be known as a “Participating Employer,” by executing the Appropriate Form evidencing said intent and will of such Participating Employer.

10.2 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustees for the purposes of the Plan, each Participating Employer shall be deemed to have designated irrevocably the Executive Board as its agent. Unless the context of the Plan clearly indicates the contrary, the word “Employer” shall be deemed to include each Participating Employer as related to its adoption of the Plan.

10.3 EMPLOYEE TRANSFERS.

It is anticipated that an Employee may be transferred between participating Employers. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred may thereupon obligate itself to provide the Employee with additional deferred compensation benefits hereunder.

Amendment of this Plan shall be by the written action of the Executive Board, and each Participating Employer, by adopting this Plan, consents to the authority of the Executive Board to amend such plan.

10.4 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer shall be permitted to discontinue or revoke its participation in the Plan. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustees. The Trustees may, thereafter, in its sole discretion, direct a payment of all benefits under this Plan which the Employer has obligated itself to pay either within 30 days of the effective date of the Employer’s discontinuance or revocation or at such later date as the Trustees select, which in no event shall be later than the date benefits payments under this Plan would otherwise be due to commence. Notwithstanding any provision contained herein to the contrary, the Trustees may direct that benefits paid pursuant to this section be in either a single lump sum cash payment or any other form which the Trustees deem appropriate.

10.5 TRUSTEES’ AUTHORITY

(a) The Trustees shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purposes of this Article.

(b) The Trustees shall also have the authority to designate as parsonage, on behalf of the Executive Board as each Participating Employer’s agent under Section 10.2, all or a

portion of any benefits to be paid under the Plan during a calendar year to a retired cantor or other “minister of the gospel” (within the meaning of Code Section 107). A retired cantor or other minister who wishes to have a portion of his benefits designated as parsonage hereunder shall file with the Plan the Appropriate Form setting forth his estimate of the total parsonage expenses he expects to incur during the calendar year. A parsonage designation for a retired cantor or other minister filing the Appropriate Form under the preceding sentence shall be deemed automatically made for the total estimated parsonage expenses shown on, and as of the date the Plan receives, the Appropriate Form. Neither the Executive Board nor the Trustees shall be under any obligation to verify whether a retired cantor’s or minister’s actual parsonage expenses in any calendar year equals or exceeds the amount of benefits designated as parsonage for the year. It shall be the sole obligation and responsibility of each retired cantor or minister to determine whether the amount of any benefits designated as parsonage hereunder is excludable from his gross income.

IN WITNESS WHEREOF, the parties have executed this agreement this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

AMERICAN CONFERENCE OF CANTORS, INC.

By: \_\_\_\_\_  
As its: