




air pollution control district  
SANTA BARBARA COUNTY

Agenda Item: E-6  
Agenda Date: March 21, 2024  
Agenda Placement: Admin.  
Estimated Time: N/A  
Continued Item: No

## Board Agenda Item

TO: Air Pollution Control District Board

FROM: Aeron Arlin Genet, Air Pollution Control Officer 

CONTACT: Kristina Aguilar, CPA, Administrative Division Manager, (805) 979-8288

SUBJECT: Amendment to the Santa Barbara County Air Pollution Control District's 457(b) Deferred Compensation Plan with Empower Retirement

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### RECOMMENDATION:

Authorize the Air Pollution Control Officer to amend the Santa Barbara County Air Pollution Control District's 457(b) Deferred Compensation Plan with Empower Retirement to update the product and fund options.

### DISCUSSION:

The District's Deferred Compensation Committee ("the Committee") has the fiduciary responsibility to oversee the District's 457 plan. While renewing the Committee's fiduciary liability insurance plan, the insurance underwriter informed the Committee that the investment fees for many of the funds offered by the current 457 plan are high for their respective investment types. Since fees can have a drastic impact on long-term investment performance, the Committee took this, and their responsibility, seriously and reached out to Empower Retirement to discuss options. Over the last 12 months the Committee has worked with Empower Retirement to come up with a new structure for the 457 plan that will offer participants a selection of investment options that mirrors the current plan but at a significantly lower cost for most. For example, one fund may currently have an expense ratio of 0.59% and the new proposed fund has a proposed expense ratio of 0.08%. While these percentages may be minor, depending on how diversified a participant is in the plan, as well as how much they have invested in the plan, they will see savings that are meaningful and worthwhile.

Based on the information provided by Empower Retirement, and the discussions had with them about the plan's restructure, the Committee moved to amend the existing 457 plan to make the

Aeron Arlin Genet, Air Pollution Control Officer

change. Once the new service agreement is signed, the process will take approximately 90-120 days to implement. This period will include outreach to all plan participants about the upcoming changes including an explanation of fees and a list of the new investment fund options.

Participants' existing investment fund balances and selected asset allocations will automatically be moved to and invested in a new correlated fund so participants will not have to make any changes to maintain their chosen investment strategies.

**FINANCIAL IMPACT:**

There are no additional costs to the District to amend the 457 plan.

**ATTACHMENT:**

- A. Empower Service Agreement

# ATTACHMENT A

## Empower Retirement Service Agreement

March 21, 2024

Santa Barbara County Air Pollution Control District  
Board of Directors

260 San Antonio Road, Suite A  
Santa Barbara, California 93110

## ADMINISTRATIVE SERVICES AGREEMENT

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This Administrative Services Agreement (“Agreement”) sets forth the general terms and conditions under which Empower Retirement, LLC (“Empower”) will provide administrative services to the undersigned Plan Sponsor with respect to Plan Sponsor’s defined contribution plan (the “Plan” or “Plans”) established pursuant to Code section 401(a) or 401(k) or pursuant to the Puerto Rico Internal Revenue Code of 2011, as amended (“PR Code”), Section 1081.01 (as applicable).

### 1. Definitions

“Agreement” includes this base Administrative Services Agreement as well as the attached Schedule of Services and a separately executed fee schedule or fee proposal (“Fee Schedule”).

“Business Day” means any day, and only for as many hours as, the New York Stock Exchange is open.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Empower” and “Empower Retirement” refer to Empower Retirement, LLC and its affiliates with respect to products and services offered in the retirement markets, including but not limited to recordkeeping and communication services.

“Participant” shall mean an employee, former employee, Plan participant, participant, former participant, beneficiary or alternate payee who is or may be entitled to participate in or receive benefits under the Plan.

“Plan Sponsor” and “Employer” refer to the undersigned Employer, the Plan Sponsor, Plan Administrator, named fiduciaries, and other delegates of the Employer (other than Empower), as dictated by the context.

### 2. Services Provided by Empower

**2.1. Services.** Empower will provide the services set forth in this Agreement (collectively the “Services”). In the performance of the Services, Empower will act as a non-discretionary service provider directed by the Plan Sponsor in compliance with applicable laws and regulations. The parties agree that the purchase and sale of securities for the Plan, except for employer stock and unaffiliated self-directed brokerage, will be effected through Empower Financial Services, Inc., a broker/dealer affiliate of Empower.

**2.2. Fiduciary Status.** Except with respect to any Services for which Empower has specifically agreed to act as a fiduciary under this Agreement, Plan Sponsor acknowledges that the Services are ministerial and are not intended to involve the exercise of any discretion that would cause Empower to be a fiduciary or Plan Administrator as defined under the Code, the PR Code, ERISA, the Investment Advisors Act of 1940, or state law, as applicable. Nothing in this Agreement or otherwise shall result in Empower having any discretionary authority or responsibility for the administration of the Plan, including management of the Plan or disposition of Plan assets. Empower shall not render, or have any authority or responsibility to render, investment advice for a fee or other compensation, direct or indirect, with respect to any Plan assets, except as specifically provided for under this Agreement.

**2.3. No Tax or Legal Advice.** Nothing in this Agreement is intended to constitute legal or tax advice from Empower to Plan Sponsor, or to any other party. Plan Sponsor understands that Empower has not given and may not give legal advice. All issues should be reviewed and discussed with Plan Sponsor's legal counsel and/or tax adviser.

**2.4. ERISA Section 408(b)(2) Disclosures.** By executing this Agreement, Plan Sponsor acknowledges receipt of a written statement describing the Services to be provided, all direct and indirect compensation reasonably expected to be received by Empower, and other related information as required by ERISA Section 408(b)(2), reasonably in advance of the date of such execution.

### **3. Responsibilities of Plan Sponsor**

Plan Sponsor acknowledges that Empower cannot effectively perform the Services without Plan Sponsor's cooperation. Accordingly, Plan Sponsor acknowledges and agrees that it will fulfill the following duties and obligations.

**3.1. Plan Administrator.** Plan Sponsor, a designated employee or committee, or a third party retained by Plan Sponsor or named in the Plan (other than Empower or one of its affiliates) will be the "plan administrator" and "named fiduciary" as defined by applicable law.

**3.2. Provision of Information.** Plan Sponsor or its designee, including any third parties retained by or on behalf of the Plan or Plan Sponsor, will provide all information necessary for Empower to perform the Services in a manner and format that does not require manual intervention or manipulation by Empower. Plan Sponsor acknowledges and agrees that Empower shall not bear any responsibility for any penalties or other costs incurred as a result of Plan Sponsor's failure to provide such information in a timely manner. Plan Sponsor further acknowledges and agrees that Empower may charge an additional fee if any necessary information is not provided on a timely basis, or in an electronic format usable by Empower without any manual intervention or manipulation. Plan Sponsor agrees that Empower shall be entitled to fully rely upon the accuracy and completeness of information Plan Sponsor submits and that Empower shall have no duty or responsibility to verify such information. If, as a result of incorrect or incomplete information furnished by Plan Sponsor, it becomes necessary to repeat any calculation or service, complete any new forms or revise any completed forms, Empower reserves the right to charge an additional fee. Each party agrees to bear its own interconnect transmission costs and is solely responsible for its own acts and omissions relating to transmitting, receiving, storing and handling documents and information, including the maintenance of all equipment, software and testing necessary to effectively, reliably and securely send and receive such documents and information.

**3.3. Remitting Contributions and Allocation Instructions.** Plan Sponsor agrees that it is solely responsible for collecting and remitting all initial and recurring contributions and loan repayments to Empower electronically via Empower's plan sponsor website, or another mutually agreed-upon manner within the time prescribed by applicable law. Plan Sponsor acknowledges that Empower is not responsible for monitoring the amount and/or timeliness of such contributions and loan repayments. In the event that a Plan participant ("Participant") does not elect investment options, Plan Sponsor directs Empower to invest the contribution in the default investment option under the Plan at the time the contribution is received. Plan Sponsor acknowledges that Empower reserves the right to either reject contributions remitted via ACH without proper proceeds or to assess an additional processing charge, and that in such event Empower further reserves the right to reject all future ACH contribution remittances from Plan Sponsor. With respect to Plan- or Plan Sponsor-initiated distributions or rollovers, Plan Sponsor hereby instructs and authorizes Empower to rely upon the information on Empower's

recordkeeping system for purposes of tax reporting and withholding, and to treat payees with U.S. addresses as U.S. persons and payees with foreign addresses as foreign persons. Plan Sponsor certifies that such information is accurate and compliant with the Foreign Account Tax Compliance Act (FATCA) and the Code, and that required documentation supporting such information has been collected by Plan Sponsor.

**3.4. Plan Document and Compliance Responsibilities.** Plan Sponsor has the responsibility to ensure that the Plan documents are accurate and complete and that the Plan is being operated in accordance with its terms and applicable law. Plan Sponsor shall provide Empower with a signed copy of the Plan document and all amendments to the Plan document within thirty (30) days after such document and/or amendment is adopted. Plan Sponsor acknowledges that it is responsible for reviewing the accuracy and completeness of all Plan document services performed by Empower, if any. Plan Sponsor is solely responsible for ensuring that a Plan is qualified under the Code. If it is intended that the Plan be a plan described in ERISA Section 404(c), Plan Sponsor agrees that Empower will have no responsibility or liability for ensuring compliance with ERISA Section 404(c) and the regulations thereunder. Plan Sponsor agrees to comply with all of its Plan notice and disclosure responsibilities under applicable law.

**3.5. Disclosures.** Plan Sponsor agrees to comply with all of its notice and disclosure responsibilities under applicable law.

**3.6. Investment Options.** Plan Sponsor is responsible for the selection of all investment options made available under the Plan ("Investment Options") based on Plan Sponsor's independent evaluation, or that of its registered investment advisor, consultant, broker or other agent, as applicable. Plan Sponsor must notify Empower in writing of the Investment Options intended to be serviced by Empower and such Investment Option services are only provided as agreed upon by Empower and may be subject to certain limitations or conditions. Plan Sponsor acknowledges that the Plan's transition to Empower may be delayed if there is a change in the Investment Option selections.

As part of the Services provided by Empower, the Plan's assets may be invested in a group annuity contract and/or array of funds offered by Empower, its affiliates or other investment providers (the "Investment Program"). Empower may add, delete and/or replace available investment options offered under the Investment Program with at least sixty (60) days written notice to Plan Sponsor or the Plan fiduciary. This notice will explain the fund change, communicate the timeline and effective date of the fund change, provide information on fees received by Empower or an affiliate from a fund company, and explain Plan Sponsor's or the Plan fiduciary's right to opt out of the change. Plan Sponsor or the Plan fiduciary will be deemed to have approved such change unless Plan Sponsor's or Plan fiduciary's written objection is received by Empower within the sixty (60) day notice period. If Plan Sponsor or the Plan fiduciary objects to the fund change, Empower may terminate this Agreement, but will continue to provide services for at least sixty (60) days after the effective date of the fund change.

If allowed within the Investment Program, Plan Sponsor may request an addition, deletion, and/or replacement with respect to investment options available in the Plan. Plan Sponsor must provide Empower with notice of the intended change sixty (60) days prior to the intended date of the fund lineup modification. Empower must confirm, in writing, its ability to administer any requested fund additions, deletions and/or replacements prior to these changes being implemented. Once Empower receives notice of such fund change request, Empower will assess the Plan's pricing and the selected fund company's administrative requirements. Empower reserves the right to decline a fund change request if Empower is unable to administer the fund requested. Additionally, Empower reserves the right to reevaluate and

modify the Fee Schedule as part of the request, and the Plan Sponsor acknowledges that such a request could impact the fees paid by the Plan or Plan Sponsor. The Plan Sponsor shall provide sufficient notice of the Plan's desired fund change to provide Empower with the opportunity to conduct the necessary review and to ensure that Plan participants can be provided with notification of fund changes at least thirty (30) days prior to the effective date of the change. If applicable, Plan Sponsor agrees to cooperate with Empower to create and deliver all necessary participant communications, and acknowledges that there may be an additional cost for such communications.

If Plan Sponsor offers Plan Investment Options that are recordkept outside of this Agreement ("Outside Assets"), Plan Sponsor hereby instructs Empower to restrict any and all transfers between the Outside Assets and the Plan assets recordkept under this Agreement. If Plan Sponsor has selected an Empower annuity product, Plan Sponsor agrees that any provision(s) of the group annuity contract to the contrary are inoperable with respect to the Plan.

Plan Sponsor acknowledges that Empower or its affiliates may receive fees from mutual fund families or other Investment Option sponsors or their affiliates for providing certain administrative or other services thereto ("Fund Service Fees"). Plan Sponsor may request additional information regarding such fees at any time. If the provider of an Investment Option causes an Investment Option to become unavailable, Empower will notify Plan Sponsor as soon as practicable after the Investment Option Sponsor notifies Empower. If any employer securities are included as an Investment Option or are otherwise contributed under the Plan, (i) Plan Sponsor shall be responsible for any Securities and Exchange Commission (the "SEC") or state registration, prospectus delivery or Form 11-K annual reporting requirements; and (ii) Empower shall not be responsible for the enforcement of or compliance with any SEC or Employer regulations or policies related to insider trading in Employer securities or the reporting of such trading. Plan Sponsor acknowledges that the SEC requires mutual fund companies to establish procedures to prevent market timing and excessive trading. Plan Sponsor agrees to adhere to the terms and conditions of such procedures included with this Agreement, as amended from time to time.

**3.7. Payment of Plan Expenses.** Plan Sponsor may direct Empower in writing to deduct Plan expenses from the Plan to the extent Plan Sponsor has determined that deduction is specifically allowed by the Plan document and applicable law, and to remit to the party designated by the Plan Sponsor.

**3.8. Direction by Plan Sponsor.** In performing the Services, Empower is acting at the direction of the Plan Sponsor or other named fiduciary of the Plan. Plan Sponsor agrees to provide direction in a manner reasonably requested by Empower, and Empower may rely upon any such direction, whether provided electronically or in writing, by a person that Empower reasonably believes to be authorized to act on behalf of the Plan Sponsor or other named fiduciary. Plan Sponsor agrees that all services and procedures to be followed by Empower as set forth in any service profile, summary plan description, plan administrative guide, administrative form or other similar document will constitute direction by the Plan Sponsor to Empower, unless Plan Sponsor indicates otherwise. Plan Sponsor specifically intends that Empower will have no discretionary authority with respect to such "deemed" approved transactions, and that Empower's responsibility is limited solely to confirming it has been provided in good order and in accordance with the procedure.

**3.9. Electronic Delivery.** Empower will deliver plan-related documents to Participants under the Agreement in an electronic manner in accordance with the "notice and access method" described in Department of Labor regulation §2520.104b-31.



**3.9.1.** Plan notices to be delivered by Empower will be delivered to an email address provided to Empower by the Participant or by the Plan Sponsor. If Empower is not provided with an email address, plan-related documents will be delivered to the Participant via regular mail.

**3.9.2.** Empower will send an initial notification of electronic delivery (§2520.104b-31(g)) via regular mail to each Participant at least 10 days prior to delivering any plan-related documents via email.

**3.9.3.** If notice of availability of a plan-related document is returned undeliverable, Empower will send the notice to another email on file for the Participant. If no other email is on file for the Participant or such other email is also returned undeliverable, plan related documents will be delivered via regular mail to the Participant until such time as Empower is provided another email address for the Participant.

**3.9.4.** Participants may request to receive one paper copy of a plan-related document for no cost. In addition, Participants may opt out of electronic delivery and request that their plan-related documents be delivered via regular mail at any time.

**3.9.5.** Empower will maintain access to plan-related documents on the Participant website in accordance with Department of Labor regulation §2520.104b-31(e) (*standards for internet website*).

**3.10. Review of Reports.** Plan Sponsor and Participants are responsible for reviewing and monitoring reports made available by Empower (whether provided electronically, by posting on an Empower website, or otherwise) regarding Plan activity, transactions and investments to verify that the investments indicated in the reports properly reflect the investment directions provided by the Plan Sponsor or the investment elections made by Participants, as applicable. Empower's performance of its obligations under this Agreement shall be conclusively presumed to be accurate unless Plan Sponsor or a Participant provides Empower with proper notice of discrepancies.

### **3.11. Error Correction.**

#### **3.11.1. Transactional and Operational Errors.**

**a. Transactional Errors.** If Empower does not accurately process contribution, distribution, or investment instructions provided in good order by a Participant or the Plan Sponsor (e.g., investment allocation of Plan contributions, investment exchanges or transfers, or timely processing of a Plan distribution) and the issue is timely brought to Empower's attention, Empower will, at its own expense, retroactively correct the Plan or Participant account to reflect its adjusted financial position had the error not occurred, including any investment earnings and reduced by any investment losses. If the issue is not timely brought to Empower's attention, Empower may correct the error by adjusting the Plan or Participant account prospectively.

**b. Plan Operational Errors.** If Empower is timely notified that it has made an error that creates an operational or fiduciary issue for the Plan, Empower will, within a reasonable time after being notified of or discovering such error, notify the Plan Sponsor and describe the corrective option that Empower proposes to employ that is consistent with the Internal Revenue Service, Department of Labor, or other agency correction guidelines, where applicable, and Plan Sponsor shall review the proposed correction option. Unless the Plan Sponsor objects to such proposed correction and



requests an alternate correction option within five (5) business days after receiving notice of Empower's suggested corrective option, the Plan Sponsor Directs Empower to promptly process the correction in accordance with the proposal, at Empower's expense. If Empower's proposed correction is consistent with Internal Revenue Service, Department of Labor, other agency correction guidelines, or other guidance, but the Plan Sponsor requests an alternate correction method resulting in expenses in excess of what Empower would have incurred under its proposed correction, the Plan Sponsor shall bear such additional expenses (including without limitation any attorney's fees, regulatory filing costs and additional net loss resulting from such method).

**3.11.2. Trading Errors.** If Empower does not accurately process a trade with the mutual fund company as Directed by the Plan Sponsor or as instructed by a Participant, then Empower will correct the share position at the mutual fund company as if the error had not occurred. In the event there are multiple funds or related errors in one or more funds involved, Empower will net gains and losses across all funds involved in the associated error(s). If the Plan Sponsor utilizes the services of a third-party trustee and/or custodian ("**Third-Party Trustee**"), Empower shall in no event be required to perform any correction: (i) for a trading error that results from an error or omission by the Third-Party Trustee, (ii) to be performed under the terms of any service arrangements between the Plan Sponsor and such Third-Party Trustee (the "**Third-Party Trust Agreement**"), (iii) that falls within error tolerance ranges under the Third-Party Trust Agreement, or (iv) that otherwise would exceed any requirements for error correction by the Third-Party Trustee under the Third-Party Trust Agreement.

**3.11.3.** The parties acknowledge and agree that Empower will have no liability for an error caused by acts or omissions of the Plan Sponsor, Participants or any other third party.

**3.11.4. Duty to Mitigate.** The parties acknowledge and agree that the Plan Sponsor, the Plan Administrator and Participants each have a duty to mitigate any errors so as to minimize the expenses that may be incurred to correct such errors by promptly reviewing transaction confirmations, account statements and other Plan reports, as applicable, and providing notification of any error, providing timely approval of correction measures and taking such other reasonable steps as may be necessary (e.g., proactively transferring account holdings into the appropriate Investment Option).

**3.11.5. Transactional Gain/Loss Compensation Policies for Error Correction.** Empower may incur a gain or loss in the process of adjusting a Plan or Participant account to correct certain errors due to changes in the share/unit price of an Investment Option between the original transaction date and the correction date. The adjusted position of Plan and Participant accounts are not impacted by transactional gains or losses incurred by Empower to settle the Investment Option positions in the course of correcting the account. Empower will net any Investment Option pricing differences as part of the correction process. If a correction is made at Empower's expense, Empower, not the Plan or Participant, will incur any transactional loss and Empower will retain any transactional gain.

**3.12. Requirement to Appoint a Trustee.** Plan Sponsor is responsible for determining whether to appoint a trustee to provide trust services to the Plan and for selecting the trustee. If Plan Sponsor chooses to fund the Plan exclusively through an Empower group annuity contract, if available, the annuity contract may be used in lieu of a separate trust agreement, and Plan Sponsor will be considered the deemed trustee. If a trust agreement is used, Plan Sponsor agrees to have the trustee execute such agreement and all other documents required to establish and operate the trust.

Any trustee or custodian selected by Plan Sponsor for the Plan must be able to interface with Empower's recordkeeping system in a "passive" role and all assets must be transferred to the omnibus

custodial bank account. Plan Sponsor agrees to require the trustee or custodian to provide to Empower all information in the possession of the trustee or custodian that is necessary for the performance of Empower's duties under this Agreement.

If Plan Sponsor chooses to retain Empower Trust Company, LLC ("ETC") to serve as a Plan trustee or custodian, Plan Sponsor agrees to execute any and all documents required to establish the trust or custodial account. If Plan Sponsor, another entity or named employees serve as trustee of the Plan and ETC does not serve as a trustee, Plan Sponsor agrees to enter into a custodial agreement or other applicable agreement with ETC for the receipt of contributions. ETC may not be retained for a Plan under the PR Code.

**3.12.1. Trustee/Custodian Services.** If Trustee or Custodian services are provided by ETC, the compensation received by ETC for such services is reflected in the Plan's fee disclosure report provided by Empower and the Empower Trust Company Bank Credits below. Additional fees may be reflected in the trust or agreement between ETC and Plan Sponsor. If Plan Sponsor selects a trustee or custodian that requires changes to any procedures or services in the Agreement, Empower reserves the right to change fees in this Section.

**3.12.2. Empower Trust Company Bank Credits.** If Plan assets pass through a bank account held by the trustee or custodian or its Affiliates, the trustee or custodian may earn credits and/or interest on Plan assets awaiting investment or pending distribution. Any credits or interest earned by the trustee or custodian are aggregated with credits and/or interest earned by the trustee or custodian's Affiliates and will be used to defray the aggregate expenses for the maintenance of bank accounts. The trustee or custodian will not retain credits and/or interest earned in excess of such maintenance expenses. Credits and/or interest are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from Investment Option redemptions where Plan distribution checks have not been presented for payment by Participants. Credits and/or interest (i) begin to accrue on contributions on the date such amounts are deposited into the bank account and end on the date such amounts are invested pursuant to Participant instructions, and (ii) begin to accrue on distributions on the date the check is written or on the ACH date, as applicable, and end on the date the check is presented for payment or when the ACH clears against the account, as applicable. Earnings of credits and/or interest are at the rate the bank provides from time to time.

Plan Sponsor acknowledges that any change to the trustee and/or custodial setup or relationships during implementation may delay the Effective Date.

## **4. Fees & Charges**

**4.1. Fees.** Plan Sponsor agrees to pay Empower for the Services in accordance with the Fee Schedule. Such fees do not reflect the sales, use, excise, services, consumption and other taxes or duties as described in Section 4.2 below. As of the Effective Date, the Services are rendered outside of Puerto Rico and therefore the Fees are not subject to income tax withholding under PR Code provisions of Section 1062.03. To the extent not paid by the Plan, Plan Sponsor agrees to pay Empower within thirty (30) days of Empower's invoice to the Plan Sponsor for services provided to the Plan. In the event any charges or fees reasonably and properly chargeable under the terms of the Agreement remain unpaid after sixty (60) days after the date billed, Plan Sponsor directs Empower to deduct such expense charges from the Plan and Plan Sponsor affirms that the Plan document specifically allows such deduction from the Plan. To the extent that the forfeiture or other Plan accounts would not pay Plan expenses under the Plan document or the Plan accounts are insufficient, Plan Sponsor directs Empower to allocate such fees to the Participant accounts, and to the investment choices in which the Participant accounts are invested, on

a pro rata basis using Participant account and investment option balance ratios as of the date of deduction. Plan Sponsor agrees to amend the Plan, if necessary, to provide for the payment of expenses from Plan assets consistent with the foregoing. Empower reserves the right to change its fees upon ninety (90) days' advance written notice to Plan Sponsor.

Plan Sponsor directs Empower to debit from the Plan the amount of fees payable to any outside third parties retained by Plan Sponsor to provide plan administration, investment advisory, or other services ("Plan Service Providers"), as detailed in the Fee Schedule, and to remit the fees directly to the Plan Service Provider.

**4.2. Taxes.** Unless Plan Sponsor provides Empower with a valid and applicable exemption certificate, Plan Sponsor will reimburse Empower for sales, use, excise, services, consumption and other taxes or duties that Empower is required to collect from the Plan Sponsor and which are assessed on the purchase, license and/or supply of Services. Plan Sponsor and Empower shall each bear sole responsibility for all taxes, assessments and other real property related levies on its owned or leased real property, personal property (including software), franchise and privilege taxes on its business, and taxes based on its net income or gross receipts. If applicable, Plan Sponsor and Empower shall reasonably cooperate to more accurately determine each party's tax liability and to minimize such liability to the extent legally permissible.

## **5. Confidentiality & Data Privacy**

**5.1.** In order to perform the Services, both parties may have access to certain information of the other party, including, without limitation, trade secrets, commercial and competitively sensitive information of the party related to business methods or practices, and proprietary software or websites of the party ("Confidential Information"). For the purpose of clarity, any software or website owned, licensed or made available by Empower ("Empower Software") is Confidential Information of Empower. The parties mutually agree to hold all Confidential Information of the other party in confidence and not to disclose any Confidential Information of the other party to anyone except the parties' affiliates, suppliers, and respective personnel in connection with the performance or receipt of Services hereunder or as directed or approved by the other party or its agents. Confidential Information does not include: information that is otherwise in the public domain through no action of the non-disclosing party; information that is acquired by a party from a person other than the other party or its agents without any obligation of confidentiality; or information that is independently developed by a party without reference to the Confidential Information of the other party.

**5.2.** In the event a party is required to make a legally required disclosure of the other party's Confidential Information, such party shall notify the other party of the disclosure as soon as reasonably practicable, and shall cooperate with any efforts by such party to obtain protective treatment of such Confidential Information to the extent permitted by law. The foregoing shall not apply to broad-based regulatory examinations associated with a party's general business or operations, to disclosures made in conjunction with a law enforcement investigation, or where notice is prohibited by law.

**5.3.** Empower and Plan Sponsor each agree to maintain and hold in confidence all Nonpublic Personal Information received in connection with the performance of Services under this Agreement ("NPI"). Empower and Plan Sponsor agree that their collection, use and disclosure of any and all NPI is and will be at all times conducted in compliance with all applicable data protection and/or privacy laws, rules and/or regulations. NPI includes personally identifiable financial information as defined by Title V of the Gramm-Leach-Bliley Act. Plan Sponsor authorizes Empower to disclose NPI to its affiliates, service providers, and Plan Service Providers in connection with Empower's performance of Services under this

Agreement. In addition, Plan Sponsor authorizes Empower to disclose NPI to Plan Sponsor's advisors, third-party administrators, service providers (such as payroll providers) and representatives authorized by Plan Sponsor in writing to receive such Data. Empower may use and disclose, for benchmarking and research purposes, de-identified NPI that is aggregated with other anonymized data of a similar nature across Empower's client base in a manner that makes such NPI unidentifiable to a particular individual or plan. Empower's current Privacy Notice is attached to this Agreement, but shall not lessen any of Empower's obligations regarding NPI hereunder. Plan Sponsor agrees that any changes to the Privacy Notice may be delivered to Plan Sponsor through the Plan Service Center.

**5.4.** The parties will use best efforts to secure NPI through the use of appropriate physical and logical security measures, and will take all commercially reasonable organizational and technical steps to protect against unlawful and unauthorized processing of NPI.

**5.5.** The parties will promptly notify the other in the event of (i) any confirmed breach of the party's security measures that results in unauthorized access to or theft of NPI; (ii) the consequences of the breach, including (without limitation) any potential impact on the other party's security measures, systems, data (including but not limited to NPI) or the Empower Software (defined above); and (iii) the corrective action taken to remedy the breach. In addition to the foregoing, Plan Sponsor will notify Empower immediately upon discovering a compromise of the security and/or log-on credentials of any Plan Sponsor employee or agent that has a plan administration role in Empower's system.

**5.6.** Plan Sponsor acknowledges that Empower maintains security and fraud mitigation protocols (such as multi-factor authentication) designed to comply with statutory obligations and to safeguard Participant identities, Participant accounts, or access to Empower Software. Empower may update these protocols as needed to address new or evolving threats and statutory obligations. Plan Sponsor agrees to cooperate with Empower to implement, support, or otherwise cooperate in the implementation of any such updates, changes or enhancements. To the extent Empower offers Participants protection against account losses that result from unauthorized transactions, such protection is not available if Plan Sponsor fails to meet the requirements of this provision, or if the loss resulted from a compromise of the systems or security protocols of Plan Sponsor or its third party service providers (other than Empower).

**5.7.** Upon request, Empower will provide Plan Sponsor or its designated agent with information (which may include NPI) received from or in relation to Participants in connection with the performance of services under this Agreement including recorded phone calls and written and electronic correspondence. To the extent Plan Sponsor requests such information, Plan Sponsor agrees to indemnify Empower and to waive, absolve and forfeit any claims against Empower for providing such information to the Plan Sponsor or its designated agent.

**5.8.** For purposes of Rule 14(b)-1 and Rule 14(b)-2 of the Securities Exchange Act of 1934, as amended from time to time, Plan Sponsor authorizes Empower, and/or its affiliates and services providers, to provide the name, address and share position of the Plan with respect to any class of securities registered under the Investment Company Act of 1940 when requested by such SEC registrant for purposes of shareholder meetings. The above-referenced rules prohibit the requesting SEC registrant from using the Plan's name and address for any purpose other than corporate communications of the type contemplated under the rules.

## **6. Business Continuity & Disaster Recovery**

**6.1.** Empower will maintain business continuity and disaster recovery procedures to address the security, integrity and availability of the technology, operational, financial, human and other resources required to provide the Services. Such procedures shall be designed to enable Empower to continue to perform mission-critical Services in the event of a natural disaster or other interruption of normal business operations. Such procedures will be tested at least once annually.

**6.2.** Empower Financial Services, Inc.'s current Business Continuity Plans Notice is attached to this Agreement. By executing this Agreement, Plan Sponsor acknowledges receipt of this Notice.

## **7. Records & Audit**

**7.1. Record Retention.** Empower shall retain all records in its custody and control that are pertinent to performance under this Agreement in accordance with its record retention policy and as required by applicable law. Subject to the foregoing, each party agrees to return or destroy the other party's Confidential Information and NPI once it is no longer required for the purpose of performing or receiving the Services, provided that the parties are not obligated to destroy copies of Confidential Information or NPI that must be retained for audit, legal or regulatory purposes, or is stored in non-readily accessible electronic format, such as on archival systems.

**7.2. SSAE 18.** Each year upon the request of Plan Sponsor, Empower will provide Plan Sponsor with a copy of the review performed by Empower's external auditors under the "Statement of Standards for Attestation Engagements Number 18, Attestation Standards: Clarification and Recodification" of the American Institute of Certified Public Accountants (SSAE18) SOC 1, or any new or replacement standard or protocol established by the American Institute of Certified Public Accountants.

## **8. Intellectual Property Rights**

**8.1. Plan Sponsor Materials.** As between the parties hereto, excluding the Empower Materials (as defined below), Plan Sponsor shall own all trademarks, trade names, logos, trade dress, and other Confidential Information provided or made accessible by Plan Sponsor to Empower in providing the Services (collectively, the "Plan Sponsor Materials"). Plan Sponsor grants to Empower a nonexclusive, nontransferable and non-sublicensable license to use Plan Sponsor Materials in connection with its provision of the Services. Nothing contained herein shall prohibit Empower from referencing client partnerships in the normal course of public-relations communications or in materials prepared at the request of prospective clients.

**8.2. Empower Materials.** As between the parties hereto, Empower and its affiliates shall own all materials, documentation, user guides, forms, templates, business methods, trademarks, trade names, logos, websites, Empower Software, technology, computer codes, domain names, text, graphics, photographs, artwork, interfaces, and other information or material provided by Empower or its affiliates hereunder (collectively, the "Empower Materials"). Empower grants to Plan Sponsor and Participants (as applicable) a nonexclusive, non-transferable and non-sublicensable license to use the Empower Materials during the term of the Agreement solely for purposes of using Empower's Services hereunder and subject to the terms and conditions set forth in this Agreement and any terms of use associated with Empower Software. All rights with respect to the Empower Materials not specifically granted hereunder are reserved by Empower.

## **9. Liability & Indemnification**



**9.1.** Each party agrees to indemnify the other from and against any and all expenses, costs, reasonable attorneys' fees, settlements, fines, judgments, damages, liabilities, penalties or court awards asserted by a third party (collectively, "Damages") to the extent resulting from the indemnifying party's breach of this Agreement, negligence, or willful misconduct. Notwithstanding anything to the contrary herein, Empower shall not be liable to Plan Sponsor for, and Plan Sponsor will indemnify Empower from and against, any Damages resulting from: 1) any acts or omissions undertaken by Empower at the direction of Plan Sponsor or any agent or any third party authorized by Plan Sponsor to provide direction to Empower, including but not limited to prior service providers, investment advisors, or any authorized agent thereof; 2) any performance of the Services that is in strict compliance with the terms of this Agreement; or 3) Plan Sponsor's or its designee's failure to provide accurate documents, material, information or data to Empower or its affiliates, as applicable on a timely basis.

Plan Sponsor acknowledges that Empower and its directors, officers, employees and authorized representatives are not responsible for the investment performance of any Investment Options under the Plan.

**9.2. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT) EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.3. Insurance.** Empower will, at its own cost and expense, procure and maintain in full force and effect throughout the term of this Agreement insurance coverage that is reasonably appropriate to the Services provided under this Agreement. The requirements in this section are not intended to, and will not in any way, limit or qualify the liabilities and obligations of Empower under this Agreement.

## **10. Dispute Resolution**

The parties shall engage in reasonable and good faith discussions to resolve any dispute arising out of or relating to this Agreement. If the parties are unable to agree between themselves, the parties will submit the dispute to non-binding mediation conducted by a private mediator agree to by both parties. If the parties cannot agree on a mediator, the mediator may be selected by a nationally recognized, independent arbitration or mediation organization to which the parties mutually agree. The costs of mediation shall be borne equally by the parties, and each party shall pay its own expenses. If the parties are unable to resolve the dispute through non-binding mediation, either party may initiate litigation; provided, however, that if one party requests mediation and the other party rejects the proposal or refuses to participate, the requesting party may initiate litigation immediately upon such refusal.

## **11. Termination**

**11.1. Effective Date.** This Agreement will be effective as of the Effective Date specified in the Signature Page and will continue in effect until terminated in accordance with the termination provisions of this Agreement.

**11.2. Termination.** This Agreement may be terminated by either party, in whole or in part, by delivering sixty (60) days advance written notice to the other party. Plan Sponsor directs Empower to deduct any and all outstanding expenses and fees owed to Empower from the Plan's trust on the termination date, unless paid by Plan Sponsor. Plan Sponsor agrees to amend the Plan, if necessary, to

provide for the payment of expenses from the Plan consistent with the foregoing. Plan Sponsor acknowledges that after the termination of this Agreement, Plan Sponsor will be responsible for performing all actions required to be taken with respect to the Plan including, but not limited to: processing of contributions, loans and distributions, and the distribution of forms to Participants. On and after the actual date of termination of this Agreement, Empower shall have no further obligations hereunder except as set forth in this subsection. Notwithstanding the foregoing, upon a written request by Plan Sponsor, Empower will provide Plan Sponsor, or a designated successor service provider, with Plan data and other information residing on Empower's recordkeeping system in Empower's standard format or another mutually agreeable format. Any request for Empower to provide information other than in its standard format shall be at Empower's sole discretion, and Plan Sponsor agrees to pay all fees, costs and expenses associated with such a request.

**11.3. Plan Termination.** If the Plan terminates, Empower may utilize any procedures promulgated by the U.S. Department of Labor or other applicable regulatory agencies for abandoned or orphaned plans, including the facilitation of distributions to payees and any other required plan termination requirements.

## **12. Miscellaneous**

**12.1. Affiliates & Agents.** Plan Sponsor acknowledges and agrees that Empower may utilize the services of affiliates, agents, vendors and suppliers selected by Empower. Empower's use of any such party will not relieve Empower of its obligations hereunder, and Empower shall at all times remain liable for the performance of the Services hereunder.

**12.2. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Neither Empower nor its personnel shall be considered employees of Plan Sponsor for any purpose. None of the provisions of this Agreement shall be construed to create an agency, partnership or joint venture relationship between the parties or the partners, officers, members or employees of the other party by virtue of either this Agreement or actions taken pursuant to this Agreement.

**12.3. No Third Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto and their affiliates and is not intended to confer any rights or remedies upon any other person.

**12.4. Assignment.** This Agreement shall be binding upon and inure to the benefit of each of the parties, their affiliates, successors and permitted assigns; provided, however, that neither party may assign its rights or obligations hereunder without the other party's prior written consent. Notwithstanding the foregoing, a party may assign this Agreement in connection with: (i) the sale of substantially all of its assets or the assets of any business unit to an entity that assumes the assignor's obligations under this Agreement; (ii) a merger, acquisition or divestiture; and/or (iii) a transfer to a parent or affiliate, in each case without the other party's consent.

**12.5. Entire Agreement.** This Agreement, including all Exhibits, Schedules, notices and attachments, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior drafts, agreements, negotiations and proposals, written or verbal, relating to the Services. Except as otherwise provided herein, this Agreement may be modified only by an Amendment signed by authorized representatives of each party. Notwithstanding the foregoing, Empower may unilaterally amend the Agreement in order to comply with applicable laws, to add or enhance the Services, or to update the method of providing the Services, by providing written notice to Plan Sponsor at least 30 days in advance of the effective date of such change. If applicable, service elections or



modifications that alter the terms of the Schedule of Services or the Fee Schedule may be reflected in a new version of such document, which will be produced by Empower and made available to Employer, and which shall replace all prior versions of such document(s). Any Empower notices or policies that are attached to or referenced in this Agreement may be modified by Empower at any time. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of such provision or any other provision hereof and no waiver shall be effective unless made in writing.

**12.6. Governing Law; Waiver of Jury Trial.** To the extent not preempted by ERISA, this Agreement shall be construed and enforced in accordance with and governed by the laws of the state of Colorado, without regard to conflict of law principles, and any claim arising under or related to this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts located in Colorado. Both parties agree to waive any right to have a jury participate in the resolution of any dispute or claim arising out of, connected with, related to or incidental to this Agreement to the fullest extent permitted by law. Plan Sponsor agrees that to the extent it can assert sovereign immunity under applicable law, it waives such sovereign immunity to the extent necessary to permit Empower to enforce the terms and conditions of this Agreement under the dispute resolution mechanism specified herein. Plan Sponsor further agrees to not assert sovereign immunity as a defense to any claim or action that Empower may bring relating to this Agreement.

**12.7. Unclaimed Property.** With respect to any checks issued on Plan assets, Plan Sponsor directs Empower to follow state unclaimed property regulations and escheat assets to the Plan or Participant's state of residence based on Empower's records. However, Plan Sponsor may direct Empower, in writing, to treat the Plan's unclaimed property in a different manner. Plan Sponsor is solely responsible for determining the appropriate handling of such amounts, including the determination and handling of amounts related to lost Participants.

**12.8. Website Services.** Empower will, as part of the Services, host, maintain and make certain information available to Plan Sponsor and Participants on a website or websites (the "Website Services"). Plan Sponsor will not use or permit any use of the Website Services (i) in any unlawful or illegal manner; (ii) in any way that could impair the Website Services or any other party's use thereof; or (iii) to distribute, sell, resell, license or transfer any of Plan Sponsor's rights to access or use the Website Services or make the Website Services available to any third party. Any user credentials, including user identification and passwords, established by Plan Sponsor and its delegates or any Participant (each a "User ID") is issued to a specific user and may not be shared or used by any individual other than that user. Plan Sponsor will be responsible for the compliance by its users with the applicable terms of this Section. Empower may terminate the User ID, or portions thereof, for any user involved in a breach of this Section. Plan Sponsor acknowledges that transmissions through the internet are inherently unsecure, that virus protection software, firewalls and other security measures are not foolproof, and that the Website Services and their content are not invulnerable to fraud or hacking. In addition, Plan Sponsor acknowledges that Empower shall from time to time perform scheduled or emergency repairs, maintenance, and disaster recovery testing on the websites, and that such activity, or other circumstances beyond Empower's reasonable control, may cause the Website Services to be unavailable or delayed. Plan Sponsor agrees that Empower shall not be liable for any such delays or downtime in the Website Services, or for any virus or malicious access to the Website Services by third parties, provided that Empower has implemented and maintained security features with respect to the Website Services that are consistent with this Agreement and commercially reasonable industry standards.

**12.9. Force Majeure.** Neither Empower nor Plan Sponsor shall be liable to the other for any and all losses, damages, costs, charges, counsel fees, payments, expenses or liability due to delay or

interruption in performing its obligations hereunder, and without the fault or negligence of such party, due to causes or conditions beyond its control, including, without limitation, labor disputes, riots, war and war-like operations including acts of terrorism, pandemics, epidemics, explosions, sabotage, acts of God, civil disturbance, governmental restriction, transportation problems, failure of power or other utilities including phones, internet disruptions, fire or other casualty, natural disasters, or disruptions in orderly trading on any relevant exchange or market, or any other cause that is beyond the reasonable control of either party.

**12.10. Severability.** The provisions of this Agreement are severable, and if for any reason a clause, sentence, paragraph or provision of this Agreement is determined to be invalid by a court or federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity will not affect other provisions of this Agreement that can be given effect without the invalid provision.

**12.11. Notices.** All formal notices required by this Agreement will be in writing and shall be sent to Empower as set forth below and to the most current Plan Sponsor and trustee address on file with Empower. All notices sent shall be effective upon receipt.

Notice To Empower:

Empower Retirement, LLC  
Empower Retirement Division  
8515 East Orchard Road  
Greenwood Village, CO 80111

With a copy to:  
Empower Retirement, LLC  
8515 East Orchard Road  
Greenwood Village, CO 80111  
Attn: General Counsel

**12.12. Headings; Defined Terms; Counterparts.** Section headings used in this Agreement are intended for reference purposes only and shall not affect the interpretation of this Agreement. Unless the context requires otherwise, capitalized terms defined in this Agreement have the meanings set forth herein for all purposes of this Agreement including any Schedules or Exhibits. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The parties' execution and delivery of this Agreement by facsimile, email, or electronic copies shall have the same force and effect as execution and delivery of an original.

**12.13. Survival.** The provisions of the following sections shall survive the termination of this Agreement: Fees & Charges; Confidential Information; Privacy & Data Security; Record Retention; Intellectual Property Rights; Indemnification; Limitation of Liability; Dispute Resolution; Governing Law; Waiver of Jury Trial; Unclaimed Property; Website Services; Survival; Severability; No Third-Party Beneficiaries; and any other section that would by its context be reasonably expected to survive termination.

**12.14. Signatures/Corporate Authenticity.** Plan Sponsor has been provided a signature page ("Signature Page") that applies to this Agreement as well as to certain other documents, which are listed thereon. By signing the Signature Page, the parties certify that they have read and understood this



Agreement, that they agree to be bound by its terms, and that they have the authority to sign it. This Agreement is not binding on either party until signed by both parties.

**12.15. Electronic Signatures.** Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures reasonably believed to be genuine on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**12.16.**

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## BUSINESS CONTINUITY PLAN NOTICE

Empower Financial Services, Inc. ("Empower"), a subsidiary of Empower Annuity Insurance Company of America and affiliate of Empower Life & Annuity Insurance Company of New York\* and Empower Retirement, LLC, maintains a comprehensive business continuity plan designed to respond reasonably and effectively to events that lead to significant business disruption, such as natural disasters, power outages, or other events of varying scope. This plan defines critical functions and systems, alternate work locations, vital books and records, and staff resources, and provides for the continuation of business operations with minimal impact, depending on the severity and scope of the disruption. The plan is reviewed and tested no less than once annually to ensure that the information in the plan is kept current and that documented recovery and continuity strategies adequately support its business operations. Of utmost importance to the plan is the ability for customers to maintain access to securities accounts and assets in those accounts.

In the event that one of the contact centers or back office operation facilities becomes unavailable for any reason, calls would be re-routed to one of the firm's alternative contact center or operations facilities.

In the event of a significant business disruption to the primary office and/or data center, access to customer accounts will be provided via the Company's Web site and voice response system, operated from an alternative data center. Customer service will continue to be provided by re-routing telephone calls to a contact center located in one or more alternative sites located outside of the region. Secure work from home solutions are available for all staff.

While no contingency plan can eliminate the risk of business interruption, or prevent temporary delays with account access, the firm's continuity plan is intended to mitigate all reasonable risk and resume critical business operations within 24 hours or the next business day, whichever is later.

\* Record keeping and administrative services are provided by Empower Retirement, LLC, and in New York, Empower Life & Annuity Insurance Company of New York, or one of its subsidiaries or affiliates. Securities offered in your account may be offered through another broker/dealer firm other than Empower Financial Services, Inc., a wholly owned subsidiary of Empower Annuity Insurance Company of America. Please contact your investment provider for more information if needed.

This disclosure is subject to modification at any time. The most current version of this disclosure can be found on the Company's website or can be obtained by requesting a written copy by mail.

BCP – Empower Customer Notice (Ed. August 2022)

## **Procedures for Complying with Fund Company Market Timing and Excessive Trading**

The prospectuses, policies and/or procedures of certain fund companies require retirement plan providers offering their fund(s) to agree to restrict market timing and/or excessive trading ("prohibited trading") in their funds. The following procedures describe how we, as your recordkeeper, will comply with fund company instructions designed to prevent or minimize prohibited trading.

Various fund companies instruct intermediaries to perform standardized trade monitoring while others perform their own periodic monitoring and request trading reports when they suspect that an individual is engaging in prohibited trading. If an individual's trading activity is determined to constitute prohibited trading, as defined by the applicable fund company, the individual will be notified that a trading restriction will be implemented if prohibited trading does not cease. (Some funds may require that trading restrictions be implemented immediately without warning, in which case notice of the restriction will be provided to the individual and plan, if applicable). If the individual continues to engage in prohibited trading, the individual will be restricted from making transfers into the identified fund(s) for a specified time period, as determined by the applicable fund company. Individuals are always permitted to make transfers out of the identified fund(s) to other available investment options. When the fund company's restriction period has been met, the individual will automatically be allowed to resume transfers into the identified fund(s).

Additionally, if prohibited trading persists, the fund company may reject all trades initiated by the plan, including trades of individuals who have not engaged in prohibited trading.

Note: certain plan sponsors have or may elect to implement plan level restrictions to prevent or minimize individual prohibited trading. To the extent that such procedures are effective, we may not receive requests for information from the fund companies or requests to implement the restrictions described above.

10/16/07



## PRIVACY NOTICE

REV 5/2022

<b>FACTS</b>	What does Empower Retirement, LLC (Empower) do with your personal information?
<b>WHY?</b>	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share and protect your personal information. Please read this notice carefully to understand what we do.
<b>WHAT?</b>	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>• Social Security number and account balances</li> <li>• Retirement assets and transaction history</li> <li>• Employment information and income</li> </ul> <p>When you are no longer our customer, we continue to share your information as described in this notice.</p>
<b>HOW?</b>	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information, the reasons Empower Retirement chooses to share and whether you can limit this sharing.

REASONS WE CAN SHARE YOUR PERSONAL INFORMATION	DOES EMPOWER SHARE?	CAN YOU LIMIT THIS SHARING?
<b>For our everyday business purposes –</b> Such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
<b>For our marketing purposes –</b> To offer our products and services to you	Yes	No
<b>For joint marketing with other financial companies</b>	No	We don't share
<b>For our affiliates' everyday business purposes –</b> Information about your transactions and experiences	Yes	No
<b>For our affiliates' everyday business purposes –</b> Information about your creditworthiness	No	We don't share
<b>For nonaffiliates to market to you</b>	No	We don't share
<b>QUESTIONS?</b> Call toll-free at 855-756-4738 or go to <a href="https://empower.com/privacy">empower.com/privacy</a>		

WHO WE ARE	
<b>Who is providing this notice?</b>	Empower and its affiliates. A list of companies is provided at the end of this notice.
WHAT WE DO	
<b>How does Empower protect my personal information?</b>	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include physical, technical and procedural safeguards, such as building and system security and personnel training.
<b>How does Empower collect my personal information?</b>	<p>We collect your personal information, for example, when you:</p> <ul style="list-style-type: none"> <li>• Provide account information or apply for a loan</li> <li>• Enter into an investment advisory contract or seek advice about your investments</li> <li>• Tell us about your investment or retirement portfolio</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates or other companies.</p>
<b>Why can't I limit all sharing?</b>	<p>Federal law gives you the right to limit only:</p> <ul style="list-style-type: none"> <li>• Sharing for affiliates' everyday business purposes – information about your credit worthiness</li> <li>• Affiliates from using your information to market you</li> <li>• Sharing for nonaffiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing</p>
DEFINITIONS	
<b>Affiliates</b>	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Our affiliates include companies with the Empower, Great-West Life &amp; Annuity or Great-West names, as listed below, and other financial companies such as Advised Assets Group, LLC and GWLA</i></li> </ul>
<b>Nonaffiliates</b>	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Empower does not share with nonaffiliates so they can market to you.</i></li> </ul>
<b>Joint marketing</b>	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>• <i>Empower does not jointly market.</i></li> </ul>
WHO IS PROVIDING THIS NOTICE?	
<p>Empower Retirement, LLC; Great-West Life &amp; Annuity Insurance Company; The Great-West Life Assurance Company (U.S. operations); Great-West Life &amp; Annuity Insurance Company of New York; Great-West Financial Retirement Plan Services, LLC; Advised Assets Group, LLC; GWFS Equities, Inc.; The Canada Life Assurance Company (U.S. operations); Empower Retirement, LLC; Great-West Life &amp; Annuity Insurance Company of South Carolina; Great-West Capital Management, LLC; Great-West Funds, Inc.; and Great-West Trust Company, LLC; Prudential Insurance and Annuity Company; Prudential Bank &amp; Trust, FSB; Global Portfolio Strategies, Inc.; TBG Insurance Services Corporation; MC Insurance Agency Services, LLC; Mullin TBG Insurance Agency Services, LLC; and COMOSA REIT Corp.</p>	
GEN-FLY-WF-1831220-0622	

## **Schedule of Services**

### **Services provided by Empower**

- A. Recordkeeping Services - Core Services.** The following services are core recordkeeping and communication services available to all plans.

#### ***Implementation Services:***

##### **Empower will provide the following conversion services prior to the receipt of assets:**

- Gathering initial plan information;
- Coordinating conversion assets from a prior service provider;
- Reconciling plan assets;
- Loading records onto the recordkeeping system; and
- Assisting Employer's payroll office or payroll vendor to process the next scheduled payroll to Empower on or after the implementation period.

#### ***Implementation Period:***

##### **ACH Automation:**

Plan Sponsor Directs Empower to accept a transfer of Plan records that reflects Participant ACH banking information as provided by the Plan Sponsor or by the Plan's prior service provider, without any further review and validation of the ACH information provided.

In Directing Empower to accept a transfer of existing Participant ACH banking information to its recordkeeping system, the Plan Sponsor certifies the following:

- The Participant has previously authorized the Plan to process an ACH debit and/or credit of the Participant's account at the designated financial institution ("Account") in connection with all applicable Plan transactions and has authorized the designated financial institution, in the form of electronic fund transfer, to credit and/or debit the same to such Account.
- The Participant has not revoked the ACH authorization for the Account prior to the transfer and the Plan shall treat the Participant's ACH authorization for the Account as remaining in effect until Empower receives a notice of cancellation from the Participant.
- Plan Sponsor Directs Empower to administer all ACH transactions for all Plan purposes under the terms of Empower's separate ACH Agreement, which the Plan Sponsor has adopted as the Plan's terms and conditions governing all applicable ACH transactions processed on the Empower platform.

##### **Merging Plan:**

An existing Employer Plan that is converting to Empower or a plan that is merging into an existing Employer Plan already record kept by Empower will be subject to an implementation period to facilitate the movement of Participant, Alternate Payee and Beneficiary records and Plan assets from the prior record keeper and/or trustee to Empower.

##### **Startup Plan:**

A startup plan will require an implementation period to facilitate the establishment of the new plan on the recordkeeping system.

Empower will continue services for existing plans or commence services for startup plans under this Agreement after the implementation period when all necessary implementation documentation has been received in good order.

Plan Sponsor acknowledges that certain implementation-related tasks that are changed during the implementation period may change or delay the receipt of assets. If any documentation is missing, incomplete or improperly completed, the receipt of assets, and/or continuation of services for merger plans, may be delayed or discontinued. Changes to the plan document or a plan amendment, trustee/custodial setup and investment options available under the plan made during the implementation period may change or delay the receipt of assets.

Plan Sponsor understands that during the implementation period and before the receipt of assets, the blackout dates agreed to by the prior record keeper(s) may impact the Plan Sponsor's ability to process payroll contributions. Assistance will be provided by Empower to coordinate the transition of Participant contribution processing from the prior record keeper(s) to Empower's recordkeeping system. The prior record keeper(s) will process participant contributions received prior to the blackout start date and issue the last quarterly participant statement. Empower will process contributions received after the blackout start date. If Participant contributions are received at Empower after the blackout start date but before the final records are received, Participant contributions will be defaulted into the Plan's default investment option.

#### ***Blackout Notice Services:***

##### **Initial Blackout Notices:**

Empower will assist in the preparation of the initial transition blackout notice and will provide the blackout notice to the Plan Sponsor for distribution to Participants, Alternate Payees and Beneficiaries, as requested by the Plan Sponsor. A "Blackout Period" is defined as any period of more than three consecutive Business Days during which the Participant, Beneficiaries and Alternate Payees are prohibited or restricted from exercising certain otherwise available rights, such as directing investment of their accounts, obtaining loans or making distributions. During the implementation period, Plan Sponsor's prior record keeper's improper reporting or incomplete transferred records may impact the blackout period end date. Such an impact may cause an extension of the blackout period, resulting in a second notice. Empower may agree to provide this additional blackout notice if the parties agree in writing.

##### **Future Blackout Notices:**

If mutually agreed to in writing, Empower may provide blackout notices to the Plan Sponsor for distribution to Participants, Alternate Payees and Beneficiaries for fund or other ongoing plan changes that result in a period of more than three (3) consecutive Business Days where the Participant, Alternate Payee and Beneficiary are restricted from exercising certain otherwise available rights such as directing investments of their accounts, obtaining loans or taking distributions.

##### ***Establishment of Accounts:***

## **1. Participant Accounts:**

- a.** Participant accounts shall be established and maintained for each Employer-approved new enrollee and each employee or former employee with a balance in the plan ("Participant"). Each Participant's account record shall consist of the Participant's name, Social Security number ("SSN"), mailing address, date of birth, and any such other information as required from time to time for provision of services to the Plan.
- b.** On and after the receipt of assets, Empower shall maintain a record of each Participant's investment option allocation and transaction received in good order to the recordkeeping system, including:
  - (i)** Current and historical investment allocations and percentages for each available investment option.
  - (ii)** Current account balances of each Participant in each available investment option and money source.
  - (iii)** An accounting of each transaction made to each available investment option and money source.
- c.** Empower shall provide each Participant with access to his or her account and investment information via a Web site, the voice response unit ("VRU") and the Client Service Center domestic toll-free number and international toll number. Participants may use these services to change allocations of future deferrals and/or initiate transfers between and among investment options available under the Plan(s).
- d.** Empower shall make available to each Participant a quarterly account statement in Empower's standard format.

Participants will also have access to their account activity via the VRU and the Web site.
- e.** If applicable, Empower will include vesting information on Participant statements, provided that Plan Sponsor provides Empower with all vesting information required under applicable law.

## **2. Beneficiary Accounts**

If elected by the Beneficiary(ies) in good order and in a manner satisfactory to Empower, Empower will establish a Beneficiary account pursuant to the terms of the Plan, ERISA, Code and/or PR Code requirements in effect on the date of establishment.

### ***Contribution Processing:***

**Receipt and Investment of Contributions.** Empower will credit contributions for allocation to Participant accounts in accordance with direction from the Plan Sponsor and as set forth below. Empower will allocate or otherwise apply forfeitures under the Plan accounts, if any, as directed by the Plan Sponsor. Empower will pass directions to invest such contributions, and to execute appropriate transactions related to forfeitures, to the Plan trustee or custodian in accordance with investment directions of the Plan Sponsor.

**Timing Requirements for Contributions Funded via ACH, Check or Wire.** Contributions received by Empower in good order prior to the close of any Business Day will be processed effective that Business Day, at that Business Day's net asset / unit values. Contributions not received by Empower prior to the close of Business Day will be processed effective the next Business Day.

### ***Distributions and Forfeitures:***

Empower will create and maintain a record of any distribution, including the distribution reason, from the Plan made with respect to each Payee. If applicable, Empower will provide a Code §402(f) Notice of Special Tax Rules on Distributions to the Payee at the time of distribution. Unless otherwise agreed to in writing, Empower is not responsible for issuing any other Participant, Alternate Payee or Beneficiary notice required by the Code, PR Code or ERISA, as applicable. Distributions will be made within two (2) Business Days if Empower receives instructions in good order. If the Plan requires QJSA (qualified joint & survivor annuity) and/or QPSA (qualified preretirement survivor annuity) notices, Plan Sponsor, and not Empower, shall provide such notices.

#### **1. Participant Distributions**

Empower will make distributions to Participants pursuant to the Plan Sponsor's and Participant's distribution requests received in good order.

#### **Beneficiary Distributions**

Plan Sponsor instructs Empower to pay the claimant listed on the Death Benefit Claim form signed by the Plan Sponsor unless there is a conflict between the designation on file with Empower and the claimant listed on the Death Benefit Claim form. In the event of a conflict, the Plan Sponsor will determine which Beneficiary designation will control.

#### **3. Forfeiture Processing**

If applicable, Empower will calculate forfeiture amounts based upon the Participant's vesting and will place the forfeiture amounts in a separate Plan account as instructed by the Plan Sponsor.

#### **4. Participant Termination Services**

If the services described in this subsection is made available to the Plan Sponsor by Empower, and if the Plan provides for de minimis Participant accounts to be distributed after termination, then the Plan Sponsor instructs Empower to distribute communication material to

the terminated Participant informing them of their distribution options. Such information includes communicating to the Participant that if he/she does not take a distribution of the account that it will be automatically rolled over into the Plan Sponsor-elected de minimis IRA. Plan Sponsor also instructs Empower to automatically roll any monies remaining in the Plan after a certain period of time following these communications to the rollover provider selected by the Plan Sponsor.

Plan Sponsor permits Empower to send out communication material to terminated participants informing them of their distribution options.

***Transfers:***

Participant, Alternate Payee and Beneficiary-initiated transfers will be processed and effective the Business Day they are received at Empower's home office, if received before the close of the New York Stock Exchange (typically 4:00 p.m. Eastern Time or such earlier time as may have to be implemented to comply with any applicable future law, rule or regulation). If transfers are received at Empower's home office after the close of the New York Stock Exchange, transfers will be processed and be effective the next Business Day (or such earlier time as may have to be implemented to comply with any applicable future law, rule or regulation).

***Tax Reporting of Distributions:***

1. Plan Sponsor appoints Empower as its agent to perform income tax withholding and reporting for all Payee distributions and agrees to provide all necessary information needed by Empower to perform these services.
2. Empower shall deposit the income tax withheld with the Internal Revenue Service ("IRS") and other appropriate governmental entities or the Puerto Rican Treasury Department, as applicable, on or before the applicable due dates for such remittances.
3. Empower will complete necessary tax reporting forms for Payee distributions, file the tax reporting forms with the IRS or the Puerto Rican Treasury Department, as applicable, and send copies to the Payee.

***Plan Loans:***

Empower will process Participant account reduction loans pursuant to the Plan's loan policy and Empower's loan procedures, as amended from time to time. Plan Sponsor agrees to provide an authorization for all Participant loan requests.

***Ongoing Plan Resources:***

1. Empower will provide the Plan Sponsor access to Plan information and electronic approval capabilities via the PSC.
2. Empower will provide the Plan Sponsor access to a Plan Services Representative for assistance with plan questions.
3. Empower shall provide periodic Employer Plan Reports in Empower's standard format.



4. Empower shall provide Plan Sponsor with an electronic Plan Administration Guide containing processes and procedures applicable to the services provided to the Plan, as updated from time to time.

***Incoming Rollovers:***

Where a Participant requests, via a recorded telephone call with Empower, to roll assets into the Plan from a previous employer's plan, Plan Sponsor instructs and approves Empower to assist the Participant in completing such rollover without Plan Sponsor's signature or approval, provided the Plan permits such rollovers. The recordkeeper of the previous employer's plan may still require Plan Sponsor's signature or approval to complete the rollover.

***Communication and Education (subject to applicable law):***

1. Standard forms, notices and other information necessary for the service provided to the Plan will be provided to Plan Sponsor and to Participants via the PSC and/or through enrollment meetings.
2. Empower will provide investment education and communication materials, which may include education and planning tools, newsletters, brochures, or other materials.

***Distribution Education Services:***

Empower or its affiliates will make retirement education consultants available to Participants to provide distribution education services and may contact Participants who are eligible to receive distributions from the Plan to provide information regarding distribution options under the Plan including rollover services and products offered by Empower.

***Financial Services & Tools:***

Empower will provide employee plan and investment education and communications materials, including education and planning tools.

**1. Empower Participant Experience**

With certain exceptions, Empower provides Participants, with an estimated hypothetical monthly retirement income and goal based on a number of factors including the Participant's Plan assets, Plan contribution rates and compensation data on the Participant website.

**2. Health Cost Estimator**

With certain exceptions, Empower will provide Participants access to Empower's Health Cost Estimator (as defined below) on the Participant website. Health Cost Estimator provides Participants with estimated monthly health care expenses based on retirement age and certain personal health condition information provided to Empower by Participants ("Health Cost Estimator"). All health care costs and projections are provided by an unrelated third party vendor. Plan Sponsor agrees that the Health Insurance Portability and Accountability Act of 1996 does not apply to any personal health condition information provided to Empower by Participants. Plan Sponsor also acknowledges that such health condition information is owned by the Participant and not the Plan Sponsor and that Empower will not disclose any health condition information provided to Empower by Participants to Plan Sponsor without the Participant's consent. Empower agrees that, except as provided in the preceding sentence, it will otherwise treat such health condition information as NPI in accordance with the Section

entitled Confidentiality & Data Privacy in this Agreement. Plan Sponsor further agrees not to use any information it obtains through Health Cost Estimator other than for Plan purposes, contribution rates and compensation data.

### **3. Personalized Participant Communications**

Except as otherwise agreed by the parties, Empower will send certain action-oriented Participant education communications according to a Participant's behavior, preferences, and information. Messaging will include: (i) information about the tools and services available in the Plan and what actions a Participant may take to build individual savings, and will address topics such as enrollment, beneficiary designation, contribution increases, asset allocation, catch-up contributions and more; (ii) general financial topics that a Participant may find helpful while striving to reach financial and savings goals, and will include budgeting, debt management, investing basics, emergency funds, National Retirement Security Week and more; and (iii) the opportunity to view additional options available that may provide a Participant with a more comprehensive savings strategy, and will include information about healthcare savings accounts, estate planning, college saving and more. A Participant must have an email address on file with Empower in order to receive such communications via email. The Participant can opt out of receiving these emails at any time as required by applicable law.

#### ***My Financial Path:***

Empower's financial wellness program provides Participants with tools and services to review overall financial wellness including tools that allow Participants to complete a personalized online assessment, the output of which provides the user with ideas on the next steps they can take to address financial concerns they identified when completing the assessment and educational resources to learn more about financial topics of interest, including a learning center with educational content on certain financial wellness topics. Empower or its affiliates may make retirement education consultants available to Participants to provide financial wellness consultations and may contact Participants to offer financial wellness consultations. Consultations involve topics such as (but not limited to): budgeting, saving, student debt, debt prioritization, life insurance, managing investments and consolidating assets. Empower's financial wellness tools, services and consultations may include information on financial products and services made available by Empower or third-party providers. Participants may pay fees if they choose certain products. Empower may receive fees and other payments from the products selected by Participants. More information on the applicable financial wellness products and the fees and payments that may be received by Empower is available upon request.

#### ***Participant Fiduciary Services:***

Empower may offer investment advice and act as a fiduciary under ERISA to Participants on certain Plan transactions, such as point-in-time advice on designated investment alternatives and investment advisory services available under the Plan and distribution and rollover options which may include services and products offered by Empower and its affiliates. When Empower acts as a fiduciary, it will do so in the best interest of the Participants as required under ERISA. Empower will provide such fiduciary services pursuant to applicable DOL regulations and guidance.

#### ***Disclosure Services:***

1. **Plan-Level Disclosures** - Plan Sponsor acknowledges that Empower will provide required fee and other disclosures under ERISA section 408(b)(2) and corresponding regulations electronically via the PSC or such other electronic means as may be designated by Empower from time to time. Plan Sponsor agrees to ensure that there is at all times a person that is able and authorized to access the disclosure on Plan Sponsor's behalf. Empower will notify such person when disclosures become available to view on the PSC.
2. **Participant Disclosures** - Empower agrees to create a Participant fee disclosure document based on the DOL's Model Comparative Chart to assist the plan administrator with meeting its obligations under ERISA Regulation Section 1.404a-5 (also known as the participant fee disclosure regulation). This document will also include the required plan-related information. This disclosure document may serve as the initial and annual disclosure and will be provided in the enrollment process.

Empower will create the disclosure document and update the information monthly. The disclosure document will be posted on the PSC and on the Participant website.

**Delivery Options:**

- a. **Plan Sponsor Delivery/Mailing (Default Option):** The disclosure document may be downloaded from the PSC and delivered to Participants and eligible employees.
- b. **Empower Mailing (Upon Plan Election Only):** If elected, Empower will mail a copy of this notice to all Participants and eligible employees based on the data on Empower's recordkeeping system for an additional fee.

**B. Elective Services.** The following elective services are available upon Plan Sponsor meeting certain requirements. Additional fees may apply.

**1. Eligibility Determination**

Plan Sponsor can instruct Empower to calculate Participant eligibility based on Plan Sponsor's instructions as to the Plan's eligibility requirements. Plan Sponsor instructs Empower to reject the enrollment of any Participant determined to be ineligible. For each ineligible determination, Plan Sponsor instructs Empower to notify the Participant to contact the Plan Sponsor if he or she wishes to appeal the determination.

**2. Online Enrollment**

Plan Sponsor can instruct and authorize Empower to allow online Participant enrollment. Plan Sponsor instructs Empower to issue a Personal Identification Number ("PIN") to every eligible employee, allowing enrollment in the Plan through the Web site and VRU.

**3. Automatic Enrollment**

Empower can perform automatic enrollment and deferral increase services, and create and mail initial and annual automatic enrollment notices, as elected by Plan Sponsor in good order and in a form acceptable to Empower.

**4. Qualified Default Investment Alternative (QDIA)**



Empower can create and mail initial and annual QDIA notices as instructed by the Plan Sponsor in good order and in a form acceptable to Empower.

## **5. Deferral Processing**

Plan Sponsor can instruct and authorize Empower to provide for deferral processing by the Plan Sponsor via the Web site. Participants may access the Web site to input the required payroll deferral amount/percentage information. Plan Sponsor acknowledges that the Deferral Processing service described in this Section shall only be available as long as Empower is the sole record keeper for the Plan.

If Plan Sponsor uses Empower's Automatic Enrollment services, Deferral Processing does not require separate election.

## **6. Vesting Services**

Plan Sponsor needs to provide Empower all information necessary to perform vesting services. Employer hereby instructs and authorizes Empower to:

- a. Maintain each Participant's vesting percentage on Empower's recordkeeping system;
- b. Display the Participant's vested account balance on the quarterly statements; and
- c. Calculate and process withdrawals and/or loans according to the vested percentage.

## **7. Loan Approval**

Plan Sponsor can instruct and authorize Empower to process, without Plan Sponsor approval, Participant loan requests submitted in a manner acceptable to Empower. If the Plan is subject to spousal consent requirements, loans may only be initiated by paper forms and not online or by VRU. Plan Sponsor agrees to specifically authorize each principal residence loan request.

## **8. Distribution Processing**

Plan Sponsor can instruct and authorize Empower to process, without Plan Sponsor approval, requests for distributions in good order and in a manner acceptable to Empower. If Plan Sponsor does not provide the Participant's termination date or other required information, Plan Sponsor instructs Empower to route the request to Plan Sponsor for approval before processing the distribution. This service is not available to Plans under the PR Code.

## **9. In-Service Distributions at Age 59½**

Plan Sponsor can instruct and authorize Empower to process, without Plan Sponsor approval, Participant age 59½ in-service distribution requests received in good order and in a manner acceptable to Empower. If the Participant's birth date information has not been provided, or if there is a discrepancy between the birth date on the system and the birth date on the form, Empower is instructed to rely on the birth date specified by the Participant on the form. This service is not available to Plans under the PR Code.

#### **10. Automated Mandatory Distributions (De Minimis)**

Empower can perform automated mandatory distributions of small account balances, as elected by Plan Sponsor in good order and in a form acceptable to Empower. This service is not available to Plans under the PR Code.

#### **11. Required Minimum Distributions (RMDs)**

Plan Sponsor can instruct Empower to provide a notice to Participants who, based on Plan Sponsor records reflected on Empower's recordkeeping platform, may be RMD eligible. If the Participant does not timely provide an election for the RMD as described in the notice, the Plan Sponsor acknowledges and agrees that it must provide timely direction to Empower with respect to processing any RMD payments prior to the regulatory deadline. Empower will process RMDs upon receipt of a Participant or Plan Sponsor request in good order.

#### **12. Beneficiary Record Keeping**

If Empower is and remains the sole record keeper for the Plan during the term of this Agreement, Plan Sponsor can instruct and authorize Empower to accept, maintain and file, without Plan Sponsor's signature, Beneficiary Designation forms received by Empower in good order and in a manner acceptable to Empower. Upon request, Plan Sponsor agrees to provide Empower with any and all Beneficiary information filed with the Plan by the Participant prior to the Effective Date of this Agreement.

If the spousal consent rules apply, Plan Sponsor shall provide Empower with instructions as to the portion of the Participant account for which a Beneficiary may be designated without spousal consent under the Plan. Plan Sponsor instructs Empower to rely on the marital status specified by the Participant on the Beneficiary Designation form and to obtain spousal consent, when applicable.

#### **13. Investment Advisory-Related Services**

If the Plan Sponsor meets the relevant underwriting and other requirements, Empower Advisory Group, LLC ("EAG"), a federally registered investment adviser and wholly owned subsidiary of Empower Annuity Insurance Company of America, may offer fund performance data and/or similar services regarding the investment options in the Plan through the Plan's recordkeeping and administrative relationship with Empower.

EAG, may separately offer Empower Retirement Advisory Services (Online Investment Guidance, Online Investment Advice and Managed Account service) to the Participants in the Plan through the Plan's recordkeeping and administrative relationship with Empower. Plan Sponsor may instruct EAG to make Empower Retirement Advisory Services available to Plan Participants in accordance with the terms and conditions of the Empower Retirement Advisory Services Agreement between EAG and Plan Sponsor.

#### **14. 3(21) Fiduciary Services Product**



Empower will make available a product (the “3(21) Fiduciary Service Product”) under which Plan Sponsor may retain Morningstar Investment Management, LLC (“Morningstar”) to provide fiduciary investment advice regarding Plan Sponsor’s selection and monitoring of the Plan’s investment options. Plan Sponsor is solely responsible for determining whether the 3(21) Fiduciary Service Product is an appropriate program for the Plan.

To implement the 3(21) Fiduciary Service Product, Plan Sponsor must execute a separate agreement between Plan Sponsor and Morningstar (the “Employer-Morningstar Agreement”), which more fully describes the services that Morningstar provides under the 3(21) Fiduciary Service Product, and the terms and conditions of the 3(21) Fiduciary Service Product.

#### **15. Missing Participant Administrative Services**

Plan Sponsor is solely responsible for identifying and locating missing Participants. Upon request by Plan Sponsor, Empower will provide reports or other information to the Plan Sponsor with respect to Participants with undeliverable addresses as reflected in Empower’s records. Also at Plan Sponsor’s request, Empower will provide a description of administrative services and associated fees, as updated from time to time, to assist the Plan Sponsor with identifying and locating missing Participants and reissuing benefit payments to Participants. The administrative services may include performing Participant address searches using a commercial locator service, updating Participant address records and attempting to contact Participants using certified U.S. mail. Plan Sponsor may select such services and agree to the associated fees via a separate letter of direction.

#### **16. Empower Health Reimbursement Account**

Empower has partnered with a third-party custodian and administrator (“Service Provider”) to provide an integrated end-to-end health reimbursement account solution for employers and their employees (“Empower HRA”). The Service Provider is the custodian and administrator of the Empower HRA, and the Service Provider and Empower will share health reimbursement account (“HRA”) information as necessary to streamline the user experience. In no event will Empower receive Health Insurance Portability and Accountability Act (“HIPAA”) protected information from the Service Provider.

The specific services, available based on Plan type, that may be provided by Service Provider as Directed by Employer can include: (i) prepare documentation for the Plan in accordance with the Code or applicable law; (ii) prepare trust documentation for the Plan; (iii) administrative duties, as applicable; (iv) Plan amendments; (v) perform a discrimination test annually; (vi) summary of benefit coverage, as needed; (vii) prepare Form 990 on an annual basis for filing; (viii) prepare and submit Form 5500 to electronic filing service for filing; and (ix) provide certain COBRA administration services.

Changes to HRA contribution amounts may be made directly between the Service Provider and Plan Sponsor (“Employer” for this Section). Additionally, Employer can Direct Empower to take HRA contribution changes directly from employees and transmit



such changes to the Employer. Empower will forward updated deferral information to Employer according to the schedule elected by Employer.

Service Provider will charge certain fees to Employer and Participants for the HRA Services, such fees are available upon request. On behalf of Service Provider, Empower will invoice Employer for any Employer listed fees and Participant listed fees will be deducted from their account balance.



### ***QDRO Review and Determination Services.***

If the Plan accepts Qualified Domestic Relations Orders ("QDROs", Plan Sponsor directs and authorizes Empower to handle QDRO correspondence to and from involved parties and attorneys, including phone, email and other written communication. Plan Sponsor directs Empower to distribute QDRO Procedures and Model QDRO to involved parties and attorneys. Plan Sponsor directs Empower to place benefit holds as soon as administratively feasible pursuant to the Plan's adopted QDRO procedures. Plan Sponsor directs Empower to acknowledge receipt of a DRO and review the terms of the DRO to determine whether the order meets the requirements of applicable federal law and satisfies the requirements contained in the Plan's adopted QDRO Procedures. After review of a DRO, Plan Sponsor directs Empower to prepare and distribute approval, pre-approval or denial letters to the involved parties and attorneys. Plan Sponsor directs Empower to maintain QDRO records during the term of service, including Pre-Approval, Approval and/or rejection letter(s).

Plan Sponsor directs Empower to process the QDRO, without Plan Sponsor's further approval, by establishing a separate account for the alternate payee or making a lump sum distribution to the alternate payee. Plan Sponsor further directs Empower to process, without Plan Sponsor's further approval, all requests, received in good order and in a manner acceptable to Empower, for distributions from alternate payee accounts established before or after the Effective Date. Plan Sponsor directs Empower to calculate any alternate payee's QDRO amount based solely on the Participant's account records on Empower's recordkeeping system. Plan Sponsor further directs Empower to process, without the Plan Sponsor's further approval, distribution requests received in good order and in a manner acceptable to Empower, with respect to alternate payee accounts established before the Effective Date pursuant to QDROs previously processed by Empower. The Plan Sponsor directs Empower to calculate any alternate payee's QDRO amount based solely on the Participant's account records on Empower's recordkeeping system.

If the alternate payee's awarded share exceeds the value of the Participant's core investment account(s) under the Plan, Empower shall notify the Participant in writing to liquidate and transfer the necessary remaining sum from the SDB into the core investment options, to enable the processing of the QDRO. If the Participant fails to transfer the necessary amount within fifteen (15) Business Days of the date of the notification, and if the necessary amount is available in the SDB money market, Plan Sponsor directs Empower to transfer such amount into the Default Investment Option. If there are insufficient available funds in the SDB money market, Plan Sponsor directs Empower to notify the SDB provider to liquidate all of the Participant's SDB investments and to transfer the entire amount into the Default Investment Option.

For each qualified and processed QDRO, the Participant's portion of the fee will be deducted from the Participant's account balance, and the alternate payee's portion of the fee will be deducted from the alternate payee's account or from the lump sum distribution, as applicable.

### ***Special Investment Options:***

#### **1. Employer Stock**

Empower can provide employer stock services if: the employer stock is publicly traded on a United States stock exchange and employer stock shares are held in custody currently at a bank mutually agreed upon by Empower. Plan Sponsor stock redemptions will be made effective that Business Day (at that Business Day's share value) if complete and



accurate instructions are received by Empower by 8:00 a.m. Eastern Time that Business Day. Plan Sponsor acknowledges that Empower cannot guarantee the price of a stock trade.

## **2. Self-Directed Brokerage Accounts**

Plan Sponsor can choose to offer a self-directed brokerage option ("SDB"). Plan Sponsor agrees to complete and execute all documents required to activate the SDB.

## **3. Life Insurance**

If, at the time of conversion, the Plan has existing life insurance policies, limited services may be available as described in Empower's life insurance guidelines and policies, as updated from time to time. If Empower determines that such services will be offered, Empower will remit insurance premiums to the applicable life insurance provider pursuant to Plan Sponsor's instructions as to the timing and manner of premium remittance. Plan Sponsor may be required to retain a third-party administrator to perform certain compliance and other services. Life insurance cannot be added to an existing Plan. Additional fees may apply.

## **C. Designation of Third Party Administrator as Agent of Employer; Authorization**

Plan Sponsor represents, acknowledges and agrees that Plan Sponsor may retain a Third Party Administrator ("TPA") to provide certain administrative and compliance services for the Plan under a separate agreement between the TPA and Plan Sponsor. If Plan Sponsor retains a TPA, Plan Sponsor agrees to provide Empower with proper notice and information regarding the services to be provided by such TPA. In order for Empower to implement such services, Plan Sponsor hereby designates the TPA as an agent of Plan Sponsor, and authorizes and directs Empower to grant the TPA access to Plan and participant information and to reports produced by Empower. Such access permits the TPA to update Plan and participant information and approve plan operations, including distributions. Plan Sponsor has, in a separate agreement, authorized the TPA as its limited agent and hereby authorizes and directs Empower to (1) construe any TPA directions or certifications as Plan Sponsor directions, and (2) comply with directions provided by the TPA. If the agreement between Plan Sponsor and the TPA is terminated for any reason, the Client shall notify Empower within five (5) business days of such termination. Plan Sponsor acknowledges and understands that it may appoint a successor TPA eligible to participate in Empower's TPA program and may direct the terminated TPA to transfer the Plan's records to the successor TPA selected by Plan Sponsor. Plan Sponsor understands and agrees that, if a successor TPA is appointed, Empower will comply with any successor TPA directions.

Plan Sponsor hereby acknowledges and agrees that, in order for the TPA to provide services to the Plan, Empower may enter into an Agreement with the TPA (the "TPA Agreement") enabling Empower and the TPA to interact and communicate in order to provide services to the Plan. In the event that such TPA Agreement is terminated due to TPA dissolution, bankruptcy, or other reasons, Empower will notify Plan Sponsor as promptly as administratively possible.

**EMPOWER RETIREMENT, LLC  
ADMINISTRATIVE SERVICES AGREEMENT ADDENDUM FOR  
EMPOWER PARTICIPANT EXPERIENCE**

This Addendum to the Administrative Services Agreement (“Agreement”) entered into between Empower Retirement, LLC and Employer describes certain Participant investment tools and services, including education and planning tools through the internet. This Addendum amends or modifies anything in the Agreement to the contrary.

**My Financial Path**

Empower’s financial wellness program (My Financial Path) offers Participants tools and services to review their overall financial wellness and may include information on financial products and services made available by Empower or third-party providers. More information on the applicable financial products and services is available upon request. My Financial Path includes a “Next Step Evaluator” tool that allows Participants to complete a personalized online assessment, the output of which provides Participants with ideas on next steps they can take to address certain financial concerns they identified when completing the assessment. Additional educational resources will be available to Participants to learn more about financial topics of interest, including a learning center with educational content on certain financial wellness topics. Empower or its affiliates may make retirement education consultants available to Participants to provide financial wellness consultations. Retirement education consultants may contact Participants to consult on My Financial Path tools and services and may discuss certain Empower financial products and services during the consultation. Consultations involve topics such as (but not limited to): budgeting, saving, student debt, debt prioritization, life insurance, managing investments and consolidating assets. There is no additional cost to the Plan Sponsor or its Participants for the Next Step Evaluator and the additional educational resources offered by Empower. Participants may pay fees if they choose certain products available through My Financial Path (see the product fee schedule(s), if applicable for more detail). Empower may receive fees and other payments from the My Financial Path products offered by Empower and third parties that are selected by Participants. See the Plan’s Fee Disclosure Report for more detail (a copy of the Plan’s most recent Fee Disclosure Report is available on the Plan Sponsor website).

**EMPOWER RETIREMENT, LLC  
RECORDKEEPING SERVICES AGREEMENT ADDENDUM FOR  
ELECTRONIC DELIVERY**

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This Addendum to the Recordkeeping Service Agreement (“Agreement”) entered into between Empower Retirement, LLC and Employer amends the Electronic Delivery section of the Agreement and modifies anything in the Agreement to the contrary effective on or about January 26, 2022.

**Electronic Delivery.** Empower will deliver plan-related documents to Participants under the Agreement in an electronic manner in accordance with the “notice and access method” described in Department of Labor regulation §2520.104b-31.

Plan notices to be delivered by Empower will be delivered to an email address provided to Empower by the Participant or by the Plan Sponsor. If Empower is not provided with an email address, plan-related documents will be delivered to the Participant via regular mail.

Empower will send an initial notification of electronic delivery (§2520.104b-31(g)) via regular mail to each Participant at least 10 days prior to delivering any plan-related documents via email.

If notice of availability of a plan-related document is returned undeliverable, Empower will send the notice to another email on file for the Participant. If no other email is on file for the Participant or such other email is also returned undeliverable, plan related documents will be delivered via regular mail to the Participant until such time as Empower is provided another email address for the Participant.

Participants may request to receive one paper copy of a plan-related document for no cost. In addition, Participants may opt out of electronic delivery and request that their plan-related documents be delivered via regular mail at any time.

Empower will maintain access to plan-related documents on the Participant website in accordance with Department of Labor regulation §2520.104b-31(e) (*standards for internet website*).

By signing the Agreements/Signature Adoption Page, Employer agrees to all of the above provisions.

# Non-standard services

The following additional services listed below may be requested by the Employer in writing. The applicable fee will apply to any services performed.

ADDITIONAL SERVICE	DESCRIPTION	EXPENSE	REMITTANCE	FREQUENCY
<b>Data Entry Services</b>	Conversion of unusable electronic, hard copy and account takeover data	\$75 per hour	Billed	As needed
<b>Special Consulting Services</b>	Special consulting or additional plan administration work.	\$75 per hour	Billed	As needed
<b>Representation during IRS/DOL Audit</b>	Covers services provided as part of IRS/DOL audit	Quoted upon request	Billed	As needed
<b>Qualified Domestic Relations Order Processing Services (QDRO)</b>	Processing of QDRO requests	\$75	Billed	Per request
<b>Consultation Related to Plan Mergers</b>	Additional services provided as part of plan mergers and/or non-record kept plan years	Quoted upon request	Billed	As needed
<b>Reconciliation of Loan Data</b>	Reconciliation of loan conversion data and providing data in hard copy format	\$75 per hour	Billed	As needed

## Service Agreement Signature Page 744343-01

By signing this Agreements/Services Signature Page, the parties certify that they have read and understood this Agreement and all applicable documents set forth below, that they agree to be bound by the terms and conditions of these Agreements and applicable documents listed below, and that they have the authority to sign and adopt these Agreements and applicable documents.

### **Documents that require issuance to client (do not require return to Empower)**

- RecordKeeping Services Agreement
- Procedures for Complying with Fund Company Market Timing and Excessive Trading Policies
- Business Continuity Plans
- Privacy Notice Exhibit

### **Documents that require submission to Empower and are covered by the Signature Page**

- Signature Agreement Signature Page

### **Consent to Receive Communication and Documents Electronically**

In accordance with applicable law, Empower Retirement, LLC must obtain the Plan's consent to receive privacy notices electronically. Privacy notices will be delivered electronically with your consent below.

- ☐ The Plan hereby consents to receive privacy notices electronically.  
☐ The Plan does not consent to receive privacy notices electronically

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Empower reserves the right to provide communications and documents in an electronic format. By signing below, Plan Sponsor understands, acknowledges and consents to the electronic communication of all general Plan Sponsor communications and the electronic delivery of plan and service-related information. Certain documents delivered electronically may still require Plan Sponsor signatures. Plan Sponsor understands and agrees that Plan Sponsor can elect to receive all communications in paper form.

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IN WITNESS WHEREOF, the parties duly execute this Agreement as follows:

**Employer     Santa Barbara County Air Pollution Control District 744343-01**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ ("Effective Date")

**Empower Retirement, LLC**

By:

Print Name: Joe Smolen

Title: Senior Vice President, Core Markets

Date: 10/3/2023

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