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**ADOPTION AGREEMENT  
FOR THE DATAIR MASS-SUBMITTER PROTOTYPE  
SHORT FORM NON-STANDARDIZED CASH OR DEFERRED PROFIT  
SHARING PLAN  
01-041**

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**SAMPLE**

**ADOPTION AGREEMENT  
FOR THE DATAIR MASS-SUBMITTER PROTOTYPE  
SHORT FORM NON-STANDARDIZED CASH OR DEFERRED PROFIT SHARING  
PLAN**

The DATAIR Mass-Submitter Short Form Prototype Non-Standardized Cash or Deferred Profit Sharing Plan ("the Plan") is hereby adopted by:

\_\_\_\_\_  
\_\_\_\_\_  
(the "Employer").

The Plan as applicable to the Employer shall be known as:

\_\_\_\_\_

The Trust shall be known as:

\_\_\_\_\_

This Plan shall be funded solely by Insurance Contracts. (See Insurance Addendum)

The Effective Date of the Plan and Trust is: \_\_\_/\_\_\_/\_\_\_\_\_. (May not be earlier than the first day of the initial Plan Year.)

The cash or deferral portion of the Plan shall be effective as of: \_\_\_/\_\_\_/\_\_\_\_\_. (Effective Date of the cash or deferral portion of the Plan may not be earlier than the date the Plan is adopted.)

(Specify, if different from the Plan Effective Date.)

- a. The Plan is an amendment of a preexisting Plan that was originally effective as of: \_\_\_/\_\_\_/\_\_\_\_\_.
- b. The Plan is an amendment and restatement of an existing Plan originally effective as of: \_\_\_/\_\_\_/\_\_\_\_\_.
- c. Frozen Plan. Effective date: \_\_\_/\_\_\_/\_\_\_\_\_.

**PART I.** The following identifying information pertains to the Employer and the Plan and the Trust:

- 1. **Employer Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 2. **Employer Telephone:** \_\_\_\_\_
- 3. **Employer Tax ID:** \_\_\_\_\_
- 4. **Employer Fiscal Year:** \_\_\_/\_\_\_ to \_\_\_/\_\_\_
- 5. **Three Digit Plan Number:** \_\_\_\_\_
- 6. **Trust ID Number:** \_\_\_\_\_
- 7. **Plan Year:** \_\_\_/\_\_\_ to \_\_\_/\_\_\_  
(Must be 12 consecutive months.)
- 8. **Short Plan Year:** \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

9. **Plan Administrator:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
10. **Plan Trustees:** \_\_\_\_\_
11. **Legal Organization of Employer:** \_\_\_\_\_  
 (Must be legal entity recognized under federal income tax laws)
12. **State of Legal Construction:** \_\_\_\_\_
13. **Date Business Commenced:** \_\_\_/\_\_\_/\_\_\_

NOTE: An executed copy of the Trust Agreement must be attached to this Plan.

\*\*\* CAUTION \*\*\*

*FAILURE TO FILL OUT THE ADOPTION AGREEMENT PROPERLY MAY  
 RESULT IN DISQUALIFICATION OF THE PLAN*

**PART II.** The Plan contains certain design features intended to provide the statutory requirement or most commonly adopted feature but permits the selection of alternative features. **Unless specifically provided to the contrary, only one selection may be made for each design category.** Section references are to the Plan or the Trust. All capitalized terms are defined in the Plan or Trust.

**A. Eligibility and Service Provisions**

**A1. Eligible Employees** - (Select all applicable.) (Exclusions under b. are not safe harbor and are subject to non-discrimination testing.)

- a. All Employees are eligible except members of a collective bargaining unit and non-resident aliens
- b. Other - Specify: \_\_\_\_\_  
 (May not use employee classification that indirectly imposes an Hours of Service requirement (i.e., part-time, seasonal or temporary.))(Cannot discriminate in favor of Highly Compensated Employees.)

**A2. Elective Deferral Eligibility Requirements** (Section 2.1.1.) - An Employee is eligible to participate in Elective Deferral portions of the Plan if he satisfies the following requirements during the Eligibility Computation Period. **(Select all applicable.** Selecting more than one option means that an Employee must meet all indicated requirements for eligibility, except for option e. Option e. overrides any other requirement.)

- a. No age or service required.
- b. Minimum age of \_\_\_ years. (Not to exceed 21.)
- c. Minimum of \_\_\_ Year of Service (cannot require more than 1 Year of Service).
- d. Minimum of \_\_\_ months of service - use Elapsed Time Method. (Cannot require more than 12 consecutive months. An Employee cannot be required to complete any specified number of Hours of Service.)

- e. Employed on \_\_\_/\_\_\_/\_\_\_ and age \_\_\_ (Not to exceed 21). Shall enter the Plan as of the effective date of the document.

**A3. Non-Elective and Matching Employer Contributions Eligibility Requirements** (Section 2.1.1.) - An Employee is eligible to participate in the Employer Contribution portion of the Plan if he satisfies the following requirements during the Eligibility Computation Period. **(Select all applicable.** Selecting more than one option means that an Employee must meet all indicated requirements for eligibility, except for option f. Option f. overrides any other requirement.)

- a. No age or service required.
- b. Use the eligibility requirements selected for Elective Deferrals in Section A.2. above.
- c. Minimum age of \_\_\_ years. (Not to exceed 21.)
- d. Minimum of \_\_\_ Year(s) of Service (Cannot require more than 2 years) (If 2 years is selected, must select full and immediate vesting.).
- e. Minimum of \_\_\_ months of service - use Elapsed Time Method. (Cannot require more than 24 consecutive months. If more than 12 months is selected, must select full and immediate vesting. An Employee cannot be required to complete any specified number of Hours of Service.)
- f. Employed on \_\_\_/\_\_\_/\_\_\_ and age \_\_\_ (Not to exceed 21). Shall enter the Plan as of the effective date of the document.

**A4. Entry Date** (Section 2.1.2) - provides that an Employee who satisfies the eligibility requirements enters the Plan on the Entry Date. The Entry Date for Plan Participation shall be:

- a. **Semiannual** - First Entry Date: \_\_\_/\_\_\_/\_\_\_ or the date 6 months later, coincident with or next following satisfaction of the eligibility requirements.
- b. **Quarterly** - First Entry Date: \_\_\_/\_\_\_/\_\_\_ and the same day of the month occurring in each successive 3-month period, coincident with or next following satisfaction of the eligibility requirements.
- c. **Monthly** - The \_\_\_ day of each calendar month of the Plan Year, coincident with or next following satisfaction of the eligibility requirements.

## B. Date Provisions

**B1. Valuation Date** - The Valuation Date is the date or dates on which the assets of the Trust Fund are valued and Participants' Accounts determined. (Select all applicable.)

- a. Last day of the Plan Year
- b. Value individual investment accounts daily
- c. Specify: \_\_\_\_\_  
(Must be at least annually)

## C. Compensation

**C1. Compensation** - as defined for Wages, Tips, and Other Compensation Box on Form W-2 (Plan Section 3.2.5(a)(i)).

- Compensation will include the following deferrals: 401(h)(1)(b) (SEP), 125 (Cafeteria Plan), Deemed Section 125 Compensation, 132(f)(4) (Transportation), 402(e)(3), 401(k), 403(b), and 457(b).

**C2. Modifications to Compensation** - For purposes of the Plan, unless defined elsewhere, a

Participant's Compensation shall exclude the following types of compensation (if any).

Specify: \_\_\_\_\_.

(No exclusions permitted for Code section 414(s) safe harbor compensation.) (Cannot discriminate in favor of Highly Compensated Employees.)

**C3. Compensation for initial Plan Year of Participation - For Non-Elective and Matching Contributions**

- a. From Entry Date as a Participant.
- b. For the 12 month period ending in the initial year of participation.

**D. Contribution and Allocation**

**D1. Elective Deferrals - (Select all applicable.)**

- a. No limits on Elective Deferrals
- b. Elective Deferrals must be at least \_\_\_\_\_% of Compensation.
- c. A special election shall be provided for bonuses.

**D2. Automatic Compensation Reduction (ACR) (Section 2.2.2(b))**

- a. Not permitted.
- b. The automatic Compensation reduction under Section 2.2.2(b) shall be equal to \_\_\_\_\_% of Compensation. (Select one)
  - b.1. Apply to new Participants.
  - b.2. Apply to current Participants without an election.
  - b.3. Apply to all Participants with prior year elections that are less than the automatic reduction percentage.
- c. Annual Increase in a Participant's ACR shall be \_\_\_\_\_% up to a maximum ACR of \_\_\_\_\_% Compensation.

**D3. Requirement to Share in Non-Elective and Matching Contribution Allocation - In order to share in the allocation of the Employer's Contributions for the Plan Year, a Participant: (Select all applicable. Does not apply to CODA Safe Harbor Contribution. See *Part II.D.9.*)**

- a. Will be eligible regardless of Hours of Service.
- b. Must complete \_\_\_\_\_ Hours of Service (cannot exceed 1000).
- c. Must complete \_\_\_\_\_ Hours of Service **or** be employed on the last day of the Plan Year.
- d. Must complete \_\_\_\_\_ Hours of Service **and** be employed on the last day of the Plan Year.

**D4. Non-Elective Contribution - The Employer's Non-Elective Contribution to the Plan shall be:**

- a. Not applicable - Non-Elective Contributions are not permitted.
- b. Discretionary, but not limited to profits.
- c. Discretionary, but not limited to profits, by Employee Classification defined in D.5.c. below.

**D5. Allocation Method - The Employer Non-Elective Contribution is allocated to Participants on the basis selected below. (Does not apply to CODA Safe Harbor Contributions. See *Part II.D.8.*)**

- a. Proportionate to salary - Based upon each Participant's Compensation in proportion to the Compensation of all Participants.

- b. Integrated with Social Security - see Sections 2.3.2 and 2.3.5. Use Steps One through Four in Section 2.3.5 of Plan in all cases.

The Integration Level is equal to:

- b.1. The Taxable Wage Base under section 230 of the Social Security Act in effect as of the first day of the Plan Year.
- b.2. \_\_\_\_\_% (Not to exceed 100) of the Taxable Wage Base under section 230 of the Social Security Act in effect as of the first day of the Plan Year.

**NOTE:** *The Employer Contribution allocable to Compensation in excess of the Integration Level (IL) may not exceed 5.4% if the IL is more than 80% but less than 100% of the Taxable Wage Base (TWB) under section 230 of the Social Security Act in effect as of the first day of the Plan Year, and may not exceed 4.3% if the IL is greater than 20% of the TWB, but not more than 80% of the TWB, and greater than \$10,000.*

*This Plan may not provide for permitted disparity if the Employer maintains any other plan that provides for permitted disparity or imputes permitted disparity and benefits any of the same Participants.*

- c. Participant Group Allocation. Plan Participants will be divided into the following groups (one or more) with the same allocation ratio.

Specify groups by classification of Participant, including both HCEs and NHCEs:

<u>Classification</u>	<u>Description</u>
A	_____
B	_____
C	_____
D	_____
E	_____
F	_____
G	_____
H	_____
I	_____
J	_____

A list of each classification and the associated percentage or dollar amount shall be prepared for each Plan Year and provided to the Plan Administrator or Trustee not later than the time prescribed by law for filing the return for such applicable taxable year (including any extensions), and shall be maintained as part of the administrative records of the Plan. (The specific categories of participants should be such that resulting allocations are provided in a definite predetermined formula that complies with 1.401- 1(b)(1)(ii). The number of allocation rates must not exceed the maximum allowable number of allocation rates. HCEs may each be in separate allocation groups. Eligible NHCEs must be grouped using allocation rates specified in plan language. The grouping of eligible NHCEs must be done in a reasonable manner and should reflect a reasonable classification in accordance with 1.410(b)-4(b). Also, standard interest rate and standard mortality table assumptions in accordance with 1.401(a)(4)-12 must be used when testing the plan for satisfaction of nondiscrimination requirements. In the case of self-employed individuals (i.e., sole proprietorships or partnerships), the requirements of 1.401(k)-1(a)(6) continue to apply, and the allocation method should not be such that a cash or deferred election is created for a self-employed individual as a result of application of the allocation method.)

**D6. Allocation Method for Matching Contributions** - Matching Contributions shall be allocated to eligible Participants in an amount: (See Part II.D.8 for CODA Safe Harbor Provisions.) (Select all

applicable.)

- a. Proportionate to the Elective Deferrals made on behalf of a Participant.
- b. Based on a discretionary percentage allocated proportionate to Elective Deferrals or levels of deferrals as determined by the Employer.
- c. Equal to \_\_\_\_\_% of the Elective Deferrals, as determined by the Employer.
- d. Roth Deferrals will not be matched.

**D7. Allocation Date for Non-Elective Contributions and Matching Contributions** - For the purposes of this Plan, Non-Elective Contributions and Matching Contributions are allocated as of:

**Non-Elective Contributions**

- a. Not applicable - No Non-Elective Contribution.
- b. The last day of the Plan Year.
- c. Specify: \_\_\_\_\_ .  
(Must be allocated at least annually.)

**Matching Contributions**

- d. Not applicable - No Matching Contribution.
- e. The last day of the Plan Year.
- f. The last day of the pay period.
- g. Specify: \_\_\_\_\_ .  
(Must be allocated at least annually.)

**Safe Harbor CODA Provisions**

**D8. Safe Harbor CODA Contributions** - If D.8.a. is checked do not fill out D.9.

- a. The Plan is not intended to satisfy the Safe Harbor CODA requirements.
- b. The Safe Harbor CODA provisions of Part II Article IX of the Plan shall apply (Safe Harbor Option).

**D9. ADP Test Safe Harbor Contribution** - (Complete only if 8b. is checked.) The Employer will make the following contributions for the Plan Year. The Employer will provide the ADP Test Safe Harbor Contribution to each Participant who is eligible to make Elective Deferrals. The ADP Test Safe Harbor Contribution selected below will also satisfy the ACP test.

The ADP Test Safe Harbor Contribution is:

- a. The Basic Matching Contribution of 100% of the Elective Deferral that does not exceed 3% of Compensation, plus 50% of the Elective Deferral that exceeds 3% of Compensation but does not exceed 5% of Compensation.
- b. Safe Harbor Non-Elective Contribution to each eligible Participant in an amount equal to \_\_\_\_\_% of Compensation. (Must be 3% or more.)

**D10. 401(k) SIMPLE Provisions**

- a. The Employer elects to have the 401(k) SIMPLE Provisions described in Part II, Article VIII apply to the Plan. (This option may be selected only if the Plan uses a calendar year Plan Year and the Employer is an Eligible Employer as defined in Section 2.8.2(b) of the Plan.)
- b. In lieu of the Matching Contribution described in Section 2.8.4(a) of the Plan, the Employer shall make a Non-Elective Contribution described in Section 2.8.4(b) of the Plan that will be allocated to all Eligible Employees who received at least \$\_\_\_\_\_ [INSERT AN AMOUNT

LESS THAN \$5,000] of Compensation for the Year.

- c. The Plan previously adopted SIMPLE provisions, but that status is revoked effective as of January 1, \_\_\_\_\_. **Note:** *An amendment to revoke SIMPLE status must be adopted before the effective date.*

## E. Vesting Provisions

**E1. Vesting Schedule** - Section 2.4.1 provides that benefits will vest in accordance with the method specified in the Adoption Agreement.

- a. At the rate of 20% each year after 2 Years of Vesting Service (20% vested in second year).
- b. 100% vesting upon participation.

**E2. Application of Forfeitures of Employer Contributions**- (Section 2.4.4) Select all applicable. If a. is selected, must select one other option. **(If Plan uses permitted disparity, Forfeitures must be allocated in accordance with the Plan's allocation formula.)**

- a. Applied to reduce administrative expenses of the Plan, then any remaining Forfeitures shall be applied according to the following selection.
- b. Supplement Non-Elective or Matching Contribution. (If Plan uses permitted disparity, Forfeitures must be allocated in accordance with the Plan's allocation formula.)
- c. Reduce Matching Contribution.

## F. CODA Limitation Provisions

**F1. Prior Year - Current Year** - (Sections 2.7.1 and 2.7.2)

The same testing method must be used for both the Actual Deferral Percentage (ADP) Test and the Actual Contribution Percentage (ACP) Test.

The ADP and ACP tests will use: (Select all applicable.)

- a. Prior Year Testing.

Only if this is the first plan year this Plan permits any Participant to make Elective Deferrals and it is not a successor plan, the ADP for NHCEs shall be:

- a.1. 3%
- a.2. The ADP for NHCEs for the Current Year
- b. Current Year Testing (See Section 2.7.1(b) for rules to change this election)

## G. Distribution Provisions

**G1. Method of Distribution** - Section 2.5.6 provides that the Employer may elect to permit Plan distributions to be made in the form of: (Select at least one)

- a. Lump sums
- b. Annuities



**G2. Hardship Distributions of Elective and Roth Deferrals - Section 2.5.10**

- a. Hardship distributions of Pre-tax Elective Deferrals and Roth Deferrals are permitted.
- b. Hardship distributions of Pre-tax Elective Deferrals and Roth Deferrals are not permitted.

**G3. Required Minimum Distributions**

- a. Required Beginning Date - Section 2.5.4(i)(5) states that minimum distributions to a Participant must begin by April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2.
- a.1. Required Beginning Date is age 70-1/2 for all Participants.
  - a.2. Exception for Non-5-Percent Owners. (The Required Beginning Date for Participants who are not 5-Percent Owners shall be the later of April 1st of the calendar year following the calendar year in which the Participant attains age 70-1/2, or April 1st of the calendar year following the calendar year in which the Participant retires.)

**Warning:** If the Plan was in existence before the adoption of this Adoption Agreement, the choice between Items G3a.1 or 2 must be the same as the selection previously made.

**H. Other Administrative Provisions**

**H1. Loans - Section 3.5.1 provides that the Employer may elect to permit loans to Participants and Beneficiaries in accordance with a Participant loan program.**

- a. Loans are permitted.
- b. Loans are not permitted.

**H2. Investment Control - Section 4.5 of the Trust provides that the Employer may elect to permit Participants to control the investment of their Accounts. (Select all applicable.)**

- a. Participants may not control their investments
- b. Participants may control all their investments
- c. Participants may control the following investments. Specify:  
\_\_\_\_\_
- d. This Plan is intended to comply with ERISA section 404(c). (Plan Administrator or appropriate Fiduciary shall ensure that the Plan provides Participants with the minimum options and information required by ERISA section 404(c) and the Regulations thereunder.)

**H3. Minimum Top-Heavy Allocation - For purposes of minimum Top-Heavy allocations, an allocation of contributions and Forfeitures equal to the following percentage of each Non-Key Employee's Compensation will be made to the Employee's Account when the Plan is Top-Heavy: (Must select a. or b., may also select c. or d.)**

- a. The lesser of 3% or the highest percentage allocated to any Key Employee.
- b. \_\_\_\_\_%. (Must be at least 3.)
- c. Members of a collective bargaining group shall not receive Top-Heavy minimum allocation.
- d. Provide Top-Heavy minimum allocation to Key Employees.

**H4. Multiple Plans Provisions** - The Employer that maintains a qualified defined benefit plan in which any Participant in the Plan is, was, or could become a Participant adds the following optional provisions that it deems necessary to satisfy Code section 416 because of the required aggregation of multiple plans: (May select e. and one other option.)

- a. Not applicable - No other plan or other plan terminated prior to the Effective Date of this Adoption Agreement.
- b. A minimum contribution allocation of 5% of each Non-Key Participant's total Compensation shall be provided in a defined contribution plan of the Employer.
- c. A minimum benefit of the lesser of 2% times years of service or 20% of each Non-Key Participant's Average Compensation shall be provided in a defined benefit plan of the Employer.
- d. A minimum benefit of the lesser of 2% times years of service or 20% of each Non-Key Participant's Average Compensation shall be provided in a defined benefit plan of the Employer but offset by the amount contributed on such Participant's behalf under any defined contribution plan of the Employer.
- e. Members of a collective bargaining group shall not receive Top-Heavy minimum allocation.
- f. Other - Specify: \_\_\_\_\_.

*NOTE: When selecting "f. Other" the method selected must preclude Employer discretion (method used must be definitely determinable and clearly stated). If c. or d. selected, should coordinate with any existing defined benefit plan.*

**H5. Top-Heavy Duplications** - If the Employer maintains two or more defined contribution plans a minimum Top-Heavy benefit will be provided as follows:

- a. Not applicable.
- b. A minimum contribution of \_\_\_\_\_ % of each Non-Key Participant's Compensation shall be provided by:
  - b.1. This Plan.
  - b.2. The following defined contribution plan:  
\_\_\_\_\_
  - b.3. Employees who will receive the minimum benefit under such other plan:  
\_\_\_\_\_

The name, address and telephone number of the Plan Sponsor is:

DATAIR Employee Benefit Systems, Inc.  
735 N. Cass Avenue  
Westmont, IL 60559-1100  
(630) 325-2600

This Plan must be registered with the Plan Sponsor within 60 days of adoption of this document, and the Document Serial Number assigned by the Plan Sponsor shall be affixed to this signature page. The adopting employer must notify the Plan Sponsor through the document provider if the plan is terminated, merged, or of any changes in the name, address, or EIN of the adopting employer at least annually, and within 30 days of any request of the Plan Sponsor. If the adopting Employer terminates its relationship with the document provider its plan will no longer be considered a prototype sponsored by the Plan Sponsor.

Unregistered use of this document will result in the Plan no longer participating in this Master/Prototype Plan, and the document will be considered an individually designed plan, without reliance on the opinion letter of the Plan Sponsor, which could result in the disqualification of the plan.

If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this Master/Prototype Plan and will be considered an individually designed plan.

The Plan Sponsor will inform the Employer of any amendments made to the Plan or of the discontinuance or abandonment of the Plan.

The adopting Employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Code section 401 except to the extent provided in Revenue Procedure 2005-16.

The Employer may not rely on the opinion letter in certain other circumstances or with respect to certain qualification requirements that are specified in the opinion letter issued with respect to the Plan and in Revenue Procedure 2005-16.

In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

*This Adoption Agreement may be used only in conjunction with Basic Plan Document #01 (the DATAIR Mass-Submitter Defined Contribution Plan) Revised 01/31/2006.*

\*\*\*

The Employer hereby adopts the Plan as evidenced by the foregoing Adoption Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Employer:**

\_\_\_\_\_  
\_\_\_\_\_

**Trustee:**

\_\_\_\_\_  
\_\_\_\_\_

Plan Serial Number: