

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
Under
The Securities Act of 1933

KLA-TENCOR CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

04-2564110
(IRS Employer Identification No.)

One Technology Drive
Milpitas, California 95035
(Address, including zip code, of principal executive offices)

Executive Deferred Savings Plan
(Full titles of the Plans)

Brian M. Martin
Senior Vice President and General Counsel
KLA-Tencor Corporation
One Technology Drive
Milpitas, California 95035
(408) 875-3000
(Name, address including zip code, and telephone number,
including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered (1) | Proposed Maximum Offering Price per Share | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|---|-----------------------------------|--|--|-------------------------------|
| Deferred Compensation Obligations: Executive Deferred Savings Plan | \$75,000,000 | 100% | \$75,000,000 | \$2,302.50 |

PART II
Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference

KLA-Tencor Corporation (the "Registrant") hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the "SEC"):

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended June 30, 2007, filed with the SEC on August 20, 2007;
- (b) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2007, filed with the SEC on October 31, 2007; and
- (c) The Registrant's Current Reports on Form 8-K filed with the SEC on July 25, 2007; August 9, 2007; August 14, 2007; September 25, 2007; and November 13, 2007.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities

This Registration Statement relates to deferred compensation obligations of the Registrant to be issued under the Registrant's Executive Deferred Savings Plan (the "Plan") after December 31, 2007. The Plan is a non-qualified deferred compensation program under the Internal Revenue Code in which highly compensated employees and selected managerial personnel of the Registrant and its subsidiaries and the non-employee members of the Registrant's Board of Directors may participate.

The principal features of the Plan may be summarized as follows:

Structure. The Plan will permit each participant, by prior irrevocable election, to defer up to 100% of his or her base salary, commissions and cash bonuses earned each year. Non-employee members of the Registrant's Board of Directors may also defer any fees earned as a member of the Board or any Board committee, as well as any fees for attendance at meetings of the Board or any Board committee of which such individual is a member.

Accounts. The Registrant will establish on its books a special account for each individual for whom compensation is deferred or to whom a company contribution is credited under the Plan. However, the Registrant's obligation to pay the balance credited to such account will at all times be an unfunded and unsecured obligation and rank on parity with other unsecured and unsubordinated indebtedness of the Registrant from time to time outstanding. The Registrant will be under no obligation to establish any trust, escrow arrangement or other fiduciary relationship for the purpose of segregating funds for the payment of the account balances maintained under the Plan. Although the Registrant has established a so-called "rabbi trust" in order to accumulate a reserve for satisfying its liabilities under the Plan, no participant will have any beneficial interest in those trust assets, and the assets will be available for the satisfaction of creditor claims in the event of the Registrant's insolvency or bankruptcy. Accordingly, the deferred compensation obligations registered hereunder shall be paid solely from the Registrant's general assets.

The Registrant's obligations under the Plan are not convertible into any other security of the Registrant and will not have the benefit of a negative pledge or any other affirmative or negative covenant on the part of the Registrant. No trustee has been appointed with authority to take action with respect to such obligations, and each participant will be responsible for acting independently with respect to, among other things, the giving of notices, responding to any requests for consents, waivers or amendments pertaining to the obligations, enforcing covenants and taking action upon a default.

Investment Return. The balance credited to each participant's account under the Plan will be credited with earnings, at periodic intervals, that track the actual rate of return for such period realized by the investment fund or funds or index or indices selected by such participant from the range of investment vehicles offered under the Plan.

Vesting. The participant will at all times be vested in the portion of his or her account attributable to the compensation the participant has elected to defer under the Plan. Any company contributions credited to the participant's account will be subject to such vesting and distribution conditions and limitations at the Registrant may impose at those contributions are made.

Distribution. Each participant will be permitted to elect various distribution options with respect to his or her account balance under the Plan. The participant may make a separate election for each post-2007 calendar year for which he or she elects to defer compensation, and his or her account balance will be divided into a series of subaccounts to reflect each such separate election. The distribution event may be tied to: (i) the date of the participant's separation from service, (ii) the date, if any, specified by the participant in his or her election, which date must be within the first 60 days of any calendar year that is at least two calendar years following the calendar year to which the participant's deferral election relates, or (iii) the earlier of the participant's separation from service or such a specified date. The participant may elect to receive the distribution in one of the following forms: (i) a lump sum, (ii) a series of quarterly installments over a five-year period, or (iii) solely in connection with a distribution in connection with a separation from service, a series of quarterly installments over a ten-year period (provided, however, that the ten-year method of distribution will only be effective if a participant's separation from service occurs after such participant has attained age 55 and completed five years of service; otherwise, the participant's distribution will be made over five years). The participant will have the right to change the elected distribution event and/or method of distribution in effect for one or more of his or her subaccounts, subject to certain timing restrictions and minimum extended deferral periods set forth in the Plan. In the event of a participant's death, his or her entire account balance will be paid in a lump sum to such participant's designated beneficiary. Some or all of a participant's account balance may be distributed prior to the time elected by the participant upon the inurrence by the participant of severe financial hardship as a result of certain extraordinary and unforeseeable events.

Transferability. A participant's interest in his or her account balance under the Plan cannot be transferred or assigned, except to a designated beneficiary upon his or her death or pursuant to a domestic relations order.

Amendment / Termination. The Plan may be amended or terminated at any time, but (except in certain instances, when the Plan Administrator determines that amendments are necessary to avoid current taxation of amounts deferred under the Plan) no such plan amendment or termination will adversely affect the benefits which the participants have accrued to date under the Plan or otherwise reduce the then outstanding balances credited to the participants' accounts or adversely affect the distribution provisions applicable to those accounts. Otherwise, the Registrant's obligations under the Plan are not subject to redemption, in whole or in part, prior to the individual payment dates specified by the participants.

There is no dollar limit on the total amount of compensation which may be deferred by participants over the term of the Plan. The Plan serves as the successor to certain other deferred compensation programs implemented by the Registrant, and there are currently outstanding account balances for the compensation deferred under those programs, as adjusted to reflect the investment return to date.

Item 5. Interests of Named Experts and Counsel

Not Applicable.

Item 6. Indemnification of Directors and Officers

Section 145(a) of the Delaware General Corporation Law (the “DGCL”) provides in relevant part that “[a] corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint-venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful.” With respect to derivative actions, Section 145(b) of the DGCL provides in relevant part that “[a] corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.”

The Registrant’s Amended and Restated Certificate of Incorporation provides that, to the fullest extent permitted by the DGCL, no director of the Registrant shall be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director. The Registrant’s Amended and Restated Certificate of Incorporation also provides that no amendment or repeal of such provision shall apply to or have any effect on the right to indemnification permitted thereunder with respect to claims arising from acts or omissions occurring in whole or in part before the effective date of such amendment or repeal whether asserted before or after such amendment or repeal.

The Registrant’s Bylaws provide that the Registrant shall indemnify to the fullest extent permitted by the DGCL each of its directors, officers, employees and other agents against expenses actually and reasonably incurred in connection with any proceeding arising by reason of the fact that such person is or was an agent of the Registrant.

The Registrant has entered into indemnification agreements with its directors and executive officers and intends to enter into indemnification agreements with any new directors and executive officers in the future.

Item 7. Exemption from Registration Claimed

Not Applicable.

Item 8. Exhibits

See Exhibit Index.

Item 9. Undertakings

A. The undersigned Registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement (i) to include any prospectus required by Section 10(a)(3) of the

Securities Act of 1933 (the "1933 Act"), (ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement and (iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the 1934 Act that are incorporated by reference into this Registration Statement;

(2) that for the purpose of determining any liability under the 1933 Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and

(3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act that is incorporated by reference into this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers, or controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6 or otherwise, the Registrant has been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the 1933 Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the 1933 Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Milpitas, State of California, on the 15th day of November, 2007.

KLA-TENCOR CORPORATION

By: /s/ JEFFREY L. HALL
Name: Jeffrey L. Hall
Title: Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned officers and directors of KLA-Tencor Corporation, a Delaware corporation, do hereby constitute and appoint Jeffrey L. Hall and Brian M. Martin or any one of them, the lawful attorney-in-fact and agent, each with full power and authority to do any and all acts and things and to execute any and all instruments which said attorney and agent determines may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments, both pre-effective and post-effective, and supplements to this Registration Statement, and to any and all instruments or documents filed as part of or in conjunction with this Registration Statement or amendments or supplements thereof, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or any one of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|-------------------|
| <u>/s/ RICHARD P. WALLACE</u> Richard P. Wallace | Chief Executive Officer and Director (principal executive officer) | November 15, 2007 |
| <u>/s/ JEFFREY L. HALL</u> Jeffrey L. Hall | Senior Vice President and Chief Financial Officer (principal financial officer and principal accounting officer) | November 15, 2007 |

| | | |
|---|------------------------------------|-------------------|
| <u>/s/ EDWARD W. BARNHOLT</u> Edward W. Barnholt | Chairman of the Board and Director | November 15, 2007 |
| <u>/s/ H. RAYMOND BINGHAM</u> H. Raymond Bingham | Director | November 15, 2007 |
| <u>/s/ ROBERT T. BOND</u> Robert T. Bond | Director | November 15, 2007 |
| <u>/s/ ROBERT M. CALDERONI</u> Robert M. Calderoni | Director | November 15, 2007 |
| <u>/s/ JOHN T. DICKSON</u> John T. Dickson | Director | November 15, 2007 |
| <u>/s/ STEPHEN P. KAUFMAN</u> Stephen P. Kaufman | Director | November 15, 2007 |
| <u>/s/ KEVIN J. KENNEDY</u> Kevin J. Kennedy | Director | November 15, 2007 |
| <u>/s/ LIDA URBANEK</u> Lida Urbaneck | Director | November 15, 2007 |
| <u>/s/ DAVID C. WANG</u> David C. Wang | Director | November 15, 2007 |

EXHIBIT INDEX

| <u>Exhibit Number</u> | <u>Exhibit</u> |
|-----------------------|--|
| 4.1(1) | Amended and Restated Certificate of Incorporation. |
| 4.2(2) | Certificate of Amendment of Amended and Restated Certificate of Incorporation. |
| 4.3(3) | Amended and Restated Bylaws of the Registrant. |
| 4.4(4) | Amended and Restated Rights Agreement dated as of April 25, 1996, between the Registrant and The First National Bank of Boston, as Rights Agent. This agreement includes the Form of Right Certificate as Exhibit A thereto and the Summary of Terms of Rights as Exhibit B thereto. |
| 5.1 | Opinion of Brian M. Martin, Esq. |
| 23.1 | Consent of Independent Registered Public Accounting Firm. |
| 23.2 | Consent of Brian M. Martin, Esq. (included in Exhibit 5.1). |
| 24.1 | Power of Attorney (included on signature page). |
| 99.1 | Executive Deferred Savings Plan, as amended and restated effective January 1, 2008. |

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- (1) Incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 1997 (Commission File No. 000-09992).
 - (2) Incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended December 31, 2000 (Commission File No. 000-09992).
 - (3) Incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K, filed with the SEC on November 13, 2007 (Commission File No. 000-09992).
 - (4) Incorporated by reference to Exhibit 1 of the Registrant's report on Form 8-A/A Amendment No. 2 to the Registration Statement on Form 8-A filed with the SEC on September 24, 1996 (Commission File No. 000-09992).

OPINION OF BRIAN M. MARTIN, ESQ.

[KLA-Tencor Corporation letterhead]

November 15, 2007

KLA-Tencor Corporation
One Technology Drive
Milpitas, California 95035

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

KLA-Tencor Corporation, a Delaware corporation (the "Company"), is filing with the Securities and Exchange Commission a Registration Statement on Form S-8 (the "Registration Statement") for the purpose of registering under the Securities Act of 1933, as amended (the "Securities Act"), up to \$75,000,000 of deferred compensation obligations (the "Deferred Compensation Obligations") of the Company pursuant to the Company's Executive Deferred Savings Plan (the "Plan").

I have acted as General Counsel to the Company with respect to the issuance of this opinion and, as such counsel, have examined such documents and such matters of fact and law that I have deemed relevant and necessary as the basis for the opinions hereinafter expressed. In such examinations, I have assumed the genuineness of all signatures and the authenticity of all documents submitted to me as originals and the conformity to original documents of all documents submitted to me as conformed or photostatic copies.

Based on the foregoing, I am of the opinion that, when issued in accordance with the terms of the Plan, the Deferred Compensation Obligations will be legally and validly issued and will constitute binding obligations of the Company, enforceable in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws of general applicability relating to or affecting enforcement of creditors' rights or by general principles of equity.

I hereby consent to the filing of this opinion as an Exhibit to the Registration Statement.

Sincerely,

/s/ BRIAN M. MARTIN

Brian M. Martin
Senior Vice President and General Counsel
KLA-Tencor Corporation

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated August 17, 2007 relating to the financial statements, financial statement schedule, management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting, which appears in KLA-Tencor Corporation's Annual Report on Form 10-K for the year ended June 30, 2007.

/s/ PRICEWATERHOUSECOOPERS LLP

San Jose, California
November 15, 2007

KLA-TENCOR
EXECUTIVE DEFERRED SAVINGS PLAN
AS AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2008

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**KLA-TENCOR EXECUTIVE DEFERRED SAVINGS PLAN
AS AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2008**

This KLA-Tencor Executive Deferred Savings Plan was originally adopted effective October 1, 1997 to amend, restate and consolidate in their entirety the KLA Instruments Corporation Supplemental Executive Benefit Plan and the Tencor Instruments Amended and Restated Deferral Plan. The Plan is hereby amended and restated, effective January 1, 2008, to conform the provisions of the Plan to the applicable requirements of Section 409A of the Internal Revenue Code and the Treasury Regulations issued thereunder and thereby bring the Plan into documentary compliance with those requirements. The Plan as so amended and restated shall continue to function solely as a so-called "top hat" plan of deferred compensation subject to the provisions of the Employee Retirement Income Security Act of 1974 (as amended from time to time) applicable to such a plan.

**ARTICLE I
DEFINITIONS**

Whenever used herein, the masculine pronoun shall be deemed to include the feminine, and the singular to include the plural, unless the context clearly indicates otherwise, and the following definitions shall govern the Plan:

1.1 "**Account**" shall mean the following accounts maintained for each Participant on the books and records of the Participating Employer to which there shall be credited the items of compensation deferred by such Participant under the Plan:

(a) The **Pre-2005 Deferred Account** to which there shall be credited the following items of compensation which were deferred and vested under the Plan as of December 31, 2004: the Participant's Deferral Amounts pursuant to Article III, any Company Contributions and any Prior Plan Company Contributions. Such account shall be subject to adjustment from time to time to reflect the Credited Investment Return (Loss) determined under Article IV, any distributions made to Participant and any charges which may be imposed on such account pursuant to the terms of the Plan.

(b) The **2005-2007 Deferred Account** to which there shall be credited the following items of compensation which were deferred under the Plan after December 31, 2004 but prior to January 1, 2008 or which were deferred under the Plan prior to January 1, 2005 but were not vested as of December 31, 2004: the Participant's Deferral Amounts pursuant to Article III and any Company Contributions. Such account shall be subject to adjustment from time to time to reflect the Credited Investment Return (Loss) determined under Article IV, any distributions made to Participant and any charges which may be imposed on such account pursuant to the terms of the Plan.

(c) The **Post-2007 Plan Year Account** which will be divided into a series of Deferral Election Subaccounts, one for each post-2007 Plan Year in which the Participant defers one or more of the following items of compensation earned for services rendered the

Participating Companies after December 31, 2007: the Participant's Salary and Commission Deferral Amounts pursuant to Article III, any Bonuses attributable to Performance Periods commencing after December 31, 2007 and any Company Contributions.

Each Account or Subaccount shall be subject to adjustment from time to time to reflect the Credited Investment Return (Loss) determined for that Account or Subaccount pursuant to Article IV, any distributions made to the Participant from that Account or Subaccount and any charges which may be imposed on such Account or Subaccount pursuant to the terms of the Plan.

1.2 "**Affiliated Company**" shall mean (i) the Company and (ii) each member of the group of commonly controlled corporations or other businesses that include the Company, as determined in accordance with Sections 414(b) and (c) of the Code and the Treasury Regulations thereunder.

1.3 "**Beneficiary**" means any of the persons, trusts or other entities which a Participant shall, in his or her most recent written form of beneficiary designation filed with the Company, have designated as a beneficiary to receive benefits which may become payable hereunder following Participant's death, as provided under Articles V and VIII.

1.4 "**Board of Directors**" or "**Board**" means the Company's Board of Directors.

1.5 "**Bonus**" means the annual, semi-annual or quarterly bonus which the Participant may earn based on the attainment of performance objectives established for a designated Performance Period or the continuation in Employee status through the completion of a specified Retention Period.

1.6 "**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

1.7 "**Committee**" means an independent committee of two or more individuals appointed by the Board to administer this Plan, including the selection of Participants, the administration of the Deferral Election process and the designation of the available investment funds, and to take such other actions as may be specified herein.

1.8 "**Company**" means KLA-Tencor Corporation, a Delaware corporation, and any successor or assignee corporation, whether by way of merger, acquisition or other reorganization.

1.9 "**Company Contribution**" means a contribution made on behalf of a Participant by the Company pursuant to Section 3.7 hereof.

1.10 "**Credited Investment Return (Loss)**" means the notional investment return credited to the Participant's Accounts or Deferral Election Subaccounts pursuant to Article IV.

1.11 “**Deferral Amount**” means the Salary and/or Commission Deferral Amount and the Bonus Deferral Amount which the Participant elects to contribute for Supplemental Executive Benefits pursuant to the Plan. For Participants who are non-employee Board members, the Deferral Amount means the retainer and meeting fees earned for service as a Board member or a member of one or more Board committees.

1.12 “**Deferral Election**” means the irrevocable election filed by the Participant under Article III pursuant to which a portion of his or her Salary, Commissions and Bonus for each Plan Year is to be deferred under the Plan.

1.13 “**Early Termination**” means, with respect to any pre-2005 Account, the Participant’s termination of Employee status other than pursuant to a Normal Termination.

1.14 “**Effective Date**” means, for this Amendment and Restatement, January 1, 2008.

1.15 “**Eligible Employee**” means any Employee who is either a highly compensated employee of his or her Participating Employer or part of its management personnel, as determined pursuant to guidelines established from time to time by the Committee. In no event shall any of the following individuals be deemed to be Eligible Employees:

- (i) an Employee who is not on the United States payroll of a Participating Employer,
- (ii) any individual classified as an independent contractor or consultant or as a temporary employee, or
- (iii) any individual who has ceased Employee status or otherwise incurred a Separation from Service.

1.16 “**Employee**” means any person in the employ of one or more members of the Employer Group, subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance. An individual shall be deemed to continue in Employee status for so long as he or she continues in the employ of at least one member of the Employer Group.

1.17 “**Employer Group**” means (i) the Company and (ii) each of the other members of the controlled group that includes the Company, as determined in accordance with Sections 414(b) and (c) of the Code, except that in applying Sections 1563(1), (2) and (3) for purposes of determining the controlled group of corporations under Section 414(b), the phrase “at least 50 percent” shall be used instead of “at least 80 percent” each place the latter phrase appears in such sections and in applying Section 1.414(c)-2 of the Treasury Regulations for purposes of determining trades or businesses that are under common control for purposes of Section 414(c), the phrase “at least 50 percent” shall be used instead of “at least 80 percent” each place the latter phrase appears in Section 1.414(c)-2 of the Treasury Regulations.

1.18 “**Extended Deferral Election**” shall mean a Participant’s election, made in accordance with the terms and conditions of Section 8.1 of the Plan, to defer the distribution of any of his or her Post-2004 Accounts or Deferral Election Subaccounts for an additional period of at least five (5) years measured from the date or event on which that particular Account or Subaccount would otherwise first become due and payable under the Plan in the absence of such election.

1.19 “**Hardship**” means a severe financial hardship to the Participant resulting from:

- (a) a sudden or unexpected illness or accident of the Participant, his or her spouse or any dependent (as determined in accordance with Section 152 of the Code), or
- (b) a casualty loss involving the Participant’s property or other similar extraordinary and unforeseeable event beyond the control of the Participant.

A severe financial hardship shall not constitute a Hardship under the Plan to the extent that it is, or may be, relieved by:

- (i) reimbursement or compensation, by insurance or otherwise;
- (ii) cancellation of the Participant’s Deferral Election under the Plan; or
- (iii) liquidation of the Participant’s assets to the extent that the liquidation of such assets would not itself cause severe financial hardship.

A Hardship under the Plan shall in no event include:

- (i) sending a child to college; or
- (ii) purchasing a home

1.20 “**KLA**” means KLA Instruments Corporation or any of its subsidiaries.

1.21 “**Normal Termination**” means, with respect to any pre-2005 Account, the Participant’s termination of Employee status on or after (i) the attainment of age fifty five (55) and the completion of at least five (5) Years of Service or (ii) the completion of at least fifteen (15) Years of Service and means, with respect to any other Account or Subaccount, the Participant’s Separation from Service on or after the attainment of age fifty five (55) and the completion of at least five (5) Years of Service.

1.22 “**Old KLA Plan**” shall mean the KLA Instruments Corporation Supplemental Executive Benefit Plan, as in effect on September 30, 1997.

1.23 “**Outside Director**” means any member of the Board of Directors who is not an Employee.

1.24 "**Participant**" means (i) an Eligible Employee selected for participation in the Plan in accordance with the provisions of Section 2.1 or (ii) any Outside Director electing to participate in the Plan.

1.25 "**Participating Employer**" means, with respect to each Participant, the Affiliated Company employing that individual which has adopted the Plan as a deferred compensation program for one or more of its Employees. The Participating Employers for the 2007 Plan Year are set forth in attached Schedule I. Any additional Affiliated Companies which may from time to time become Participating Employers shall be listed in revised Schedule I.

1.26 "**Performance Period**" means, with respect to any annual, semi-annual or quarterly Bonus that is tied to the attainment of performance objectives, the period over which those performance objectives are to be measured for purposes of determining the amount of such Bonus (if any) to be earned by the Participant for service during that period. Accordingly, the Performance Period may be coincident with the Company's fiscal year or with one or more semi-annual or quarterly periods within such fiscal year.

1.27 "**Plan**" means this KLA-Tencor Executive Deferred Savings Plan, as it may be amended from time to time.

1.28 "**Plan Year**" means, effective January 1, 2005, the 12-month period coincidental with each calendar year.

1.29 "**Prior Plans**" means the KLA Instruments Corporation Supplemental Executive Benefit Plan and the Tencor Instruments Amended and Restated Deferral Plan.

1.30 "**Prior Plan Company Contribution**" means the amount, if any, which the Company contributed on behalf of Participants for Supplemental Executive Benefits under the Prior Plans. Any Prior Plan Company Contributions that were credited to Participant Accounts as of October 1, 1997 and had not already been forfeited as of such date became 100% vested on that date.

1.31 "**Prior Policy**" means the life insurance policy on the life of a Participant maintained pursuant to a Prior Plan.

1.32 "**Retention Period**" means, with respect to any annual, semi-annual or quarterly Bonus that is tied to continuation in Employee status, the period of service in such capacity that must be completed in order to earn that Bonus. The Retention Period may be coincident with the Plan Year or with one or more semi-annual or quarterly periods within such Plan Year.

1.33 "**Separation from Service**" means the Participant's cessation of Employee status by reason of his or her death, retirement or termination of employment. The Participant shall be deemed to have terminated employment for such purpose at such time as the level of his or her bona fide services to be performed as an Employee (or non-employee consultant) permanently decreases to a level that is not more than twenty percent (20%) of the average level of services he or she rendered as an Employee during the immediately preceding thirty-six (36) months (or such shorter period for which he or she may have rendered such service). Any such determination as to Separation from Service, however, shall be made in accordance with the

applicable standards of the Treasury Regulations issued under Code Section 409A. In addition to the foregoing, a Separation from Service will not be deemed to have occurred while an Employee is on military leave, sick leave or other bona fide leave of absence if the period of such leave does not exceed six (6) months or any longer period for which such Employee's right to reemployment with one or more members of the Employer Group is provided either by statute or contract; *provided, however*, that in the event of an Employee's leave of absence due to any medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than six (6) months and that causes such individual to be unable to perform his or her duties as an Employee, no Separation from Service shall be deemed to occur during the first twenty-nine (29) months of such leave. If the period of leave exceeds six (6) months (or twenty-nine (29) months in the event of disability as indicated above) and the Employee's right to reemployment is not provided either by statute or contract, then such Employee will be deemed to have a Separation from Service on the first day immediately following the expiration of such six (6)-month or twenty-nine (29)-month period.

1.34 "**Specified Employee**" means a "key employee" (within the meaning of that term under Code Section 416(i)), as determined by the Committee in accordance with the applicable standards of Code Section 409A and the Treasury Regulations thereunder and applied on a consistent basis for all non-qualified deferred compensation plans of the Employer Group subject to Code Section 409A. The Specified Employees shall be identified on December 31 of each calendar year and shall have that status for the twelve (12)-month period beginning on April 1 of the following calendar year.

1.35 "**Supplemental Executive Benefits**" means the benefits payable to the Participant and/or his or her Beneficiary under this Plan.

1.36 "**Tencor**" means Tencor Instruments or any of its subsidiaries.

1.37 "**Trust**" means the legal entity created by the Trust Agreement.

1.38 "**Trust Agreement**" means that trust agreement entered into between the Company and Wells Fargo Bank.

1.39 "**Trustee**" means the original Trustee(s) named in the Trust Agreement and any duly appointed successor or successors thereto.

1.40 "**Year of Service**" means each twelve (12) consecutive month period of Employee service measured from the date on which the Participant initially became a Company, KLA or Tencor employee, and successive anniversaries thereof, during which the Participant continues in Employee status, including leaves of absence approved by the Company or other member of the Employer Group. Should the Participant cease Employee status and then return to such status, the following break in service provisions shall be in effect:

(i) The period of Employee service following such break shall be measured from the date of the Participant's return and shall be aggregated with the period of Employee service he or she rendered prior to the break to determine his or her total Years of Service.

(ii) The Participant shall not receive any Year of Service credit for the period of the break in service if the break is of a duration of twelve (12) months or more.

ARTICLE II ELIGIBILITY

2.1 **Eligible Persons.** The Committee shall have absolute discretion in selecting the Eligible Employees who are to participate in the Plan for each Plan Year. An Eligible Employee selected for participation for any Plan Year must, in order to participate in the Plan for that year, file his or her Deferral Election on or before the last day of the immediately preceding Plan Year. However, an Eligible Employee who is first selected for participation in the Plan after the start of a Plan Year and who has not otherwise been eligible for participation in any other non-qualified elective account balance plan subject to Code Section 409A and maintained by one or more Affiliated Companies will have until the thirtieth (30th) day following the date he or she is so selected in which to file his or her Deferral Election for that Plan Year. Individuals who are selected for participation in the Plan shall be promptly notified by the Company of their eligibility to participate in the Plan. Outside Directors shall automatically be eligible to participate in the Plan and must make their Deferral Elections in accordance with the same requirements set forth above for Employee Participants. Notwithstanding the foregoing, Participants receiving benefits pursuant to the Corporate Officers Severance Plan or the Management Severance Plan are not eligible to participate in the Plan and are deemed to have ceased Employee status for Plan purposes.

2.2 **Continuation of Participation.** Every Eligible Employee who becomes a Participant may continue to file Deferral Elections under the Plan for one or more subsequent Plan Years until the *earliest* of (i) his or her exclusion from the Plan upon written notice from the Committee, (ii) his or her cessation of Eligible Employee status or (iii) the termination of the Plan. The Committee shall have complete discretion to exclude one or more Eligible Employees from Participant status for one or more Plan Years as the Committee deems appropriate. However, no such exclusion authorized by the Committee shall become effective until the first day of the first Plan Year coincident with or next following the date of the Committee's determination to exclude the individual from such participation. If any Eligible Employee is excluded from Participant status for one or more Plan Years, then such individual shall not be entitled to defer any part of his or her Salary, Bonus or Commissions for those Plan Years.

2.3 **Resumption of Participation Following Separation from Service.** If a Participant ceases to be an Eligible Employee or an Outside Director due to a Separation from Service and thereafter returns to service with the Company or any other Participation Company, such individual will again become a Participant as of the first day the first Plan Year coincident with or next following the date on which he or she resumes Eligible Employee or Outside Director status, provided such individual files a timely a Deferral Election under Article III with respect to that Plan Year. However, a Participant who returns to Eligible Employee or Outside Director status after a Separation from Service of more than twenty-four (24) months during which he or she was not eligible to defer any compensation under this Plan or any other non-qualified elective account balance plan subject to Code Section 409A and maintained by one or more Affiliated Companies shall, upon resumption of such service, be permitted to make a Deferral Election under Article III in accordance with the requirements applicable to a

newly-selected Participant. Notwithstanding the foregoing provisions of this Section 2.3, no returning Eligible Employee shall be eligible to participate in the Plan if the Committee determines to exclude such individual from participation on or before his or her resumption of service.

2.4 Cessation or Resumption of Participation Following a Change in Status. If any Participant continues in the service of the Employer Group but ceases to be an Eligible Employee or Outside Director, the individual will continue to be a Participant until the entire amount of his or her Accounts distributed. However, the individual will not be entitled to make any Deferral Elections with respect to compensation earned for the period that he or she is not an Eligible Employee or Outside Director. In the event that the individual subsequently resumes Eligible Employee or Outside Director status, he or she will again become a Participant as of the first day the first Plan Year coincident with or next following the date of his or her resumption of Eligible Employee or Outside Director status, provided such individual files a timely a Deferral Election under Article III with respect to that Plan Year. However, an Eligible Employee shall not be eligible to participate in the Plan upon his or her resumption of Eligible Employee status if the Committee.

**ARTICLE III
SALARY, COMMISSION AND BONUS REDUCTION
CONTRIBUTIONS; COMPANY CONTRIBUTIONS**

3.1 Salary and Commission Deferrals.

(a) Each Employee Participant shall have the right to file a Deferral Election to defer a portion of the salary and/or commissions earned by such Participant for service as an Employee during the Plan Year for which the Deferral Election is made. Each Deferral Election must be made by a written or electronic notice filed with the Committee or its designate in which the Participant shall indicate the percentage (up to one hundred percent) of the salary and/or commissions to be deferred. The notice must be filed on or before the last day of the calendar year immediately preceding the start of the Plan Year for which the salary and/or commissions subject to that election are to be earned. However, an Eligible Employee who is first selected for participation in the Plan after the start of a Plan Year and who has not otherwise been eligible for participation in any other non-qualified elective account balance plan subject to Code Section 409A and maintained by one or more Affiliated Companies must file his or her initial Deferral Election no later than thirty (30) days after the date he or she is so selected. Such Deferral Election shall only be effective for salary and/or commissions attributable to Employee service for the period commencing with the first day of the first calendar month coincident with or next following the filing of such Deferral Election and ending with the close of such Plan Year.

(b) For purposes of determining the compensation which may be deferred pursuant to a Deferral Election under Section 3.1(a), the following provisions shall be in effect:

(i) Salary shall mean the Participant's base salary, and commissions shall mean the Participant's sales commissions.

(ii) For any Deferral Election made with respect to commissions, the commissions will be deemed to be earned as a result of the Participant's service in the Plan Year in which the customer payments relating to the sales generating those particular commissions are made to the Participating Employer.

(iii) For purposes of any Deferral Election made by an Outside Director, salary shall mean the compensation payable to the Outside Director for service as a member of the Board and any Board committee and/or for attendance at meetings of the Board or any Board committee on which such Outside Director serves.

(c) The salary and commissions deferred for each Plan Year shall be designated the "Salary and Commission Deferral Amount" for that Plan Year. The Salary and Commission Deferral Amount shall not be paid to the Participant, but shall be withheld from the Participant's salary and/or commissions, and an amount equal to the Salary and Commission Deferral Amount shall be credited to the Participant's Deferral Election Subaccount for the Plan Year within ten business days following the date on which such deferred amount would otherwise have been paid to the Participant in the absence of the Deferral Election. The same procedure shall be utilized for crediting any fees which an Outside Director elects to defer under the Plan, except that the deferred fees shall be credited to his or her Deferral Election Subaccount within thirty business days following the date on which those deferred fees would otherwise have been paid to the Outside Director in the absence of the Deferral Election.

(d) The Deferral Election for a particular Plan Year shall become irrevocable as of the first day of that Plan Year (or any later day the Deferral Election for such Plan Year may be filed under Section 3.1(a) by a newly-eligible Participant), and no subsequent changes may be made to that Deferral Election once it becomes irrevocable.

3.2 Bonus Deferrals.

(a) The Committee shall determine the Bonuses eligible for deferral under the Plan. Each Employee Participant shall have the right to file a separate Deferral Election to defer a portion of each eligible Bonus earned by such Participant for any Performance Period or Retention Period commencing in the Plan Year for which the Deferral Election is made. Each Deferral Election must be made by a written or electronic notice filed with the Committee or its designate in which the Participant shall indicate the percentage (up to one hundred percent) of the Bonus to be deferred. The notice must be filed on or before the last day of the Plan Year immediately preceding the Plan Year in which the Performance Period or Retention Period for the Bonus subject to that election is to commence. However, the following special rules shall be in effect for any Deferral Elections with respect to such Bonuses:

(i) The Committee may allow a Deferral Election with respect to a Bonus which is based on a Performance Period of twelve (12) month or more and which qualifies as performance-based compensation in accordance with the standards and requirements set forth in Section 1.409A-1(e) of the Treasury Regulations to be made by a Participant after the start of the Performance Period to which that Bonus pertains but not later than by a designated date that is at least six (6) months prior to the end of that Performance Period. Accordingly, for a Performance Period coincidental with the Company's July 1 to June 30 fiscal year, the

Committee may allow a Deferral Election with respect to any performance-based Bonus earned over that period to be made not later than December 31 of the calendar year immediately preceding the calendar year in which that Performance Period will end.

(i) An Eligible Employee who is first selected for participation in the Plan after the start of a Plan Year and who has not otherwise been eligible for participation in any other non-qualified elective account balance plan subject to Code Section 409A and maintained by one or more Affiliated Companies must, with respect to any Bonus to be covered by his or her initial Deferral Election, file that election no later than thirty (30) days after the date he or she is so selected. Such Deferral Election shall only be effective for the portion of such Bonus determined by multiplying the dollar amount of such Bonus by a fraction, the numerator of which is the number of days remaining in the Performance or Retention Period applicable to that Bonus following the close of the calendar month in which the Participant's Deferral Election as to such Bonus is filed and the denominator of which is the total number of days in that Performance or Retention Period; *provided, however*, that in the event any such Bonus qualifies as performance-based compensation, then the provisions of subparagraph (a) shall also be applicable in determining the amount of such Bonus that may be deferred.

(b) The amount of the Bonus or Bonuses deferred for each Plan Year shall be designated the "Bonus Deferral Amount" for that Plan Year. The Bonus Deferral Amount shall not be paid to the Participant, but shall be withheld from the Participant's Bonus or Bonuses subject to the Deferral Election, and an amount equal to the Bonus Deferral Amount shall be credited to the Participant's Deferral Election Subaccount within ten business day following the date on which such deferred amount would otherwise have been paid to the Participant in the absence of the Deferral Election.

(c) The Deferral Election shall become irrevocable as of the first day of the Plan Year to which that election relates (or any later day the Deferral Election for such Bonus may be filed pursuant to the special provisions of Section 3.2(a)), and no subsequent changes may be made to that Deferral Election once it becomes irrevocable.

3.3 **Requirements for Deferral Elections.** The following requirements shall be in effect for each Deferral Election filed by a Participant for a Plan Year beginning after December 31, 2007 or a Fiscal Year beginning after June 30, 2007:

(a) The percentage of compensation which a Participant may elect to defer each Plan Year or Fiscal Year pursuant to his or her Deferral Election must comply with the following guidelines:

(i) To the extent the Participant's salary or commissions are the subject of the Deferral Election, the amount to be deferred pursuant to such election may be any multiple of one percent (1%) of the portion of such salary and commissions eligible for deferral for such Plan Year, but not less than five percent (5%) of such compensation.

(ii) To the extent the Participant's Bonus is the subject of the Deferral Election, the amount to be deferred pursuant to such election must

be a multiple of five percent (5%), up to one hundred percent (100%) of the portion of such bonus eligible for deferral for such Plan Year or Fiscal Year.

(iii) If the amount to be deferred for a particular Plan Year pursuant to the Participant's Deferral Election would be less than Five Thousand Dollars (\$5,000), then such Deferral Election shall not be given any effect, and such amount will be paid to the Participant no later than thirty days following the close of that Plan Year. For a period of less than twelve (12) months in duration, the foregoing dollar limitation shall be multiplied by the ratio of the number of days in such period to 365.

(b) The Participant must also specify in the Deferral Election the date or event for the commencement of the distribution of the Deferral Election Subaccount attributable to that election. The following commencement dates or events shall be permissible:

- a date within the first sixty (60) days of any calendar year which is at least two (2) calendar years after the calendar year to which such Deferral Election relates,
- the Participant's Separation from Service, or
- the *earlier* of (i) a date within the first sixty (60) of any calendar year which is at least two (2) calendar years after the calendar year to which the Deferral Election relates or (ii) the Participant's Separation from Service.

(c) The Participant shall also specify in the Deferral Election the manner in which the Deferral Election Subaccount attributable to that election shall be distributed. The following methods of distribution shall be permissible for a distribution tied to a specified date:

- lump sum payment, or
- substantially equal quarterly installments (subject to periodic adjustment for Credited Investment Returns (Losses)) over a five (5)-year term.

The following methods of distribution shall be permissible for a distribution tied to a Separation from Service:

- lump sum payment,
- substantially equal quarterly installments (subject to periodic adjustment for Credited Investment Returns (Losses)) over a five (5)-year term, or

- substantially equal quarterly installments (subject to periodic adjustment for Credited Investment Returns (Losses)) over a ten (10)-year term *provided, however,* that any election of such a ten (10)-year payment stream shall only be effective if the Participant's Separation from Service is due to a Normal Termination; otherwise, such election shall automatically revert to a five (5)-year term.

For purposes of Section 8.1, an installment distribution shall be treated as a single aggregate payment, and not as a series of individual installment payments.

3.4 **Limitations on Deferrals.** In applying the Participant's Deferral Election to the salary, commissions or bonuses subject to that election, the percentage of such compensation to be deferred shall be determined after such salary, commission or bonus is reduced by the amount necessary to satisfy all federal, state and local income, employment and other payroll taxes (including FICA taxes) required to be withheld with respect to such items of compensation. Any payroll deductions to be made from the Participant's compensation for purposes of the Company's Employee Stock Purchase Plan shall be based on the Executive's compensation prior to reduction for his or her Deferral Elections under the Plan. Any salary deferral elections made by the Participant under the Company's 401(k) Plan shall be based on the Executive's compensation after reduction for his or her Deferral Elections under the Plan.

3.5 **Deferral Election Subaccounts.** A separate Deferral Election Subaccount shall be established for each Plan Year for which the Participant defers a portion of his or her eligible compensation under the Plan. The Participant shall at all times be fully vested in the balance credited to each of his or her Deferral Election Subaccounts.

3.6 **Subsequent Distribution.** Each of the Participant's Deferral Election Subaccounts shall be distributed in accordance with the provisions of Articles VII and VIII of the Plan.

3.7 **Company Contributions.** The Company may, in its sole discretion, make a Company Contribution to an Account or Subaccount on behalf of a Participant, subject to such vesting and distribution conditions and limitations as the Company, in its sole discretion, shall impose at the time such contribution is made.

ARTICLE IV CREDITED INVESTMENT RETURN (LOSS) ON DEFERRAL ACCOUNTS

4.1 **Accounts.** One or more Accounts and Subaccounts shall be established and maintained for each Participant in accordance with the provisions of Section 1.1. Each Account or Subaccount shall be charged with any distributions made therefrom pursuant to the Plan, any charges imposed thereon pursuant to the terms of the Plan and, with respect to the Pre-2005 Account, the cash surrender value of any Prior Policy distributed pursuant to Appendix I hereof. In addition, any Pre-2005 Account established for a Participant was credited, as of October 1, 1997, with the ending balance (if any) accrued by that Participant under the Prior Plans.

4.2 Credited Investment Return (Loss).

(a) Each of the Participant's Accounts and Subaccounts shall be credited monthly with the Credited Investment Return (Loss) attributable to the balance credited to that Account or Subaccount. The Credited Investment Return (Loss) is the amount which the balance credited to the Account or Subaccount would have earned if that balance had in fact been invested in the Deemed Investment Options in accordance with the Participant's Investment Elections.

(b) The Committee shall, from time to time, designate the Deemed Investment Options. The Committee shall specify the particular funds which shall constitute the Deemed Investment Options and may, in its sole discretion, change or add to the Deemed Investment Options; *provided, however*, that the Committee shall notify the Participants of any such change prior to the effective date thereof.

4.3 Deemed Investment Options. Each Participant may select among the Deemed Investment Options and specify the manner in which his or her Accounts and Subaccounts shall be deemed to be invested (the "Investment Election") for purposes of determining the Credited Investment Return on those Accounts and Subaccounts. The Committee shall establish and communicate the rules, procedures and deadlines for making and changing such Investment Elections. Each Participant may continue to make such Investment Election for so long as he or she has an outstanding balance credited to an Account or Subaccount, whether or not such Participant is in Employee status or active Participant status at the time.

**ARTICLE V
DISTRIBUTION OF PRE-2005 DEFERRED ACCOUNT**

The provisions of this Article V shall apply solely to the Participant's Pre-2005 Deferred Account for so long as that account remains exempt from the requirements of Code Section 409A by reason of the applicable effective date of those requirements.

5.1 Distribution of Benefits upon Normal Termination. The following provisions shall govern the distribution to be made with respect to a Participant who ceases Employee status through a Normal Termination:

(a) Unless the Participant otherwise elects pursuant to Section 5.1(b), the amount credited to his or her Pre-2005 Deferred Account (reduced by the cash surrender value of any Prior Policy distributed pursuant to Appendix I hereof) shall be paid in sixty (60) substantially equal quarterly installments (subject to ongoing Credited Investment Returns (Losses)), with the first installment to be paid as soon as practicable following the first day of first calendar quarter following such Normal Termination.

(b) If the Participant has filed an appropriate distribution election with the Committee at least one (1) year prior to his or her Normal Termination, then the amount of his or her Pre-2005 Deferred Account shall be distributed in one of the following methods as the Participant may specify in that election:

(i) a single lump sum payment;

- (ii) twenty (20) substantially equal (subject to ongoing Credited Investment Returns (Losses)) quarterly installments, or
- (iii) forty (40) substantially equal (subject to ongoing Credited Investment Returns (Losses)) quarterly installments.

The applicable distribution shall commence as soon as practicable following the first day of the first calendar quarter following such Normal Termination.

5.2 Distribution of Benefits upon Early Termination. The following provisions shall govern the distribution to be made with respect to a Participant who ceases Employee status through an Early Termination:

(a) Unless the Participant otherwise elects a different form of distribution in accordance the requirements and limitations of Section 5.2(b) or 5.2(c), the amount credited to his or her Pre-2005 Deferred Account (reduced by the cash surrender value of any Prior Policy distributed pursuant to Appendix I) shall be distributed to the Participant in a single lump sum payment within a reasonable amount of time after such Early Termination event.

(b) If the Participant with an Early Termination has more than five (5) Years of Service, then he or she may file a distribution election at least one (1) year prior to the date of such Early Termination to have the amount credited to his or her Pre-2005 Deferred Account (as adjusted pursuant to Section 5.2(a)), to the extent vested, distributed in twenty (20) substantially equal quarterly installments (subject to ongoing Credited Investment Returns (Losses)). The elected distribution shall commence as soon as reasonably practicable following the Early Termination Event. Such election, however, shall not be effective if the date of the Participant's Early Termination occurs within one (1) year after the filing date of that election.

(c) If the Participant with an Early Termination has at least ten (10) Years of Service, then he or she may file a distribution election at least one (1) year prior to the date of such Early Termination to have the amount credited to his or her Pre-2005 Deferred Account (as adjusted pursuant to Section 5.2(a)), to the extent vested, distributed in either twenty (20) or forty (40) substantially equal quarterly installments (subject to ongoing Credited Investment Returns (Losses)). The elected distribution shall commence as soon as reasonably practicable following the Early Termination Event. Such election, however, shall not be effective if the date of the Participant's Early Termination occurs within one (1) year after the filing date of that election.

5.3 Election of Form of Benefit Payment. The Participant may file a distribution election permitted under Section 5.1 or 5.2, above with the Committee or its designate at any time which is more than one (1) year prior to the applicable Normal Termination or Early Termination date and may revoke or change such election at any time or times which is more than one (1) year prior to the then applicable Normal Termination or Early Termination date. Any distribution election which is filed within one (1) year of the applicable Normal Termination or Early Termination date shall be void and without effect, and the most recently effective distribution election shall control instead.

5.4 **Payment to Beneficiary.** In the event the Participant dies after installment payments have begun but before all of the installments are paid, the undistributed installments shall be paid to his or her Beneficiary as they become due.

5.5 **Early Withdrawals.**

(a) Notwithstanding any other provision of this Plan, the Participant may, upon thirty (30) days prior written notice, withdraw up to ninety-two percent (92%) of the balance credited to his or her Pre-2005 Deferred Account determined at the time of such withdrawal. Upon such withdrawal, eight percent (8%) of the amount requested from the Participant's Pre-2005 Deferred Account shall be forfeited, and the Participant shall have no further right thereto. The Participant shall be prohibited from making any further compensation deferrals pursuant to this Plan for the remainder of the Plan Year in which the withdrawal occurs and for the following Plan Year. The Participant may only make a maximum of two (2) early withdrawals pursuant to this Section 5.5(a).

(b) Notwithstanding any other provision of this Plan, the Participant may request to withdraw any or all of the balance credited to his or her Pre-2005 Deferred Account in the event of a Hardship. The Committee shall, in its sole discretion, determine whether or not to approve such a withdrawal request. The Participant shall be required to demonstrate to the Committee's satisfaction that the financial burden imposed by the Hardship cannot reasonably be satisfied out of his or her other financial resources. Withdrawals pursuant to a Hardship request shall only be permitted, if at all, to the extent reasonably required to satisfy the Participant's need.

(c) Notwithstanding any other provision of this Plan, Executive may schedule an in-service distribution of any portion of the balance credited to his or her Pre-2005 Deferred Account by submitting a distribution election form (or by scheduling an in-service distribution in his or her initial enrollment election) to the Committee at least two (2) years prior to the desired distribution date. Such distribution shall be paid in a lump-sum; provided, however, that if (i) the Participant elects such form of distribution on the distribution election or initial enrollment form and (ii) the distribution commences after five (5) or more years of service with the Company, the distribution shall be made in twenty (20) equal quarterly installments, payable on the first day of each calendar quarter. Any Credited Investment Return (Loss) with respect to the portion of the Participant's Pre-2005 Deferred Account scheduled for an in-service installment distribution that is to be credited on and after the date of the initial in-service distribution shall be credited to the remaining portion of the Participant's Pre-2005 Deferred Account. The Participant may postpone a scheduled in-service distribution date by submitting a new distribution election form to the Committee at least one (1) year prior to the otherwise scheduled in-service distribution date. Any in-service distribution election form which is filed within one (1) year of the scheduled in-service distribution date shall be void and without effect. Once an in-service installment distribution commences, such distribution shall continue over the applicable installment period, whether or not the Participant continues in Employee status. However, if the Participant has an Early Termination or a Normal Termination prior to the first scheduled in-service distribution, then his or her in-service distribution election shall become void and without effect, and the distribution provisions relating to such Participant's Early or Normal Termination, as applicable, shall control the distribution of the Participant's Pre-2005 Deferred Account.

5.6 **Automatic Lump-Sum Distribution for Accounts below \$25,000** Notwithstanding any other provisions of this Plan or the provisions of a Participant's distribution election with respect to his or her Pre-2005 Deferred Account, in the event such Participant has less than twenty-five thousand dollars (\$25,000) credited to his or her Pre-2005 Deferred Account as of the date of his or her cessation of Employee status, then 100% of that Account shall be distributed to him or her in a single lump-sum payment within a reasonable amount of time following the date of such cessation of Employee status.

5.7 **Valuation.** The amount to be distributed from the Participant's Pre-2005 Deferred Account shall be determined on the basis of the balance credited to that Account as of the most recent practicable valuation date (as determined by the Committee or its designate) preceding the date of the actual distribution. For a Participant who has elected an installment distribution from his or her Pre-2005 Account (or any portion thereof), such distribution shall be effected through a series of substantially equal payments (as adjusted for Credited Investment Returns (Losses)), and the amount of each such installment shall accordingly be determined by dividing the balance credited to that Account (or applicable portion) as of the most recent practicable valuation date (as determined by the Committee) preceding the date of the actual distribution of that installment by the number of installments (including the current installment) remaining in the applicable distribution period.

5.8 **Tax Withholding.** Each payment made from the Participant's Pre-2005 Deferred Account shall be subject to the Participating Employer's collection of all applicable federal, state and local income and employment/payroll taxes, and each payment shall be net of such applicable withholding taxes.

5.9 **Outside Directors.** As applied to an Outside Director, for all purposes under the Plan, the terms "service," "employed" and "employment" shall mean the time during which the Outside Director serves on the Board of Directors, and the terms "retirement" and "termination" shall mean the time at which the Outside Director ceases to serve on the Board of Directors.

ARTICLE VI DISTRIBUTION OF 2005-2007 DEFERRED ACCOUNT

The provisions of this Article VI shall apply solely to the Participant's 2005-2007 Deferred Account.

6.1 **Special Distribution Election.** Each Participant may, prior to December 31, 2007, make a new payment election under this Article VI with respect to the commencement date and form of payment to be in effect for his or her 2005-2007 Deferred Account (the "Special Distribution Election"). Any such Special Distribution Election made by the Participant shall constitute a new payment election under Q&A 19(c) of Notice 2005-1, as modified by the Preamble to the proposed Treasury Regulations under Code Section 409A and Notice 2006-79. However, any Special Distribution Election submitted during the 2007 calendar year can only apply to amounts not otherwise payable in that calendar year, and the election may not cause any amount to be paid in the 2007 calendar year that would not otherwise be payable in that year.

6.2 **Commencement Date.** In the Special Distribution Election, the Participant must specify the date or event for the commencement of the distribution of his or her 2005-2007 Deferred Account. The following commencement dates or events shall be permissible:

- a date within the first sixty (60) days of any calendar year after the 2008 calendar year,
- the Participant's Separation from Service, or
- the *earlier* of (i) a date within the first sixty (60) days of any post-2008 calendar year or (ii) the Participant's Separation from Service.

6.3 **Method of Distribution.** The Participant must specify in the Special Distribution Election the method by which his or her 2005-2007 Deferred Account shall be distributed. The following methods of distribution shall be permissible for a distribution tied to a specified date:

- lump sum payment, or
- substantially equal quarterly installments (subject to periodic adjustment for Credited Investment Returns (Losses)) over a five (5)-year term.

The following methods of distribution shall be permissible for a distribution tied to a Separation from Service:

- lump sum payment,
- substantially equal quarterly installments (subject to periodic adjustment for Credited Investment Returns (Losses)) over a five (5)-year term, or
- substantially equal quarterly installments (subject to periodic adjustment for Credited Investment Returns (Losses)) over a ten (10)-year term, or
- substantially equal quarterly installments (subject to periodic adjustment for Credited Investment Returns (Losses)) over a fifteen (15)-year term; *provided, however*, that any election of such a fifteen (15)-year payment stream shall only be effective if the Participant's Separation from Service due to a Normal Termination; otherwise, such election shall automatically revert to a ten (10)-year term.

For purposes of Section 8.1, an installment distribution shall be treated as a single aggregate payment, and not as a series of individual installment payments.

6.4 **Continuing Elections.** Should the Participant not file a Special Distribution Election on a timely basis in accordance with Section 6.1, then each of the separate distribution elections he or she initially made with respect to the compensation deferred under the Plan for each of the 2005, 2006 and 2007 Plan Years shall continue in full force and effect and may not be subsequently changed except in accordance with the requirements of Section 8.1.

6.5 **Tax Withholding.** Each payment made from the Participant's 2005-2007 Deferred Account shall be subject to the Participating Employer's collection of all applicable federal, state and local income and employment/payroll taxes, and each payment shall be net of such applicable withholding taxes.

**ARTICLE VII
DISTRIBUTION OF POST-2007 DEFERRAL ELECTION SUBACCOUNTS**

The provisions of this Article VII shall apply to each of the Participant's Deferral Election Subaccounts attributable to a Plan Year beginning after December 31, 2007 or a Fiscal Year beginning after June 30, 2007.

7.1 **Normal Distribution.** The Participant's Deferral Election Subaccount for a particular Plan Year or Fiscal Year shall become due and payable in accordance with the commencement date and method of distribution designated by the Participant in his or her Deferral Election for that Plan Year or Fiscal Year. Such distribution shall begin on the designated commencement date or event as soon as administratively practicable thereafter, but in no event later than the *later* of (i) the close of the calendar year in which the designated commencement date or event occurs or (ii) the fifteenth (15th) day of the third (3rd) calendar month following the occurrence of such commencement date or event.

7.2 **Tax Withholding.** Each payment made from a Deferral Election Subaccount shall be subject to the Participating Employer's collection of all applicable federal, state and local income and employment/payroll taxes, and each payment shall be net of such applicable withholding taxes.

**ARTICLE VIII
PROVISIONS APPLICABLE TO 2005-2007 ACCOUNTS AND POST-2007 DEFERRAL ELECTION SUBACCOUNTS**

The provisions of this Article VIII shall apply to the Participant's 2005-2007 Account and each of his or her Deferral Election Subaccounts attributable to a Plan Year beginning after December 31, 2007. Each such Account or Subaccount shall, for purposes of this Article VIII, be designated a Post-2004 Account.

8.1 **Extended Deferral Election.** A Participant may make an Extended Deferral Election with respect to any Post-2004 Account maintained for him or her under the Plan, provided the Participant remains at the time of such election a highly compensated Employee or member of the management group of a Participating Employer (as determined pursuant to guidelines established by the Committee). The Extended Deferral Election must be made by filing an appropriate election form with the Committee at least twelve (12) months prior to the date the Post-2004 Account subject to such election is scheduled to become payable pursuant to the applicable provisions of Article VI or Article VII, and the Extended Deferral Election for that Account shall in no event become effective or otherwise have any force or applicability until the expiration of the twelve (12)-month period measured from the date such election is filed with the Committee. The Extended Deferral Election must specify a commencement date in a Plan Year which is at least five (5) Plan Years later than the Plan Year in which the distribution of that

Post-2004 Account would have otherwise been made or commenced in the absence of the Extended Deferral Election. As part of the Extended Deferral Election, the Participant may also elect a different method of distribution, provided the selected method complies with one of the forms of distribution permissible for that Account in accordance with the provisions of the Plan. Once the Extended Deferral Election becomes effective in accordance with the foregoing provisions of this Paragraph 8.1, such election shall remain in effect, whether or not the Participant continues in Employee status; *provided, however*, that in the event of the Participant's death, the provisions of Paragraph 8.4 shall apply.

8.2 **Distribution Commencement Date.** The distribution of any Post-2004 Account shall be made or commence on the distribution date or event applicable to that Account or as soon thereafter as administratively practicable, but in no event later than the later of (i) the end of the calendar year in which that distribution date or event occurs or (ii) the fifteenth (15th) day of the third (3rd) calendar month following such distribution date or event.

8.3 **Hardship Withdrawal.** If a Participant incurs a Hardship and does not have any other resources available, whether through reimbursement or compensation (by insurance or otherwise), liquidation of existing assets (to the extent such liquidation would not itself result in financial hardship) or cancellation of his or her existing Deferral Election(s) under the Plan, to satisfy such financial emergency, then the Participant may apply to the Committee Administrator for an immediate distribution from one or more of his or her Post-2004 Accounts in an amount necessary to satisfy such Hardship and the tax liability attributable to such distribution. The Committee shall have complete discretion to accept or reject the request and shall in no event authorize a distribution in an amount in excess of that reasonably required to meet such Hardship and the tax liability attributable to that distribution.

8.4 **Death Before Full Distribution.** If the Participant dies before the entire aggregate balance of his or her Post-2004 Accounts is distributed, then the unpaid balance shall be paid in a lump sum to his or her designated Beneficiary under the Plan. Such payment shall be made as soon as administratively practical following the Participant's death, but in no event later than the *later* of (i) the end of the calendar year in which the Participant's death occurs or (ii) the fifteenth (15th) day of the third (3rd) calendar month following the date of the Participant's death. Should the Participant die without a valid Beneficiary designation in effect or after the death of his or her designated Beneficiary, then any amounts due him or her from his or her Post-2004 Accounts shall be paid to his or her estate.

8.5 **Valuation.** The amount to be distributed from any Post-2004 Account shall be determined on the basis of the balance credited to that Account as of the most recent practicable valuation date (as determined by the Committee or its designate) preceding the date of the actual distribution. For a Participant who has elected an installment distribution for any Post-2004 Account, such distribution shall be effected through a series of substantially equal payments (as adjusted for Credited Investment Returns (Losses)), and the amount of each such installment shall accordingly be determined by dividing the balance credited to that Account as of the most recent practicable valuation date (as determined by the Committee) preceding the date of the actual distribution of that installment by the number of installments (including the current installment) remaining in the applicable distribution period.

8.6 **Small Account Balances.**

(a) If the aggregate balance of the Participant's Post-2004 Accounts is not greater than the applicable dollar amount in effect under Code Section 401(g)(1)(B) at the time of the Participant's Separation from Service and the Participant is not otherwise at that time participating in any other non-qualified elective account balance plan subject to Code Section 409A and maintained by one or more Affiliated Companies, then that balance shall be distributed to the Participant in a lump sum distribution as soon as administratively practical following such Separation from Service, whether or not the Participant elected that form of distribution or distribution event, but in no event later than the *later* of (i) the end of the calendar year in which such Separation from Service occurs or (ii) the fifteenth (15th) day of the third (3rd) calendar month following the date of such Separation from Service.

(b) If the Participant is receiving one or more installment distributions from his or her Post-2004 Accounts following his or her Separation from Service and the aggregate present value of all the remaining unpaid installments is at any time during the installment period less than Fifty Thousand Dollars (\$50,000), then those remaining installments shall be paid in an immediate lump sum.

8.7 **Mandatory Deferral of Distribution.** Notwithstanding any provision to the contrary in this Article VIII or any other article in the Plan, no distribution which becomes due and payable from any of the Participant's Post-2004 Accounts by reason of his or her Separation from Service shall be made to such Participant prior to the *earlier* of (i) the first day of the seventh (7th) month following the date of such Separation from Service or (ii) the date of his or her death, if the Participant is deemed at the time of such Separation from Service to be a Specified Employee *and* such delayed commencement is otherwise required in order to avoid a prohibited distribution under Code Section 409A(a)(2). Upon the expiration of such deferral period, all payments deferred pursuant to this Section 8.6 (whether they would have otherwise been payable in a single sum or in installments in the absence of such deferral) shall be paid in a lump sum to the Participant, and any remaining payments due under the Plan shall be paid in accordance with the normal payment dates specified for them herein. During such deferral period, the Participant's Account shall continue to be subject to the investment return provisions of Article IV.

ARTICLE IX BENEFICIARIES

9.1 **Designation of Beneficiary.** Executive shall have the right to designate on such form as may be prescribed by the Committee a Beneficiary to receive any Supplemental Executive Benefits due to the Participant's deferrals of compensation under the Plan which remains unpaid at the time of his or her death. The Participant shall have the right at any time to revoke such designation and to substitute another such Beneficiary.

9.2 **No Designated Beneficiary.** If, upon the Participant's death, there is no valid designation of Beneficiary, the Beneficiary shall be the Participant's estate.

**ARTICLE X
OBLIGATION TO PAY SUPPLEMENTAL EXECUTIVE BENEFITS**

10.1 **Benefits Paid From Trust.** All benefits payable to the Participant hereunder shall be paid by the Trustee, to the extent of the assets held in the Trust by the Trustee, and by the Company to the extent the assets in the Trust are insufficient to pay the Participant the Supplemental Executive Benefits to which he or she is entitled under this Plan.

10.2 **Trustee Investment Discretion.** The Deemed Investment Options shall be for the sole purpose of determining the Credited Investment Return (Loss), and neither the Trustee nor the Company shall have any obligation to invest the Participant's Deferral Amounts in the Deemed Investment Options or in any other investment.

10.3 **No Secured Interest.** Except as otherwise provided by the Trust Agreement, the assets of the Trust shall be subject to the claims of creditors of the Company, and no Participant or Beneficiary shall have any legal or equitable interest in such assets or policies or any other asset of the Company. The Participant shall be a general unsecured creditor of the Company with respect to the promises of the Company made herein, except as otherwise expressly provided by the Trust Agreement.

**ARTICLE XI
ADMINISTRATION**

11.1 **Administration of the Plan.** The Plan shall be administered by the Committee. The Committee shall have full power and discretionary authority to administer, construe and interpret the Plan, to establish procedures for administering the Plan, to prescribe forms, and take any and all necessary or desirable actions in connection with the Plan. The Committee's interpretation and construction of the Plan shall be conclusive and binding on all persons having an interest in the Plan, including (without limitation) all decisions relating to an individual's eligibility for participation in the Plan, his or her entitlement to benefits hereunder and the amount of any such benefit entitlement. The Committee may appoint a Committee or any other agent and delegate to them such powers and duties in connection with the administration of the Plan as the Committee may from time to time prescribe.

11.2 **Indemnification.** The Committee and each of its members shall be indemnified by the Company against any and all liabilities incurred by reason of any action taken in good faith pursuant to the provisions of the Plan.

**ARTICLE XII
MISCELLANEOUS**

12.1 **No Employment Right.** Neither the action of the Company or the Participating Employer in establishing or maintaining the Plan, nor any action taken under the Plan by the Committee, nor any provision of the Plan itself shall be construed so as to grant any person the right to remain in the employ of the Participating Employer or any other Affiliated Company for any period of specific duration, and the Participant may be discharged at any time, with or without cause.

12.2 Amendment/Termination.

(a) The Committee may at any time amend the provisions of the Plan to any extent and in any manner the Committee may deem advisable, and such amendment shall become effective at the time of such Committee action. Without limiting the generality of the foregoing, the Committee may amend the Plan to impose such restrictions upon (i) the timing, filing and effectiveness of Deferral Elections or Extended Deferral Elections and (ii) the distribution provisions of the Plan which the Committee deems appropriate or advisable in order to avoid the current income taxation of amounts deferred under the Plan which might otherwise occur as a result of changes to the tax laws and regulations governing deferred compensation arrangements such as the Plan. The Committee may also at any time terminate the Plan in whole or in part. Except for such modifications, limitations or restrictions as may otherwise be required to avoid current income taxation or other adverse tax consequences to Participants as a result of changes to the tax laws and regulations applicable to the Plan, no such plan amendment or plan termination authorized by the Committee shall adversely affect the benefits of Participants accrued to date under the Plan or otherwise reduce the then outstanding balances credited to their Accounts or Deferral Election Subaccounts or otherwise adversely affect the distribution provisions in effect for those Accounts or Subaccounts, and all amounts deferred prior to the date of any such plan amendment or termination shall, subject to the foregoing exception, continue to become due and payable in accordance with the distribution provisions of the Plan as in effect immediately prior to such amendment or termination.

(b) Notwithstanding the foregoing paragraph or any other provision in this Plan to the contrary, should the Plan be terminated, then all benefits attributable to the Participant's Pre-2005 Deferred Account shall be paid pursuant to the provisions of Section 5.2 as if such Participant had voluntarily ceased Employee status on the date of such Plan termination.

(c) All amounts remaining in the Trust after all benefits have been paid in connection with the termination of the Plan shall revert to the Company.

12.3 **Applicable Law.** The Plan is intended to constitute an unfunded deferred compensation arrangement for a select group of management and other highly compensated persons, and all rights hereunder shall be construed, administered and governed in all respects in accordance with the provisions of the Employee Retirement Income Security Act of 1974 (as amended from time to time) applicable to such an arrangement and, to the extent not pre-empted thereby, by the laws of the State of California without resort to its conflict-of-laws provisions. If any provision of this Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue in full force and effect.

12.4 **Satisfaction of Claims.** Any payment made to a Participant or his or her legal representative or beneficiary in accordance with the terms of this Plan shall to the extent thereof be in full satisfaction of all claims with respect to that payment which such person may have against the Plan, the Committee (or its designate), the Company, the Participating Employer and all other Affiliated Companies, any of whom may require the Participant or his or her legal representative or Beneficiary, as a condition precedent to such payment, to execute a receipt and release in such form as shall be determined by the Committee.

12.5 **Alienation of Benefits.** No person entitled to any benefits under the Plan shall have the right to alienate, pledge, hypothecate or otherwise encumber his or her interest in such benefits, and those benefits shall not, to the maximum extent permissible by law, be subject to claim of his or her creditors or liable to attachment, execution or other process of law. Notwithstanding the foregoing, any benefits otherwise due and payable to the Participant shall instead be distributed to one or more third parties (including, without limitation, the Participant's former spouse) to the extent such distribution is required by a domestic relations order or other order or directive of a court with jurisdiction over the Participant and his or her benefits hereunder, and the Participant shall cease to have any right, interest or entitlement to any benefits to be distributed pursuant to such order or directive.

12.6 **Expenses.** The Accounts and Subaccounts of each Participant shall be charged with its allocable share of all other costs and expenses incurred in the operation and administration of the Plan, except to the extent one or more Participating Employers elect in their sole discretion to pay all or a portion of those costs and expenses.

12.7 **Successors and Assigns.** The obligation of each Participating Employer to make the payments required hereunder shall be binding upon the successors and assigns of that Participating Employer, whether by merger, consolidation, acquisition or other reorganization. Except for such modifications, limitations or restrictions as may otherwise be required to avoid current income taxation or other adverse tax consequences to Participants as a result of changes to the tax laws and regulations applicable to the Plan, no amendment or termination of the Plan by any such successor or assign shall adversely affect or otherwise impair the rights of Participants to receive benefit payments hereunder, to the extent attributable to amounts deferred prior to the date of such amendment or termination, in accordance with the applicable distribution provisions of the Plan as in effect immediately prior to such amendment or termination.

12.8 **Reimbursement of Costs.** If the Company, the Participant, any Beneficiary or a successor in interest to any of the foregoing brings legal action to enforce any of the provisions of this Plan, the prevailing party in such legal action shall be entitled to be reimbursed by the other party for the prevailing party's costs of such legal action, including (without limitation) reasonable fees of attorneys, accountants and similar advisors and expert witnesses.

12.9 **Arbitration.** Any dispute or claim relating to or arising from the Plan that cannot be resolved within thirty (30) days of the dispute or controversy through good-faith negotiation or non-binding mediation between the Participant and the Company shall be subject to binding arbitration in Santa Clara, California before the American Arbitration Association under its National Rules for the Resolution of Employment Disputes, supplemented by the California Rules of Civil Procedure. The Company and the Participant shall each bear their own respective costs and attorneys' fees incurred in connection with the arbitration; and the Company shall pay the arbitrator's fees, unless law applicable at the time of the arbitration hearing requires otherwise. The arbitrator shall issue a written decision that sets forth the essential findings of fact and conclusions of law on which the award is based. The arbitrator's decision shall be final and binding to the fullest extent permitted by law and enforceable by any court having jurisdiction thereof.

12.10 **Entire Agreement.** This Plan and any applicable deferral election and beneficiary forms constitute the entire understanding and agreement with respect to the Plan, and there are no agreements, understandings, restrictions, representations or warranties among the Participant, the Company and the Participating Employers other than those as set forth or provided for therein.

ARTICLE XIII BENEFIT CLAIMS

13.1 **Claims Procedure.** No application is required for the payment of benefits under the Plan. However, if any Participant (or beneficiary) believes he or she is entitled to a benefit from the Plan which differs from the benefit determined by the Committee, then such individual may file a written claim for benefits with the Committee. Each claim shall be acted upon and approved or disapproved within ninety (90) days following receipt by the Committee.

13.2 **Denial of Benefits.** In the event any claim for benefits is denied, in whole or in part, the Committee shall notify the claimant in writing of such denial and of his or her right to a review by the Committee and shall set forth, in a manner calculated to be understood by the claimant, specific reasons for such denial, specific references to pertinent provisions of the Plan on which the denial is based, a description of any additional material or information necessary to perfect the claim, an explanation of why such material or information is necessary, and an explanation of the review procedure.

13.3 Review.

(a) Any person whose claim for benefits is denied in whole or in part may appeal to the Committee for a full and fair review of the decision by submitting to the Committee, within ninety (90) days after receiving written notice from the Committee of such denial, a written statement:

- (i) requesting a review by the Committee of his or her claim for benefits;
- (ii) setting forth all of the grounds upon which the request for review is based and any facts in support thereof; and
- (iii) setting forth any issues or comments which the claimant deems pertinent to his or her claim.

(b) The Committee shall act upon each such appeal within sixty (60) days after receipt of the claimant's request for review by the Committee, unless special circumstances require an extension of time for processing. If such an extension is required, written notice of the extension shall be furnished to the claimant within the initial sixty (60)-day period, and a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the initial request for review. The Committee shall make a full and fair review of each such appeal and any written materials submitted by the claimant or the Participating Employer in connection therewith and may require the Participating Employer or the claimant to submit such additional facts, documents or other evidence as the Committee may, in its sole

discretion, deem necessary or advisable in making such a review. On the basis of its review, the Committee shall make an independent determination of the claimant's eligibility for benefits under the Plan. The decision of the Committee on any benefit claim shall be final and conclusive upon all persons.

13.4 **Denial of Appeal.** Should the Committee deny an appeal in whole or in part, the Committee shall give written notice of such decision to the claimant, setting forth in a manner calculated to be understood by the claimant the specific reasons for such denial and specific reference to the pertinent Plan provisions on which the decision was based.

IN WITNESS WHEREOF, the Company has caused this amended and restated Plan to be executed by a duly authorized officer effective as of the Effective Date.

KLA-TENCOR CORPORATION

By: _____

Title: _____

APPENDIX I

GRANDFATHERED PROVISIONS FOR CERTAIN PRIOR PLAN PARTICIPANTS

ARTICLE I

OLD KLA PLAN LIFE INSURANCE POLICY ELECTIONS

1.1 Rights to Prior Policy. A Participant who timely made a "Prior Policy Election" (as such term was defined in the Old KLA Plan) in accordance with the terms and conditions of the Old KLA Plan (a "Prior Policy Executive") shall continue to have the life insurance premiums for the "Prior Policy" (as such term was defined in the Old KLA Plan) paid by the Company, subject to termination or distribution of the Prior Policy pursuant to the provisions of this Article I of Appendix I, and

(a) The Prior Policy Executive may designate in writing to the Company, on such forms as the Committee shall specify, the beneficiary to receive death benefits payable under the Prior Policy; provided, however, that the maximum amount of death benefits under the Prior Policy which may be paid to the Prior Policy Executive's beneficiary is the amount of death benefit specified on the September 30, 1994 Participant Statement of benefits for the Prior Policy Executive (the "Prior Policy Death Benefit"), and

(b) The Prior Policy Executive may elect to have the Prior Policy distributed to him in kind in accordance with Section 1.4 below.

1.2 Payment of Premiums. All Prior Policy Executives must pay to the Company, on an after-tax basis, their Prior Policy Premium. The Prior Policy Premium shall be equal to the one-year term insurance rates for the Prior Policy Death Benefit as set forth in the PS-58 Rate Table contained in Rev. Rul. 55-747. In the event a Prior Policy Executive fails to pay the Prior Policy Premium to the Company by the last day of the relevant Plan Year, all rights of the Prior Policy Executive and his beneficiary to the Prior Policy shall terminate.

1.3 Payment of Death Benefit. If the Prior Policy Executive dies prior to his Benefit Distribution Commencement Date, his or her Prior Policy Death Benefit shall be paid to the Prior Policy Executive's properly designated beneficiary in accordance with the terms and conditions of the Prior Policy. The payment of the Prior Policy Death Benefit shall be in addition to any other Plan benefits which may be payable upon the Executive's death. Any proceeds payable under the Prior Policy in excess of the Prior Policy Death Benefit shall be paid to the Trustee and shall be used to help defray the Company's expenses for administering the Plan.

1.4 Distribution of Prior Policy. If (i) a Prior Policy Executive's Supplemental Executive Benefits become payable upon a Normal Termination or an Early Termination pursuant to Plan Sections 5.1 or 5.2, or if the Plan terminates, and (ii) the value of his or her Deferral Account on the date of the Early Termination Event, Termination Event or termination of the Plan, as the case may be (the "In Kind Event Date"), equals or exceeds the cash surrender value of the Prior Policy as determined by the Committee, in its discretion, as of the In Kind Event Date (the "Cash Surrender Value"), then the Prior Policy Executive's election, by means of a writing to the Company prior to the In Kind Event Date, to have the Trust distribute the Prior Policy to him or her, in kind, shall become effective,

(a) If the Prior Policy Executive's election becomes effective, the Prior Policy shall be distributed within a reasonable time after the In Kind Event Date and Executive's Deferral Account shall be reduced by the Cash Surrender Value;

(b) Upon the distribution of the Prior Policy, the Company shall have no further responsibility for the payment of any premiums related to the Prior Policy on or after the date on which the Prior Policy is distributed to the Executive. If the Executive does not elect to have the Prior Policy distributed, or if such election is made and does not become effective, then the Executive and his beneficiary shall have no further rights with respect to the Prior Policy after the In Kind Event Date; and

(c) Prior to the in kind distribution of a Prior Policy to Executive, or at any time thereafter as requested by the Company, Executive agrees to authorize withholding from any other amounts payable to Executive pursuant to the Plan, and shall otherwise make adequate provision for, any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company, if any, which arise in connection with the in kind distribution of the Prior Policy, and the Company shall not be required to distribute the Prior Policy unless and until the Executive has made adequate provision for such withholding obligations, with such adequacy to be determined by the Committee in its sole discretion.

ARTICLE II. OLD KLA PLAN PRE-DISTRIBUTION DEATH BENEFITS

2.1 Pre-Distribution Death Benefits. If, prior to October 31, 1997 a Participant had elected a Pre-Distribution Death Benefit pursuant to and in accordance with the terms and conditions of the Old KLA Plan (a "Pre-Distribution Death Benefit Executive"), then such election shall remain in effect with respect to the Pre-Distribution Death Benefit Executive's Deferral Account under the Plan; provided, however, that the Credited Investment Return (Loss) determined under Plan Section 4.2 shall be decreased (increased) by one percent (1%) per annum for the period during which such Pre-Distribution Death Benefit Election remains in effect.

2.2 Revocation of Pre-Distribution Death Benefit. Each Pre-Distribution Death Benefit Executive may elect to revoke a Pre-Distribution Death Benefit by means of a writing to the Company that is acceptable to the Committee, in its sole discretion. Upon the effectiveness of such revocation, the Pre-Distribution Death Benefit Executive's Credited Investment Return (Loss) relating to his or her Deferral Account shall thereafter cease to be decreased (increased) by one percent (1%); provided, however, that such revocation shall not affect any decreases or increases to the Credited Investment Return that were made prior to the effective date of such revocation. Once a written revocation has been submitted to the Company, it may not thereafter be revoked or modified in any manner.

2.3 Automatic Termination of Pre-Distribution Death Benefit. Any Pre-Distribution Death Benefit Election shall automatically terminate upon the Pre-Distribution Death Benefit Executive's Benefit Distribution Commencement Date: Upon the Benefit Distribution Commencement Date, the Pre-Distribution Death Benefit Executive's Credited Investment Return (Loss) relating to his or her Deferral Account shall thereafter cease to be decreased

(increased) by one percent (1%); provided, however, that such revocation shall not affect any decreases or increases to the Credited Investment Return that were made prior to the Benefit Distribution Commencement Date.

2.4 Amount Payable Upon Death. Upon the Pre-Distribution Death Benefit Executive's death prior to his or her Benefit Distribution Commencement Date:

(a) if the Pre-Distribution Death Benefit Executive has a currently effective election to receive the Pre-Distribution Death Benefit, then instead of receiving the value of his or her Deferral Account, his or her designated beneficiary shall be entitled to a Pre-Distribution Death Benefit equal to the greater of (i) or (ii) below:

(i) his or her Deferral Amounts which were made within 12 months from the date he or she commenced participation in the Plan and were credited to his or her Deferral Account prior to the date of his or her death, multiplied by 10; or

(ii) the value of his or her Deferral Account determined as of the date of such the Pre-Distribution Death Benefit Executive's death multiplied by:

(A) 2.0, if Executive is less than 56 years of age on the date of death; or

(B) 1.5, if Executive is age 56 years or older on the date of death.

(b) If Executive does not have an election to receive a Pre-Distribution Death Benefit in effect on the date of his or her death, then the deceased Executive's death benefit shall be an amount equal to the amount credited to his or her Deferral Account, determined as of the date of death.

(c) Any benefit payable upon Executive's death under this Section 2 of Appendix I shall be paid to Executive's Beneficiary in a single lump sum payment on the first day of the month following the end of the quarter in which the Executive's death occurred.

(d) The death benefit payable under this Section 2 of Appendix I shall be independent of any Prior Policy Death Benefit which may be paid pursuant to Section 1 of Appendix I to the Beneficiary of a Prior Policy Executive.

ARTICLE III PRIOR PLAN DISTRIBUTIONS IN PAYOUT STATUS

3.1 Prior Plan Participants in Payout Status Participants in the Old Plans who are in payout status and are no longer eligible to make compensation deferrals into the Plan shall have their Deferral Accounts paid out and credited consistently with the terms and conditions of the Old Plans and such Participants' elections thereunder as in effect immediately prior to the Effective Date.

ARTICLE IV
PRIOR PLAN DISTRIBUTION ELECTIONS

4.1 Prior Plan Distribution Elections. Distribution elections made by Prior Plan participants prior to the Effective Date shall remain in full force and effect unless changed consistently with the provisions of the Plan.