Agenda:____June 2, 2009

TREASURER - TAX COLLECTOR

DONALD R. WHITE
TREASURER - TAX COLLECTOR

May 28, 2009

Honorable Board Members
Alameda County
1221 Oak Street, 5th Floor
Oakland, CA 94619

Dear Board Members:

Re: Extension of Prudential Retirement Services' Contract to provide Third Party Administrative Services to the County's 457 and 401 (a) Deferred Compensation Plans.

RECOMMENDATION:

I recommend that your Board approve the 2-year extension of Prudential Retirement Services' contract with Alameda County to provide Third Party Plan Administration (TPA) to the 457 and 401 (a) deferred compensation plans for the period beginning on July 1, 2009 to June 30, 2011. The principal offices of Prudential Retirement Services are located in Hartford, Connecticut. The County Plans will be serviced by Mr. Ryan Felie, Vice President for Relationship Management, 3333 Michelson Drive, Suite 680, Irvine, CA 92612. Enclosed herewith are the contract extensions for the Board's signature.

DISCUSSION:

At the Board meeting on April 14, 2009, you directed the Treasurer to re-bid the Third Party Administration contract for the 457 and 401 (a) deferred compensation plans, and to negotiate an extension of the existing third party administrative services agreement between Alameda County and Prudential Retirement Services in order to obtain the economic benefits offered during the RFP process.

The re-bidding of the contract would be done within the contract extension period, but your directive to renegotiate the existing contract with Prudential Retirement Services required immediate action. The key issues of the negotiation are: 1) to amend the cost for providing the services; 2) to expedite the most cost effective transfer of the Plan investments from Prudential's Guaranteed Interest Account (GIA) to Prudential's Stable Value Account, a separate account; 3) to move the current mutual fund options to the lower cost class shares, where applicable; and 4) to partner with a SLEB sub-contractor.

The following summarizes the resulting terms and conditions of the extension:

- Prudential will service the account for an annual all-inclusive fee of 14.5 basis points and reimburse to the Plan 10 basis points annually which at present market values, equate to approximately $300,000.00.

- Based on the County's request to transfer the investments from the Guaranteed Interest Account to the Prudential's separate account Stable Value Fund, Prudential proposes to move the funds in 5 installments. However, it is not possible to make the transfer without incurring a market value adjustment, which currently is approximately $1,200,000. To mitigate the market value adjustment cost to the Plan participants, Prudential will undertake the following:

    a) The first installment (20% or 1/5 of the GIA account balance) will be transferred at book value on July 1, 2009. The remaining GIA account balance will be moved in 4 quarterly transfers and expected to be completed by July 1, 2010.
    b) Prudential will absorb the first installment's market value adjustment of approximately $400,000. The remaining $800,000 which currently equates to approximately 44 basis points would be amortized annually at 22 basis points over the contract extension period of 2 years by adjusting the interest crediting rate in the Stable Value Fund.
    c) The transfer would be accelerated should market conditions permit.
    d) During the transition period, participants will see one Stable Value Fund investment account on their statements, behind which, is a blended portfolio of the Stable Value Fund and the remaining balance of the Guaranteed Interest Account. When the transfer is completed on July 1, 2010, the portfolio will be a 100% Stable Value Fund.

- Prudential will review the current class of shares that the mutual fund options are invested in and will move all funds that can be moved to lower cost shares as soon as administratively feasible.

- Prudential will sub-contract with SLEB partner, Emerge Financial Advisors, to assist in providing county wide education seminars, targeted membership outreach efforts and participant consultations for a compensation of 3.5 basis points annually, which is included in Prudential's all-inclusive annual revenue requirement of 14.5 basis points.

I would like to inform the Board that instead of a 1 year contract extension that I requested at the Board meeting on April 14, 2009, I have negotiated a 2 year contract extension with Prudential. This is to provide enough time for Prudential to transfer the Guaranteed Interest Account to the Stable Value Fund with the least impact to plan participants, and for the Treasurer's office to re-bid the services for third party administration, as requested by the Board.

FINANCIAL IMPACT:

There is no financial impact to the County budget.

Very truly yours,

Donald R. White,
Treasurer-Tax Collector

Enclosures
Cc: Susan Muranishi, County Administrator
Richard Winnie, County Counsel
Patrick O'Connell, Auditor-Controller
Each Member of the DCP Ad Hoc Committee
Alameda County Medical Center
Alameda County Superior Court
Alameda County Fire Department
First 5 of Alameda County
File

AMENDMENT TO BE ATTACHED TO AND MADE A PART OF THE
ADMINISTRATIVE AGREEMENT
("Agreement")

effective February 1, 1998

by and between

THE COUNTY OF ALAMEDA
("Employer")

and

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
("Prudential")

By mutual agreement between the signatories below, the Agreement is amended, effective July 1, 2009 in the following respects:

- Section 1. of Part IV: *General Terms*, of the Agreement, is hereby replaced with the following:

  1. Duration. This Agreement may not be terminated by the Employer prior to June 30, 2011 unless for cause due to Prudential's material breach of this Agreement or negligence by Prudential in the performance of its duties under this Agreement. After June 30, 2011, this Agreement will remain in effect until modified by both parties or terminated in writing by either party upon 90 days written notice to the other party. Prudential reserves the right to modify this document to update the levels of service or to incorporate changes in investment funds or services that have been agreed to by the Employer.

- The attached Exhibit A, *Prudential Fixed Income Funds*, and Exhibit B, *Revenue-Plan Expense Account Agreement* are hereby added to the Agreement:

Except as provided above, all other provisions of the Agreement will continue to apply.

THE COUNTY OF ALAMEDA	**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**
By: ____________________	By: ____________________
Title:	Title: Second Vice President
Date: ____________________	Date: May 28, 2009

Approved as to Form
RICHARD E. WINNIE, County Counsel

By ____________________

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EXHIBIT A

Prudential Fixed Income Funds
(Melded Stable Value Fund)

Prudential will perform administrative services in connection with a Melded Stable Value Fund as specified below.

a. Participant Recordkeeping Service. Prudential agrees to perform Participant-level accounting and to maintain individual Participant records of assets held under the Plan, which are invested in Prudential Stable Value Fund using a Melded Accounting Method as described below.

b. Melded Accounting Method. Prudential will maintain records on a melded basis in accordance with the following provisions. For Plan accounting purposes, the Guaranteed Interest Account (GIA) fund balance and the Book Value of the Prudential Stable Value Fund (as defined therein) are accounted for as one melded stable value fund (the "Melded Fund") under the Plan. An interest in each asset in the Melded Fund is allocated to each Participant's Account based on the proportion that each Participant's Account invested in the Melded Fund on the last day of the prior month bears to the total of all Participants' Accounts invested in the Melded Fund on the last day of the prior month.

   The Guaranteed Interest Account (GIA) fund balance and the Book Value of the Prudential Stable Value Fund contract are melded for Plan accounting purposes only.

c. Disbursement Method. Prudential will disburse funds as follows on a LIFO basis in accordance with the Employer's written election.

   LIFO Basis. All distributions to Participants (including in-service withdrawals), and any transfers from the Melded Fund to another investment vehicle provided for under the Plan, will be made first from the Prudential Stable Value Fund. To the extent that any distribution or transfer exceeds the value of the Plan's Prudential Stable Value Fund the distribution or transfer will be made from the Guaranteed Interest Account (GIA) contract. New incoming money will be deposited into the Prudential Stable Value Fund.

d. Interest Crediting. In order to permit the Employer to announce in advance the anticipated rate of return on the Melded Fund, Prudential will estimate the rate of interest, referred to herein as the Projected Rate of Interest. The Projected Rate of Interest on the Melded Fund will be determined by Prudential based upon anticipated cash flow and the rates of interest to be earned on the Guaranteed Interest Account (GIA) and the Prudential Stable Value Fund contract. If actual cash flow differs from anticipated cash flow, the actual earned rate of interest on the Melded Fund will differ from the Projected Rate of Interest. Any difference between the Projected Rate of Interest and the actual rate of interest earned will be reflected in the subsequent Projected Rate of Interest.

   The Employer agrees to notify Prudential as soon as reasonably possible of any event that will or may cause a material deviation from the anticipated cash flow previously reported to

Prudential or any other event that may cause a change in interest earned either the Guaranteed Interest Account (GIA) or the Prudential Stable Value Fund contract. Prudential may change the Projected Rate of Interest on the Melded Fund at any time as is reasonably necessary.

In no event shall Prudential be responsible for paying (or be entitled to receive) the amount by which interest credited to Participant Melded Fund accounts exceeds (or is exceeded by) interest actually earned on the Melded Fund.

e. Basis for Records; Termination of Contract. Prudential's records for the Melded Fund will be based upon the projected Rate of Interest on the Melded Fund. To the extent the actual rate of interest earned on the Melded Fund differs from the Projected Rate of Interest, the Plan's Melded Fund balance will differ from the total of assets allocated to the Guaranteed Interest Account (GIA) and the Prudential Stable Value Fund contract. Upon termination of this Agreement, the Employer shall determine if the final Melded Fund Participant statements are to be prepared reflecting the appropriate adjustment for Participant Account balances or if the subsequent recordkeeper is to incorporate the adjustment into a future melded rate of interest.

In no event shall Prudential be responsible for paying (or be entitled to receive) the amount by which interest credited to Participant Melded Fund accounts exceeds (or is exceeded by) interest actually earned on the Melded Fund.

f. Indemnification. The Employer (and not the Plan) shall indemnify and hold Prudential harmless from any loss, expense, damage or cost suffered by Prudential arising out of or related to any claim based upon any difference between interest credited to Participants' Accounts and interest actually earned on the Melded Fund except to the extent such loss, expense, damage or cost arises from the negligence or willful misconduct of Prudential.

g. Transition of the GIA contract to the Melded GIC will be complete by the end of June 30, 2010, at which time the fund will be invested exclusively in the Prudential Stable Value Fund contract and this Exhibit A shall no longer be operative.

EXHIBIT B

REVENUE-PLAN EXPENSE ACCOUNT AGREEMENT

The Prudential Insurance Company of America ("Prudential") and The County of Alameda ("Employer") hereby agree to the arrangement set forth below.

Beginning July 1, 2009, Prudential and Employer agree that Prudential will be guaranteed a minimum annual revenue ("Revenue") of 14.5 basis points of investable Plan assets, (excludes company stock and participant loans). Should the Revenue received in connection with the Plan exceed 0.145% (14.5 basis points), annualized, Prudential agrees to provide an aggregate amount equal to such amount in excess, to the Plan as an Expense Allowance ("Allowance") as described below. In the event of a material change to the Plan, Prudential reserves the right to review, adjust and/or terminate such arrangement with written notice to the Employer.

Should the total Revenue for the calendar quarter not equal 3.625 basis points, annualized, Prudential shall notify the Employer of the amount of the shortfall. The Employer shall have sixty (60) days from the date of such notification to pay the amount of the shortfall directly to Prudential.

Should the total Revenue for the calendar quarter exceed the 3.625 basis points, annualized, Prudential will deposit the amount of such excess 6-8 weeks after the end of the calendar quarter, e.g. the "payment period", as an Allowance into an account on our recordkeeping system until such time as the Employer provides direction to Prudential regarding the disposition or re-investment of these funds.

Prudential will send the Employer reports on a quarterly basis showing the calculations of the Revenue as described above. These reports will be sent 45 days after the end of the quarter. The plan expense account balance is available daily on-line.

For purposes of this agreement, Revenue shall include Distribution Revenue and Administrative Revenue as follows:

Components of Distribution Revenue and Administrative Revenue. The following components of Revenue will be utilized toward the Revenue amount that is described above.

The term "Distribution Revenue" shall mean the sum of the fund revenue, to the extent that such funds are available for investment under the Plan, such as the following revenue actually received by the Prudential Retirement business unit (as may be applicable from time to time) calculated in accordance with generally accepted accounting principles:

(a) "Prudential Mutual Fund 12b-1 Fees" or "PMF 12b-1 Fees" means the portion of the 12b-1 fees paid by Prudential-sponsored mutual funds to PIMS that are allocated to Prudential in connection with Plans recordkept by its Prudential Retirement business unit. Currently, PIMS re-calibrates such allocation annually, and shall make such allocation on the same basis for all retirement plans being record kept by Prudential Retirement.

(b) "Outside Mutual Fund 12b-1 Fees" or "OMF 12b-1 Fees" means the portion of the 12b-1 fees paid by mutual funds not sponsored by Prudential (or paid by an affiliate of such mutual fund) to PIMS in connection with the distribution of such mutual funds to Plans record kept by Prudential Retirement.

(c) "Outside Mutual Fund Finder Fees" or "OMF Finder Fees Fee" means the portion of the distribution fees (other than OMF 12b-1 Fees) paid by mutual funds not sponsored by Prudential (or paid by an affiliate of the mutual fund) to PIMS in connection with Plan investments recordkept by Prudential's Retirement business unit. Currently, PIMS re-calibrates such allocation annually, and shall make such allocation on the same basis for all retirement plans being record kept by Prudential Retirement.

The term "Administrative Revenue" shall mean the sum of the following fund revenue, to the extent that such funds are available for investment under the Plan, such as the following revenues actually received by Prudential Retirement business unit (as may be applicable from time to time) calculated in accordance with generally accepted accounting principles:

(a) "Prudential Mutual Fund Administrative Fee" or "PMF Admin Fee" means the portion of the fees (other than PMF 12b-1 Fees, PMF Sub TA Fees and Pru Admin Wrap Revenue) paid by Prudential-sponsored mutual funds to Prudential Affiliates that are allocated to Prudential in respect of its administrative services in connection with Plans recordkept by its Prudential Retirement business unit. Currently, the funds' investment manager, Prudential Investments LLC, ("PILLC") re-calibrates such allocation annually and will make such allocation on the same basis for all retirement plans being record kept by Prudential Retirement.

(b) "Pru Administrative Wrap Revenue" or "Pru Admin Wrap Revenue" means the mortality and expense fees collected by Prudential from its insurance company separate account products, plus the other basis point wrap fees that are charged in respect of all of a Plan's mutual fund investments, plus the revenues associated with investment specific "wrap" fees imposed in connection with deposits made to particular plan investment options.

(c) "Prudential Mutual Fund Sub Transfer Agency Fee" or "PMF Sub TA Fee" means the portion of the transfer agency fee allocated by the transfer agent for each Prudential-sponsored mutual fund (the "Transfer Agent") to Prudential in connection with Plans recordkept by its Prudential Retirement business unit. Currently, the Transfer Agent establishes such allocation annually and makes such payment on a per participant basis. Such allocation shall be on the same basis for all retirement plans being record kept by Prudential Retirement.

(d) "Outside Mutual Fund Sub Transfer Agency Fee" or "OMF Sub TA Fee" means the portion of the transfer agency fee paid by an unaffiliated mutual fund to its transfer agent that is paid to Prudential in connection with Plans recordkept by Prudential

Retirement. Such fee may be calibrated on the basis of the number of participants investing in the mutual fund (in which case such fee is expressed in dollars) or on the basis of the dollar amount of assets invested in the mutual fund (in which case such fee is expressed in basis points).

(e) "Outside Mutual Fund Administrative Fees" or "OMF Admin Fee" means the fees (other than OMF Sub TA Fees and OMF 12b-1 Fees) paid by an unaffiliated mutual fund (or its affiliate) to Prudential in connection with Plans recordkept by Prudential Retirement.

(f) "Stable Value Fund Administrative Fees" or "SVF Admin Allowance" means the disclosed asset charge assessed on assets invested in the Prudential Stable Value Fund or any similar investment sponsored by a Prudential entity, but not including any other sources of revenue related to that investment

Any revenue realized by Prudential Retirement not specifically set forth herein shall not be included the calculation.

Plan Expense Account. Prudential will establish an account for the Plan Trust on Prudential's recordkeeping system. Prudential will deposit payments of the Allowance into this account at the frequency defined above and invest them in the default investment fund selected by the Employer until such time that the Employer provides direction to Prudential regarding the disposition or re-investment of these funds.

Reporting. Prudential will provide periodic reports to the Employer that show payments by Prudential to the Plan Trust under this arrangement.

Amendment of Arrangement. This payment arrangement may be amended at any time in writing signed by the parties. In particular (and not by way of limitation), Prudential reserves the right to amend this arrangement, as agreed to by the Employer in writing, in the event of a material change to the Plan, for example but without limitation such as freezing of the plan, establishment of a successor plan, etc.

- **Termination of Arrangement**. Each party may terminate this payment arrangement for any reason upon thirty (30) days prior written notice to the other. In particular (and not by way of limitation), Prudential reserves the right to terminate this arrangement in the event of a material change to the Plan, or upon Prudential's conclusion that payments violate applicable law. Generally allowances are made available upon conclusion of the payment period. In the event the Employer terminates service with Prudential prior to the conclusion of the period for which an Amount was provided, the portion of the Allowance attributable to that period must be refunded to Prudential by the Plan. If this amount is not refunded, Prudential reserves the right to deduct such amounts from assets available for transfer to the successor recordkeeper.

Employer agrees, represents and warrants to Prudential:

- All instructions received pursuant to this provision will be submitted by persons authorized to act on behalf of the Plan and Prudential may rely upon those instructions as being genuine and duly authorized;

- The Plan document and any applicable Trust documents permit the Plan to make payment of administrative expenses from Plan assets;

- This Allowance is permissible under both the Plan documents and any laws applicable to the Plan;

- All amounts paid pursuant to these provisions will be used solely for Plan administrative expenses that are reasonable and necessary to the Plan;

- That they will indemnify and hold Prudential harmless to the extent that there is a material breach of any of the representations contained herein, which causes Prudential to suffer any expense or damage as a result; and

- The Employer has discussed this arrangement with its legal counsel to the extent it deems appropriate.

AMENDMENT TO BE ATTACHED TO AND MADE A PART OF THE ADMINISTRATIVE SERVICES AGREEMENT
("Agreement")

effective January 5, 2001

by and between

THE COUNTY OF ALAMEDA
("Employer")

and

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
("Prudential")

By mutual agreement between the signatories below, the Agreement is amended, effective July 1, 2009 in the following respects:

- Section E.1., *Duration*, of the Agreement, is hereby replaced with the following:

    1. Duration. This Agreement may not be terminated by the Employer prior to June 30, 2011 unless for cause due to Prudential's material breach of this Agreement or negligence by Prudential in the performance of its duties under this Agreement. After June 30, 2011, this Agreement will continue in effect until terminated in accordance with Section E.2. This Agreement shall bind all successors in interest of the parties, but cannot be transferred to unaffiliated third parties without the consent of both the Employer and Prudential.

- The attached Exhibit E, *Revenue-Plan Expense Account Agreement*, is hereby added to the Agreement.

Except as provided above, all other provisions of the Agreement will continue to apply.

THE COUNTY OF ALAMEDA	**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**
By: ____________________	By: Daniel T. Cheney
Title:	Title: Second Vice President
Date: ____________________	Date: May 28, 2009

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Approved as to Form
RICHARD E. WINNIE, County Counsel
By [signature]

EXHIBIT E

REVENUE-PLAN EXPENSE ACCOUNT AGREEMENT

The Prudential Insurance Company of America ("Prudential") and The County of Alameda ("Employer") hereby agree to the arrangement set forth below.

Beginning July 1, 2009, Prudential and Employer agree that Prudential will be guaranteed a minimum annual revenue ("Revenue") of 14.5 basis points of investable Plan assets, (excludes company stock and participant loans). Should the Revenue received in connection with the Plan exceed 0.145% (14.5 basis points), annualized, Prudential agrees to provide an aggregate amount equal to such amount in excess, to the Plan as an Expense Allowance ("Allowance") as described below. In the event of a material change to the Plan, Prudential reserves the right to review, adjust and/or terminate such arrangement with written notice to the Employer.

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Should the total Revenue for the calendar quarter exceed the 3.625 basis points, annualized, Prudential will deposit the amount of such excess 6-8 weeks after the end of the calendar quarter, e.g. the "payment period", as an Allowance into an account on our recordkeeping system until such time as the Employer provides direction to Prudential regarding the disposition or re-investment of these funds.

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Components of Distribution Revenue and Administrative Revenue. The following components of Revenue will be utilized toward the Revenue amount that is described above.

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(a) "Prudential Mutual Fund 12b-1 Fees" or "PMF 12b-1 Fees" means the portion of the 12b-1 fees paid by Prudential-sponsored mutual funds to PIMS that are allocated to Prudential in connection with Plans recordkept by its Prudential Retirement business unit. Currently, PIMS re-calibrates such allocation annually, and shall make such allocation on the same basis for all retirement plans being record kept by Prudential Retirement.

(b) "Outside Mutual Fund 12b-1 Fees" or "OMF 12b-1 Fees" means the portion of the 12b-1 fees paid by mutual funds not sponsored by Prudential (or paid by an affiliate of such mutual fund) to PIMS in connection with the distribution of such mutual funds to Plans record kept by Prudential Retirement.

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The term "Administrative Revenue" shall mean the sum of the following fund revenue, to the extent that such funds are available for investment under the Plan, such as the following revenues actually received by Prudential Retirement business unit (as may be applicable from time to time) calculated in accordance with generally accepted accounting principles:

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(b) "Pru Administrative Wrap Revenue" or "Pru Admin Wrap Revenue" means the mortality and expense fees collected by Prudential from its insurance company separate account products, plus the other basis point wrap fees that are charged in respect of all of a Plan's mutual fund investments, plus the revenues associated with investment specific "wrap" fees imposed in connection with deposits made to particular plan investment options.

(c) "Prudential Mutual Fund Sub Transfer Agency Fee" or "PMF Sub TA Fee" means the portion of the transfer agency fee allocated by the transfer agent for each Prudential-sponsored mutual fund (the "Transfer Agent") to Prudential in connection with Plans recordkept by its Prudential Retirement business unit. Currently, the Transfer Agent establishes such allocation annually and makes such payment on a per participant basis. Such allocation shall be on the same basis for all retirement plans being record kept by Prudential Retirement.

(d) "Outside Mutual Fund Sub Transfer Agency Fee" or "OMF Sub TA Fee" means the portion of the transfer agency fee paid by an unaffiliated mutual fund to its transfer agent that is paid to Prudential in connection with Plans recordkept by Prudential Retirement. Such fee may be calibrated on the basis of the number of participants investing in the mutual fund (in which case such fee is expressed in dollars) or on the basis of the dollar amount of assets invested in the mutual fund (in which case such fee is expressed in basis points).

(e) "Outside Mutual Fund Administrative Fees" or "OMF Admin Fee" means the fees (other than OMF Sub TA Fees and OMF 12b-1 Fees) paid by an unaffiliated mutual fund (or its affiliate) to Prudential in connection with Plans recordkept by Prudential Retirement.

(f) "Stable Value Fund Administrative Fees" or "SVF Admin Allowance" means the disclosed asset charge assessed on assets invested in the Prudential Stable Value Fund or any similar investment sponsored by a Prudential entity, but not including any other sources of revenue related to that investment

Any revenue realized by Prudential Retirement not specifically set forth herein shall not be included the calculation.

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Reporting. Prudential will provide periodic reports to the Employer that show payments by Prudential to the Plan Trust under this arrangement.

Amendment of Arrangement. This payment arrangement may be amended at any time in writing signed by the parties. In particular (and not by way of limitation), Prudential reserves the right to amend this arrangement, as agreed to by the Employer in writing, in the event of a material change to the Plan, for example but without limitation such as freezing of the plan, establishment of a successor plan, etc.

- **Termination of Arrangement**. Each party may terminate this payment arrangement for any reason upon thirty (30) days prior written notice to the other. In particular (and not by way of limitation), Prudential reserves the right to terminate this arrangement in the event of a material change to the Plan, or upon Prudential's conclusion that payments violate applicable law. Generally allowances are made available upon conclusion of the payment period. In the event the Employer terminates service with Prudential prior to the conclusion of the period for which an Amount was provided, the portion of the Allowance attributable to that period must be refunded to Prudential by the Plan. If this amount is not refunded, Prudential reserves the right to deduct such amounts from assets available for transfer to the successor recordkeeper.

Employer agrees, represents and warrants to Prudential:

- All instructions received pursuant to this provision will be submitted by persons authorized to act on behalf of the Plan and Prudential may rely upon those instructions as being genuine and duly authorized;

- The Plan document and any applicable Trust documents permit the Plan to make payment of administrative expenses from Plan assets;

- This Allowance is permissible under both the Plan documents and any laws applicable to the Plan;

- All amounts paid pursuant to these provisions will be used solely for Plan administrative expenses that are reasonable and necessary to the Plan;

- That they will indemnify and hold Prudential harmless to the extent that there is a material breach of any of the representations contained herein, which causes Prudential to suffer any expense or damage as a result; and

- The Employer has discussed this arrangement with its legal counsel to the extent it deems appropriate.