

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "*Agreement*") is between Plaintiffs Clifford L. Whitaker, Michael V. Mucci, Robert W. Coats, Mark D. Swanson, and Thomas R. Bulen, individually and on behalf of all others similarly situated, and defendant 3M Company ("*3M*") (collectively, the "*Parties*").

### RECITALS

A. On December 21, 2004, Plaintiffs filed a putative class action complaint in the Minnesota District Court, Second Judicial District, entitled *Clifford L. Whitaker et al., on behalf of themselves and all others similarly situated v. 3M Company*, Court File No. 62-C4-04-012239. The Complaint was subsequently amended twice. The operative Third Amended Complaint (the "*Complaint*" or the "*Action*") is dated May 22, 2007.

B. Plaintiffs assert a cause of action for alleged age discrimination in violation of the Minnesota Human Rights Act ("MHRA"), Minn. Stat. ch. 363A, on behalf of all persons who were 46 or older when employed by 3M in Minnesota in salaried exempt positions below job grade 18 any time on or after May 10, 2003, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M. Plaintiffs allege that 3M discriminated against salaried, exempt employees age 46 and older below job grade 18 in connection with promotions, compensation, performance evaluations, training selections, and terminations. 3M denies all of Plaintiffs' allegations.

C. On April 11, 2008, the Minnesota District Court granted Plaintiffs' motion for class certification. On April 28, 2009, the Minnesota Court of Appeals reversed the District Court's order granting certification and remanded for further proceedings consistent with its opinion. Plaintiffs' renewed motion for class certification is presently pending before the Minnesota District Court.

D. The parties, having engaged in extensive settlement discussions, through the use of an experienced and nationally respected mediator, Hunter Hughes, and otherwise, now desire to bring this lawsuit to an amicable resolution on terms set forth herein. The Parties, understanding the risks inherent in continued litigation, believe these terms are fair and that settlement of Plaintiffs' claims is in the best interest of all Parties. The Parties enter into this Agreement acknowledging that nothing herein is or shall be construed as an admission of liability by 3M, which denies any wrongdoing or liability whatsoever.

NOW, THEREFORE, with the intent to be legally bound hereby, and in consideration of the mutual covenants contained herein, the parties agree as follows:

### AGREEMENT

#### 1. DEFINITIONS

1.1 "*Class Member Declaration*" means the form sent to Class Members with the Notice requesting information regarding each Class Member's claim against 3M. The proposed Class Member Declaration shall be substantially similar to the form attached as **Exhibit C**.

1.2 ***“Notice of Award, Claim Form and Settlement Class Member Release”*** or ***“Claim Sheet”*** means the form sent to Settlement Class Members containing each Settlement Class Member’s estimated Settlement Award and a release of claims against 3M. The proposed Claim Sheet shall be substantially similar to the form attached as **Exhibit D**.

1.3 ***“Claims Administrator”*** means Rust Consulting, the company the Parties have designated to administer the claims process and payments provided for under the Agreement. The Claims Administrator shall also serve as administrator of the 3M Whitaker Qualified Settlement Fund (“Qualified Settlement Fund”), as described in Section 3.3, below. References to the Claims Administrator shall refer to the Claims Administrator in its capacity as Claims Administrator and/or as administrator of the Qualified Settlement Fund as necessary to implement the terms of this Agreement.

1.4 ***“Claims Administrator Costs”*** means the portion of the Gross Settlement Fund (as defined in Section 3.1 of this Agreement) attributed to all costs, expenses, and time incurred by the Claims Administrator or any other Party acting on its behalf for the administration of this Settlement, including (i) preparing, issuing, printing, mailing, and monitoring all necessary notices, declarations, filings, and tax related documents; (ii) computing the Settlement Awards, applicable taxes, and any other payments to be made; (iii) establishing or maintaining the Qualified Settlement Fund; (iv) distributing payments; (v) any related communications with Class Members or Class Counsel; and (vi) any other obligations mandated by this Agreement for the Claims Administrator, as ordered by the Court, or as may be agreed upon by the parties. Subject to the terms of this Agreement and the Court’s approval, such costs are currently estimated to be not more than a maximum total sum of \$132,000.

1.5 ***“Class,” “Class Member,”*** or ***“Class Members”*** means all persons who, on or before December 31, 2010, were 46 years old or older when employed by 3M in Minnesota in a salaried exempt position below job grade 18 any time on or after May 10, 2003, and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.

1.6 ***“Class Period”*** means January 1, 2001 to December 31, 2010.

1.7 ***“Settlement Class,” “Settlement Class Member,”*** or ***“Settlement Class Members”*** mean Class Members who do not timely submit a written statement opting-out of this Settlement.

1.8 ***“Class Counsel”*** means the law firm of Sprenger + Lang, PLLC and the AARP Foundation Litigation.

1.9 ***“Attorneys’ Fees and Costs”*** means the portion of the Gross Settlement Fund (as defined in Section 3.1 of this Agreement) attributed to attorneys’ fees and costs that shall cover all work performed and all fees and costs incurred by Class Counsel in this litigation, including all work to date, all work to be performed and all fees and costs to be incurred in connection with obtaining the Court’s approval of this Settlement, Class Counsel’s work in connection with the administration of the Settlement, and obtaining final judgment with prejudice of the Action, as further defined in this Agreement.

1.10 ***“Fairness Hearing”*** means the hearing during which the Court makes the final decision on whether to approve this Agreement as fair, reasonable, and adequate.

1.11 ***“Final Approval Order and Judgment”*** means an order and judgment certifying the

Class for settlement purposes only, approving the Settlement and entering Final Judgment. The proposed Final Approval Order and Judgment shall be substantially similar to the form attached as **Exhibit E**.

**1.12** “*Final Settlement Date*” means the date when the latest of any of the following events occurs: (a) if no appeal or request for review is taken, five (5) business days after the expiration of the time to file an appeal pursuant to Minn. R. App. P. 104.01; (b) if any appeal or request for review is taken, the date on which Named Plaintiffs serve notice that an appellate court entered an order denying review of or affirming the Final Approval Order and Judgment, and after exhaustion of all appeals or the time for seeking all appeals expires; or (c) five (5) calendar days after the latest date for the expiration of any Plaintiff’s revocation period, as set forth in Section 4 of the settlement agreement in *Arthur J. Garcia et al., on behalf of themselves and all others similarly situated v. 3M Company*, Court File No. C09-01943.

**1.13** “*Named Plaintiffs*” mean plaintiffs Clifford L. Whitaker, Michael V. Mucci, Robert W. Coats, Mark D. Swanson, and Thomas R. Bulen in their individual capacities, and each of their respective successors, assigns, legatees, heirs, agents and personal representatives.

**1.14** “*Enhancement Award*” means the proposed \$25,000 award to be paid to each Named Plaintiff in recognition of his efforts and the risks (financial, professional, and emotional) taken in commencing this Action.

**1.15** “*Notice*” means the legal notice of the proposed Settlement terms, as approved by Class Counsel, 3M’s Counsel, and the Court. The proposed Notice shall be substantially similar to the form attached as **Exhibit B**.

**1.16** “*Preliminary Approval Order*” means the order preliminarily approving the Settlement, certifying a provisional Settlement Class, providing for notice, setting a date for the Fairness Hearing, appointing Class Counsel and the class representatives, and ordering creation of a Qualified Settlement Fund. The proposed Preliminary Approval Order shall be substantially similar to the form attached as **Exhibit A**.

**1.17** “*Settlement*” means the settlement of this Action and related claims effectuated by this Agreement.

**1.18** “*Gross Settlement Sum*” means the amount, up to \$12 million (\$12,000,000.00), that 3M agrees to pay to resolve the entire Action for all Class Members on an opt-out basis. In addition, 3M will pay the employer’s share of employment tax withholding obligations (e.g., FICA, FUTA, Medicare).

**1.19** “*Class Recovery*” is \$5,600,000.00, which represents the Gross Settlement Sum minus Attorneys’ Fees and Costs.

**1.20** “*Settlement Award*” means the amount of money to be paid to each Settlement Class Member.

**1.21** “*3M*” means 3M Company as well as its past, present and future officers, directors, administrators, shareholders, employees, agents, attorneys, insurers, and representatives; any past, present or future successors, subsidiaries, parents, affiliated or related corporations; insurers of those

entities; all benefit plans sponsored by 3M, and each of their respective past, present and former agents, employees, or representatives, insurers, partners, associates, successors, and assigns, in any and all capacities (including but not limited to the fiduciary, representative, or individual capacity of any released person or entity); and any entity owned by, related to or affiliated with any of the above.

1.22 “*3M’s Counsel*” means the law firm of Dorsey & Whitney LLP.

2. **REQUISITES FOR CERTIFICATION OF A CLASS ACTION**

2.1 Solely for purposes of settling this case, the Parties stipulate and agree that the requisites for class certification under Minnesota Rule of Civil Procedure 23.01 (numerosity, commonality, typicality, and adequacy of representation) and Minnesota Rule of Civil Procedure 23.02 have been met with respect to the Settlement Class.

2.2 3M denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in Plaintiffs’ Complaint, and further denies that, for any purpose other than settling these lawsuits, these actions are appropriate for treatment as a class action. 3M categorically denies any liability or wrongdoing of any kind whatsoever associated with any allegations of employment discrimination against 3M, including but not limited to age discrimination and whether or not pled in Plaintiffs’ Complaint. 3M contends that it has at all times complied fully with the requirements of the MHRA and all other laws prohibiting employment discrimination.

2.3 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaint in this case, or which could have been raised in the Complaint in this case. In order to achieve a full and complete release of 3M, Plaintiffs, for themselves and on behalf of the Class, acknowledge that this Settlement Agreement is intended to include in its effect, to the fullest extent permitted by law, all claims of any nature alleging age discrimination or retaliation in employment related to age discrimination or termination of employment related to age discrimination by 3M under the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01, *et seq.*, or under the common law or otherwise, under any legal or equitable theory, including but not limited to claims of age discrimination in promotions, compensation, performance evaluations, training selections and/or terminations, alleged against 3M as of the date of the Court’s Preliminary Approval Order, as well as any and all claims of retaliation or reprisal, alleged against 3M as of the date of entry of the Court’s Preliminary Approval Order. Plaintiffs agree and acknowledge that the Settlement Class Member Release to be executed by Settlement Class Members as a condition of receiving their respective Settlement Awards shall include in its effect, to the fullest extent permitted by law, all claims of any nature alleging discrimination or retaliation in employment or termination of employment by 3M, including but not limited to claims alleging age discrimination, as set forth below.

2.4 The Parties agree to cooperate and take all steps necessary and appropriate to obtain final judgment.

2.5 At all times, Sprenger + Lang, PLLC and the AARP Foundation Litigation have been counsel of record for Plaintiffs. As defined in Section 1.8 above, for purposes of this Settlement only, Sprenger + Lang, PLLC and the AARP Foundation Litigation shall be designated as Class Counsel. Class Counsel have conducted a thorough investigation into the facts of this class action, including an extensive review of relevant documents, and have diligently pursued an investigation of Class Members’ claims against 3M. Based on their own independent investigation and evaluation, Class

Counsel are of the opinion that the Settlement with 3M for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by 3M, and potential appellate issues. 3M and 3M's Counsel also agree that the Settlement is fair.

### 3. SETTLEMENT TERMS

**3.1 Gross Settlement Sum.** 3M will pay to the Qualified Settlement Fund an amount not to exceed \$12 million (\$12,000,000.00) ("**Gross Settlement Sum**") to resolve the entire Action for all Class Members on an opt-out basis, which shall be sufficient to cover claims for Class Counsel's attorneys' fees (not to exceed \$3.5 million), Plaintiffs' litigation costs (not to exceed \$2.9 million), Named Plaintiffs' Enhancement Awards (not to exceed \$125,000), Claims Administrator Costs (currently estimated to be not more than a maximum total sum of \$132,000), and calculated Settlement Awards to eligible Settlement Class Members as reasonably determined by the Claims Administrator consistent with Sections 4.3, 4.6, 4.8, 4.9, 4.13, 4.15, 4.18, 5.6, and 7, herein. The Gross Settlement Sum transferred to the Claims Administrator pursuant to Section 3.3 will be net of any Settlement Awards allocated to Class Members pursuant to Section 4.3 who opt out or fail to timely execute and return a Class Member Declaration or Claim Sheet and Settlement Class Member Release described in Sections 4.6 - 4.8. At no point will 3M be obligated to pay any sum in excess of the Gross Settlement Sum. Subject to the terms set forth in Section 7 below, the Gross Settlement Sum will pay for all expenses related to settlement of this Action.

**3.2 Dismissal and Judicial Release.** In exchange for 3M's consideration, including but not limited to payment of the Gross Settlement Sum and the Programmatic Relief terms set forth in Section 8 herein, and upon the Court's Final Approval Order, Settlement Class Members and Named Plaintiffs will release 3M from any and all liability for age discrimination claims in accordance with Section 5 below, and the Action shall be dismissed with prejudice. The Court shall retain jurisdiction to enforce the provisions of Section 8 of this Agreement for the duration of the term set forth in Section 8.2.

**3.3 Qualified Settlement Fund.** The parties will seek the Court's order, in conjunction with its Preliminary Approval Order, establishing a Qualified Settlement Fund ("QSF"), as required by Treas. Reg. Section 1.468B-1. At the times required by this Agreement, 3M shall transfer the Gross Settlement Sum to the Claims Administrator to be held as a separate trust constituting a QSF as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1. Class Counsel and 3M jointly shall, and shall cause the Claims Administrator to, take such steps as shall be necessary to qualify the QSF under §468B of the Internal Revenue Code, 26 U.S.C. §468B, and the regulations promulgated pursuant thereto. 3M shall be considered the "transferor" within the meaning of Treasury Regulation §1.468B-1(d)(1). The Claims Administrator shall be the "administrator" within the meaning of Treasury Regulation §1.468B-2(k)(3) and will perform such duties as are required of the Claims Administrator and the administrator of the Qualified Settlement Fund. The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof. The administrator of the QSF shall have the responsibility for determining all awards and other payments, as well as responsibility for all tax information, return, and withholding obligations under the Internal Revenue Code, as amended, with respect to all amounts paid to eligible Settling Class members out of the QSF pursuant to this Agreement. The parties agree that the QSF is intended to be a qualified settlement fund under the requirements of Treasury Regulations Section 1.468B-1(c). The Settlement Fund shall be established and administered in accordance with Treasury Regulations Sections 1.468B-

1 to 1.468B-5, and all transfers of cash or property to or from the Settlement Fund shall be made in compliance with such Treasury Regulations.

**4. SETTLEMENT APPROVAL, NOTICE, OPT-OUT, CLAIM AND DISTRIBUTION PROCEDURES**

**4.1 Request for Preliminary Approval and Provisional Class Certification.** As soon as practicable after the signing of this Agreement, the Parties shall move for preliminary approval of this Agreement and provisional certification of a class action. The proposed order filed in conjunction with the joint motion for preliminary approval shall be substantially similar to the form attached as **Exhibit A**. Class Counsel shall draft the moving papers and give 3M's Counsel drafts of the motion and proposed order to review at least fifteen (15) calendar days before the motion's filing deadline. The motion shall request the Court to:

- (a) preliminarily approve this Agreement as being fair, reasonable, and adequate;
- (b) preliminarily approve the form, manner, and content of the Notice, Class Member Declaration, and Claim Sheet;
- (c) order establishment of a Qualified Settlement Fund;
- (d) set the date and time of the Fairness Hearing;
- (e) provisionally certify a class action under Minnesota Rule of Civil Procedure 23.01, 23.02, and 23.05 for settlement purposes only;
- (f) appoint Named Plaintiffs as the class representatives; and
- (g) appoint Sprenger + Lang, PLLC and the AARP Foundation Litigation as Class Counsel.

**4.2 Claim Data.** Within sixty-five (65) calendar days after entry of the Preliminary Approval Order, 3M will provide the Claims Administrator with an electronic database or spreadsheet with separate fields containing the following information for each Class Member: (a) name; (b) date of birth; (c) social security number; (d) last known address; (e) date of commencement of employment; (f) compensation and compensation history files for each year during the Class Period in which the Class Member was 46 years or older; (g) employee grade for each year during the Class Period in which the Class Member was 46 years or older; (h) whether the employee was selected as a Black Belt or Master Black Belt or for ALDP I or ALDP II; (i) date of termination/separation, if applicable; and, (j) whether the Class Member's termination/separation entitled the Class Member to severance pay (regardless whether in connection with a job elimination, a performance separation, a sale of a business unit or otherwise) conditioned on the signing of a release that the Class Member did not sign. In addition, 3M will calculate and provide the Claims Administrator with the average pay increase for employees (both older and younger than age 46) in each grade each year, as measured by compensation and compensation history files. The Claims Administrator shall be authorized to use this information for purposes of settlement administration and tax reporting only and shall be required to keep such data secure and confidential.

**4.3 Settlement Award Calculations.** Within one hundred and thirty (130) calendar days after entry of the Preliminary Approval Order, the Claims Administrator shall provide Class Counsel and 3M's Counsel with a report listing the portion of the Class Recovery allocated to each Class Member, which shall be calculated pursuant to the formula set forth in Section 7.1 below.

**4.4 Mailing of Class Notice and Class Member Declaration.** On the ninetieth (90th) calendar day after entry of the Preliminary Approval Order, or the following business day if the 90th day is a Sunday or holiday, the Claims Administrator shall mail a copy of the Notice and Class Member Declaration and a self addressed stamped envelope to each Class Member. The proposed Notice and Class Member Declaration shall be substantially similar to the forms attached as **Exhibits B and C**, respectively. The Notice shall prominently advise the Class that 3M will not retaliate against current employees for not opting out of and taking part in the Settlement.

**4.5 Address Check.** Prior to the initial notice mailing, the Claims Administrator will process the Class Members' addresses through the National Change of Address database maintained by the United States Postal Service. If a mailing to a Class Member is returned as undeliverable, the Claims Administrator shall conduct one search for the Class Member's current address through an automated search service such as Lexis Nexis. If an address is not found, the Claims Administrator is not required to take any further action with respect to that Class Member's Notice, Class Member Declaration, Claim Sheet, or Settlement Award. The Claims Administrator shall provide to Class Counsel and 3M's Counsel a list of those Class Members for whom mailed notice is returned as undeliverable.

**4.6 Return of Class Member Declaration.** Class Members shall complete, execute and return their Class Member Declaration within seventy-five (75) calendar days of the initial mailing of the Notice and Class Member Declaration. Except for Class Members who opt out pursuant to Section 4.9 below, Class Members who fail to timely execute and return their Class Member Declaration shall not be entitled to any Settlement Award but shall otherwise be bound by the Settlement Agreement, including the Judicial Release set forth in Section 5 herein. Class Member Declarations shall be deemed timely returned if they are postmarked on or before the 75<sup>th</sup> day after the initial mailing of the Notice and Class Member Declarations. The time to submit a Class Member Declaration will not be enlarged for returned mailings.

**4.7 Mailing of Claim Sheet.** Within ten (10) calendar days after the deadline for return of Class Member Declarations, as set forth in Section 4.6, the Claims Administrator shall mail a copy of the Claim Sheet and Settlement Class Member Release and a self-addressed stamped envelope to each Settlement Class Member who has timely executed and returned a Class Member Declaration on which the Settlement Class Member indicates a claim for age discrimination. The proposed Claim Sheet shall be substantially similar to the form attached as **Exhibit D**.

**4.8 Signed Claim Sheet Required.** Class Members shall complete, execute and return their Claim Sheet within forty-five (45) calendar days of the initial mailing of the Claim Sheets. Except for Class Members who opt out pursuant to Section 4.9 below, Class Members who fail to timely sign and return their Claim Sheet shall not be entitled to any Settlement Award but shall otherwise be bound by the Settlement Agreement, including the Judicial Release set forth in Section 5 herein. Claim Sheets shall be deemed timely returned if they are postmarked on or before the 45<sup>th</sup> day after the initial mailing of the Claim Sheet. The time to submit a Claim Sheet will not be increased for returned mailings.

**4.9 Request to Opt-Out.** Class Members may elect to opt-out of the Settlement and not be bound by its terms. To make this election, Class Members shall have one hundred (100) calendar days from the initial mailing date of Notice to submit a signed, written request to opt-out to the Claims Administrator. No particular format shall be required for a Class Member to opt-out, provided that the Class Member's written request reasonably identifies the Class Member and the *Whitaker v. 3M Company* litigation and expresses an intent to opt-out of the Settlement. Opt-outs shall be deemed timely returned if they are postmarked on or before the 100<sup>th</sup> day after the initial mailing of the Notice. The time to submit a written request to opt out will not be enlarged for returned mailings. The Claims Administrator may contact Class Members who elect to opt-out to confirm that they actually intend to opt-out of the Settlement, to explain the Settlement terms, and to provide Class Counsel's contact information if requested. Class Members who fail to timely opt out shall otherwise be bound by the Settlement Agreement, including the Judicial Release set forth in Section 5 herein. Individuals who timely opt-out of the Settlement are no longer deemed to be Settlement Class Members, and, as such, may not object to the Settlement as permitted below.

**4.10 Contact Information and Opt-Out List.** No later than fifteen (15) calendar days after the opt-out period expires, the Claims Administrator shall send 3M's Counsel and Class Counsel a list of the names of any Class Members who timely and validly opt-out of the Settlement.

**4.11 Blow-up Clause.** If more than 5% of the Class Members opt-out of the Settlement, 3M, at its sole discretion, may terminate the Settlement within thirty (30) calendar days after the opt-out period expires by notifying Class Counsel and the Claims Administrator in writing that it elects to terminate the Agreement.

**4.12 Termination by 3M If Failure of Agreement With EEOC.** Notwithstanding any other section of this Agreement, 3M, at its sole discretion, may terminate the Settlement in the event that 3M is unable to reach a negotiated resolution of the EEOC's investigation of putative claims against 3M under the Age Discrimination in Employment Act ("ADEA") on or before the date for mailing of Class Notice set forth in Section 4.4 herein, by notifying Class Counsel and the Claims Administrator in writing that it elects to terminate the Agreement.

**4.13 Effect of Agreement If Settlement Is Not Approved.** This Agreement is being entered into only for settlement purposes. If the Court does not approve the Settlement or enter the Final Approval Order and Judgment, for any reason, or the Final Settlement Date does not occur, for any reason, including but not limited to those set forth in Sections 4.11 and 4.12 above, this Agreement will be deemed null and void *ab initio*. In that event: (a) the Preliminary Approval Order, and all of its provisions, will be automatically vacated; (b) the Action will revert to the status that existed at the execution date of this Agreement, subject to the Parties' agreement to seek additional time to complete discovery from the Court; (c) no party shall be deemed to have waived any claims, objections, rights or defenses, or legal arguments or positions, including, but not limited to, claims or objections to class certification, and claims and defenses on the merits; (d) no term or draft of this Agreement, or any aspect of the Parties' settlement discussions, including related documentation, will have any effect or be admissible into evidence for any purpose in the Action, or in any other proceeding; and (e) 3M will pay all costs incurred by the Claims Administrator. In addition, 3M shall have no obligation to pay any of the Gross Settlement Sum.

**4.14 Objections.** Settlement Class Members who wish to object to the Settlement must file a written objection with the Court and serve copies of the filing on Class Counsel and 3M's Counsel no

later than one hundred (100) calendar days from the initial mailing date of Notice. Objections shall be deemed timely returned if they are postmarked on or before the 100<sup>th</sup> day after the initial mailing of the Notice. The time to submit an objection will not be increased for returned mailings. The objection shall include: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection"; (c) in clear and concise terms, the legal and factual arguments supporting the objection to the proposed Settlement; and (d) a list identifying the witness(es) the objector may call to testify at the Fairness Hearing and true and correct copies of any exhibit(s) the objector intends to offer. Settlement Class Members who fail to make objections in the manner specified above will be deemed to have waived their ability to object to the Agreement, and, therefore, will be foreclosed from making any objection (whether by a subsequent objection, intervention, appeal, or otherwise) to the Agreement. Settlement Class Members who have not filed and served timely written objections may not speak at the Fairness Hearing. If the Claims Administrator receives objections, the Claims Administrator shall provide Class Counsel and 3M's Counsel with immediate notice of any such objection received.

**4.15 Appeal of Settlement Award.** Within the time period set forth for the return of Claim Sheets in Section 4.8, a Settlement Class Member may submit a written request to the Claims Administrator for information concerning the calculation of his or her Settlement Award. Upon request and as soon as reasonably practicable, the Claims Administrator shall provide a written description of the calculation upon which the Settlement Class Member's individual Settlement Award was based. If the Settlement Class Member disputes the accuracy of the mathematical calculation of his or her Settlement Award, or of any data that provides the basis for the calculation of his or her Settlement Award, the Settlement Class Member may submit a written appeal of the calculation to the Claims Administrator, which shall set forth the basis for, and any documentation supporting, his or her appeal. The written appeal also shall be submitted within the time period set forth for the return of Claim Sheets in Section 4.8. No particular format shall be required for a Settlement Class Member to submit a written appeal, provided that the Settlement Class Member's written appeal reasonably identifies the Settlement Class Member and the *Whitaker v. 3M Company* litigation and identifies the basis for appeal. Written requests for information or appeals shall be deemed timely submitted if they are postmarked on or before the last day for Settlement Class Members to return Claim Sheets. Data provided by 3M in connection with the administration of this Settlement shall have a presumption of correctness. The Claims Administrator may consult with Class Counsel and 3M Counsel in resolving any appeal, but shall be the final decision maker with respect to any appeal under this Section.

**4.16 Claims Administrator's Report.** Within ten (10) calendar days following the expiration of the claim period set forth in Section 4.8 and the expiration of the revocation period for all Settlement Class Member Releases, the Claims Administrator shall prepare and deliver to 3M's Counsel and Class Counsel a report identifying (1) all Class Members who timely executed and returned a Class Member Declaration and Claim Sheet and the settlement award amount allocated to each such person; (2) all Class Members who did not timely execute and return a Class Member Declaration and the settlement award amount allocated to each such person; (3) all Class Members who opted out of the settlement and the settlement award amount allocated to each such person; (4) all Settlement Class Members who did not timely execute and return a Claim Sheet and the settlement award amount allocated to each such person; (5) all Settlement Class Members who submitted objections to the settlement through the Claims Administrator.

**4.17 Request for Final Approval.** After the Claims Administrator has delivered the report required by Section 4.16, and provided that the Agreement has not terminated, the parties shall move

for Court approval of a Final Approval Order and Judgment. The proposed Final Approval Order and Judgment shall be substantially similar to the form attached as **Exhibit E**. Class Counsel shall draft the moving papers and give 3M's Counsel drafts of the motion and proposed order to review at least seven (7) calendar days before the motion's filing deadline.

**4.18 Transfer of Gross Settlement Sum.** Within five (5) calendar days after the Final Settlement Date, 3M shall transfer the Gross Settlement Sum, as defined in Section 3.1, to the Claims Administrator to distribute the Settlement. 3M's obligations shall never exceed the Gross Settlement Sum.

**4.19 Distribution of Gross Settlement Sum.** Within thirty (30) calendar days after the Final Settlement Date, the Claims Administrator shall distribute the Gross Settlement Sum as set forth in Section 7.1 below, except that within ten (10) calendar days after the Final Settlement Date, the Claims Administrator shall pay to Class Counsel the amount allocated to attorneys' fees and costs pursuant to Section 7.1(c) and awarded by the Court. Notwithstanding any other Section of this Agreement, the Claims Administrator shall not distribute any Settlement Award to any Settlement Class Member who has not completed the claims process set forth herein, including (1) executed and returned a Class Member Declaration; and (2) executed and returned, and not revoked, a Settlement Class Member Release consistent with the terms of Section 5 of this Agreement.

**4.20 Return of Documents and Other Discovery.** Within thirty (30) days after the distribution of the Gross Settlement Sum, and except as permitted by Paragraph 12 of the Parties' Stipulated Protective Order in this Action, Named Plaintiffs and Class Counsel (including Class Counsel's agents) shall, at 3M Counsel's request, return or destroy all originals and duplicate copies of all materials or information produced or obtained from 3M in the discovery process (whether by formal or informal discovery) and settlement process. This includes, but is not limited to, business records, proprietary information, compensation information, or any other documents, materials, summaries, or notes relating to this Action. If any material or information is destroyed, rather than returned to 3M by Named Plaintiffs and/or Class Counsel pursuant to this paragraph, that Named Plaintiff and/or Class Counsel shall provide an affidavit to 3M within seven (7) calendar days attesting to and verifying the destruction thereof.

**4.21 Request for Attorneys' Fee Award.** 3M will not oppose Class Counsel's adequately documented application for attorneys' fees of up to a maximum of \$3.5 million, plus the actual costs incurred in litigating this Action, up to a maximum of \$2.9 million, with combined total attorneys' fees and costs not to exceed \$6.4 million, and agrees that these sums are reasonable in light of Class Counsel's efforts, risks incurred, and results achieved. The awarded attorneys' fees and costs will be paid out of the Gross Settlement Sum. The awarded attorneys' fees and costs shall cover all work performed and all fees and costs related to Plaintiffs' Complaint, this litigation or Class Counsel's efforts with respect to the claims administration process, and all work to be performed and all fees and costs to be incurred in connection with the approval by the Court of this Agreement, the administration of the Settlement, and obtaining Final Judgment, as well as Class Counsel's responsibilities under Section 8.7 below, but does not include Claims Administrator Costs.

**4.22 Request for Enhancement Award.** 3M will not oppose the Named Plaintiffs' request for a \$25,000 Enhancement Award for each Named Plaintiff in recognition of his efforts and the risks (financial, professional, and emotional) taken in commencing this Action and agrees that this sum is reasonable.

## **5. NAMED PLAINTIFFS' AND CLASS MEMBERS' RELEASE**

**5.1 Judicial Release.** As a material inducement to 3M to enter into this Agreement, the Named Plaintiffs individually and on behalf of the Settlement Class, for themselves and their agents, heirs, executors, administrators and assigns, and as a free and voluntary act, fully release and forever discharge 3M, to the fullest extent permitted by law from, and covenant not to sue or otherwise institute or cause to be instituted any legal proceedings against 3M for, any and all claims, allegations, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, penalties, actions, or causes of action of every kind or nature, known or unknown, alleging age discrimination by 3M or retaliation or termination of employment by 3M related to age discrimination or participation in the Action, including but not limited to those alleged in the Action, or that could have been alleged in the Action, and all such claims that could have been asserted against 3M at any time prior to the date of the Preliminary Approval Order, pursuant to the Minnesota Human Rights Act, Minn. Stat. §§ 363A.01, *et seq.*, or under the common law or otherwise, under any legal or equitable theory, including but not limited to allegations or claims of age discrimination against 3M in any form, whether or not related to promotions, compensation, performance evaluations, training selections or termination, as well as any and all claims of retaliation or reprisal against 3M (the "Released Claims"). This Release shall be effective as to all Settlement Class Members without regard to whether a particular Settlement Class Member returns a Class Member Declaration or Claim Sheet.

**5.2 Subsequently Discovered Facts.** The Named Plaintiffs individually and on behalf of the Settlement Class acknowledge that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Named Plaintiffs expressly hereby have, and all Settlement Class Members, upon the Final Settlement Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts. The Named Plaintiffs acknowledge that the foregoing waiver and release was separately bargained for and a key element of the settlement of which this release is a part.

**5.3 No Lawsuits.** Named Plaintiffs warrant and represent that they have not filed any claims, charges, complaints or actions against 3M, or assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Agreement, except as identified in **Exhibit F**. Named Plaintiffs agree that they will request the agencies and/or courts with jurisdiction over the matters identified in **Exhibit F** to withdraw those matters or to dismiss the matters in their entirety, with prejudice, and will execute all necessary documents to effect such withdrawals and/or dismissals with prejudice. If any agency or court assumes jurisdiction of any complaints, claims, or actions against 3M by or on behalf of any Named Plaintiff or Settlement Class Member arising out of any act or omission occurring before his or her respective execution of a release pursuant to this Agreement, he or she will request that agency or court withdraw the matter or to dismiss the matter in its entirety, with prejudice, and will execute all necessary documents to effect such withdrawal and/or dismissal with prejudice. To the extent required by law, nothing contained in this Section 5.3 will be interpreted to prevent any Named Plaintiff or Settlement Class Member from filing charges with a governmental agency or participating in or cooperating with an investigation conducted by a governmental agency.

**5.4 California Civil Code § 1542 (for California Employees or Residents Only):** Plaintiffs expressly waive any and all rights and benefits which Plaintiffs may have under the provisions of California Civil Code section 1542, which provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

**5.5 Additional Release for Settlement Class Members Individually Executing A Release of Claims.** Plaintiffs agree and acknowledge that the release of claims to be executed by Settlement Class Members as a condition of receiving their respective Settlement Awards shall include in its effect, to the fullest extent permitted by law, all claims of any nature alleging discrimination or retaliation in employment or termination of employment by 3M, including but not limited to claims alleging age discrimination, as set forth below. The release to be executed under this Section shall be substantially similar to that set forth in **Exhibit D**, hereto.

**5.6 Nonresponsive Class Members.** Class members who neither timely opt out nor timely submit a Claim Sheet shall be ineligible to receive any monetary award pursuant to this Settlement Agreement, but shall be bound by the Judicial Release, and shall be deemed to have fully, finally and irrevocably waived, released and discharged 3M from any and all claims of age discrimination, retaliation or reprisal as set forth in Section 5.1, up to and including the date of Preliminary Approval.

## **6. NO ADMISSION, NO DETERMINATION**

**6.1** This Settlement Agreement does not, and is not intended to constitute, nor shall it be deemed to constitute, an admission by any party as to the merits, validity or accuracy of any of the allegations, claims or defenses of any party in this case. Named Plaintiffs continue to assert the merits and validity of their claims under the MHRA. By entering into this Agreement, 3M does not admit or concede, expressly or impliedly, but denies that it has in any way violated the MHRA, parallel federal, state or local laws prohibiting employment discrimination, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Neither the Court nor any other court has made any findings or expressed any opinion concerning the merits, validity or accuracy of any of the allegations, claims or defenses in this case.

**6.2** Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the mediation or negotiations leading to this Settlement Agreement, is intended by the parties to, nor shall any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other proceeding of whatsoever kind or nature (including, without limitation, the results of the claims process established under this Settlement Agreement) as evidence of employment discrimination prohibited by the MHRA, parallel federal, state or and local laws prohibiting employment discrimination, the common law of any jurisdiction, or any other federal, state or local law, statute, ordinance, regulation, rule or executive order, or any other law or equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in the Court to enforce or implement any provision of this Settlement Agreement or implement any orders or judgments of the Court entered into in connection herewith.

**6.3** Except to the extent that it would constitute a set off in an action for damages claimed

for the Class Period covered by this Settlement, neither the fact nor amount of an award, nor the fact of any non-award, shall be admissible in any other proceeding for any purpose other than to enforce a release of claims pursuant to this Agreement, nor shall it be deemed to be a finding as to the merits of any claim.

7. SETTLEMENT FUND ALLOCATION

7.1 **Distribution of Gross Settlement Sum.** The Claims Administrator shall allocate the Gross Settlement Sum as follows:

- (a) **Enhancement Awards.** The Claims Administrator shall pay the Court-awarded Enhancement Award to each Named Plaintiff, not to exceed \$25,000 per Named Plaintiff.
- (b) **Administrative Costs.** The Claims Administrator shall pay itself reasonable Claims Administrator Costs in an amount currently estimated to be not more than \$132,000 for all costs, expenses, and time incurred with the administration of this Settlement, including (i) preparing, issuing, printing, mailing, and monitoring all necessary notices, declarations, filings, and tax related documents; (ii) computing the Settlement Awards, applicable taxes, and any other payments to be made out of the Gross Settlement Sum; (iii) establishing or maintaining the Qualified Settlement Fund; (iv) distributing payments out of the Gross Settlement Sum; (v) any related communications with Class Members or Class Counsel; and (vi) any other obligations mandated by this Agreement for the Claims Administrator, as ordered the Court, or as may be agreed upon by the parties.
- (c) **Attorneys' Fees and Costs.** The Claims Administrator shall pay the Court-awarded attorneys' fees of up to a maximum of \$3.5 million, plus the actual costs incurred in litigating this Action, up to a maximum \$2.9 million, with combined total attorneys' fees and costs not to exceed \$6.4 million, pursuant to Section 4.21, above.
- (d) **Settlement Awards.** The Claims Administrator shall allocate a Settlement Award to each Settlement Class Member, pursuant to the calculation described in Section 4.3 above, as follows. Payment of the allocated Settlement Award shall be subject to all required notice and claim procedures set forth in Sections 4 and 5, herein.
  - (i) **Allocation to Class Members.** Based on the information provided by 3M, the Claims Administrator will determine each Class Member's award, as follows. The inclusion of the formula used in this Settlement Agreement, as prepared by Class Counsel and to be administered by the Claims Administrator, does not indicate that 3M endorses or approves of the formula. 3M shall have no responsibility for, and no liability whatsoever with respect to, any allocations to Class Members as set forth herein.
    - (1) First, the Claims Administrator will calculate for each full calendar year during the Class Period in which the Class

Member was (i) employed for the full year by 3M, (ii) at the beginning and end of the year was a full time regular employee in exempt grades 7 thru 17 and aged 46 or older, (iii) at the end of the year was not in a grade higher than at the beginning of the year, and (iv) a Minnesota employee at either the beginning or end of the year, the dollar difference, if any, between each Class Member's base compensation increase and the average base compensation increase for employees in that grade. Each Class Member's differentials will be totaled, with the differential for any years in which the employee received a larger pay increase than the average for his/her grade subtracted from the differentials in any years in which the employee received a smaller pay increase than the average for his/her grade. The total dollar difference for each Class Member shall be referred to as the "Individual Compensation Loss," and the total dollar difference for all Class Members shall be referred to as the "Class Compensation Loss." Monetary awards for Individual Compensation Loss shall be calculated by multiplying each Class Member's Individual Compensation Loss by forty percent (40%) of the Class Recovery and dividing by the Class Compensation Loss.

- (2) Second, the Claims Administrator will add the number produced by multiplying .25 by the number of calendar years during the Class Period in which the Class Member was (i) 46 years or older for at least half the year, (ii) was employed by 3M for the full year and (iii) was a full time regular Minnesota employee in exempt grade 7 thru 17 at the beginning of the year plus the number of grades the class member moved down during the Class Period in which the Class Member was 46 years or older. From this number, the Claims Administrator will subtract the number of grades each Class Member moved up during the Class Period in which the Class Member was 46 years or older, and shall also subtract the number one (1) if the Class Member was selected as a Black Belt, Master Black Belt, or for ALDP I or II. The resulting figure shall be referred to as the "Individual Promotion/Demotion Score." For each Class Member whose Individual Promotion/Demotion Score is equal to or greater than three-fourths (.75), the Claims Administrator shall multiply the Individual Promotion Score by 100% of the Class Member's average base compensation during the Class Period in which the Class Member was 46 years or older. The dollar amount for each Class Member shall be referred to as the "Individual Promotion/Demotion Loss," and the total dollar difference for all Class Members shall be referred to as the "Class Promotion/Demotion Loss." Monetary awards for Individual Promotion/Demotion Loss shall be calculated by multiplying each Class Member's Individual Promotion/Demotion Loss by

fifty percent (50%) of the Class Recovery and dividing by the Class Promotion/Demotion Loss.

- (3) Third, the Claims Administrator will calculate for each Class Member who separated from 3M under circumstances permitting receipt of severance but who did not receive the severance because s/he declined to sign a release the present value (using the Minnesota judgment interest rate, Minn. Stat. 549.09, subd. 1(c)(2), from the date of termination) of 3M's severance offer to the Class Member. The dollar amount for each Class Member shall be referred to as the "Individual Termination Loss," and the total dollar amount for all Class Members shall be referred to as the "Class Termination Loss." The Class Termination Loss shall be ten percent (10%) of the Class Recovery. Class Members with an Individual Termination Loss who filed an administrative charge of age discrimination or this Action shall be paid first on a pro rata basis up to their full Individual Termination Loss. The remaining amount, if any, shall be paid to all other Class Members with an Individual Termination Loss in proportion to their respective Individual Termination Losses. Under no circumstances shall any Class Member eligible to receive a monetary award under this paragraph receive a total monetary award greater than fifty thousand dollars (\$50,000). The Parties agree that, in the event additional Class Members with Individual Termination Losses are identified pursuant to the claims process, other than as set forth in the Claims Administrator's allocation pursuant to Section 4.3 herein, the Claims Administrator shall recalculate the allocation under this subsection effective as of the close of the claim period set forth in Section 4.8 herein.
- (4) Fourth, the Claims Administrator will calculate the sum of each Class Member's separate monetary awards, which shall be the Class Member's Final Award. Each Class Member's Final Award shall be no less than Seventy-Five Dollars (\$75.00), which shall be the minimum award.

(ii) The Parties agree that reasonable assumptions may be made in defining and identifying the relevant data, establishing the parameters of class membership and award eligibility, and interpreting the allocation formula set forth above so as to accomplish a fair and reasonable allocation of the settlement funds consistent with the intent of Sections 4 and 7 herein.

**7.2 Cashing Settlement Awards.** Settlement Class Members will have one hundred and twenty (120) calendar days to cash or deposit their Settlement Award. After ninety (90) calendar days, the Claims Administrator shall mail to Settlement Class Members who have not cashed or deposited their Settlement Award a postcard reminding them of the deadline to do so. The Claims Administrator

may, but is not obligated to, contact Settlement Class Members by phone if they have not cashed or deposited their Settlement Awards. Uncashed Settlement Awards shall be cancelled by the Claims Administrator if not cashed by the Settlement Class Member within one hundred and twenty (120) calendar days, at which point the Settlement Class Member's claim will be deemed void and of no further force or effect. A Settlement Class Member's failure to cash a Settlement Award shall have no effect on the Settlement Class Member's release of claims against 3M pursuant to this Agreement.

**7.3 Unclaimed or Uncashed Settlement Awards.** At the conclusion of the period set forth in Section 7.2, the Claims Administrator will redistribute to 3M, or as otherwise may be required by law, all unclaimed and/or uncashed Settlement Awards in excess of the amounts described in Section 7.1 (a) – (d) and any other funds remaining in the Qualified Settlement Fund over and above the amounts required to satisfy the requirements of Section 7.1 (a) – (d).

**7.4 Proof of payment.** The Claims Administrator shall file proof of payment with the Court and provide the same to Class Counsel and 3M's Counsel.

**7.5 Payment of Settlement Awards and Employee Taxes.** The Parties agree that 100% of the Settlement Awards distributed to Settlement Class Members will be treated as income subject to W-2 reporting and withholdings pursuant to state and federal laws. Enhancement Awards distributed to the Named Plaintiffs will be treated as non-wage income. The Claims Administrator will mail IRS forms W-2, W-9 and any other necessary tax withholding forms to each Settlement Class Member and forms 1099 to each Named Plaintiff for their respective Enhancement Awards. Settlement Class Members' individual Settlement Awards, including Named Plaintiffs', will be inclusive of all related tax obligations except for the employer's share of employment tax withholding obligations (e.g., FICA, FUTA, Medicare), which shall remain 3M's responsibility, and all Settlement Awards distributed to Settlement Class Members will be net of any required withholdings and deductions. The Settlement Class Members will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes owing on said amount. Settlement Class Members agree that they are solely responsible for any tax obligations resulting from the payment of their respective Settlement Awards.

It is understood that 3M makes no representations or warranties with respect to the tax consequences of the payments referenced in this Agreement to Settlement Class Members or Class Counsel under the terms of this Agreement. Settlement Class Members further acknowledge and agree that the payments set forth herein may result in taxable income to Settlement Class Members under applicable federal, state, and/or local tax laws. With the exception of the employer's share of employment tax withholdings described in the previous paragraph, Settlement Class Members acknowledge and agree that they shall be solely responsible for any taxes that may be assessed against them relating to the payments made pursuant to this Agreement, including but not limited to all federal, state, and/or local taxes, and any other liens, obligations, claims, or consequences to them that may arise from this Agreement, and that they will not seek any indemnification from 3M with respect thereto. Settlement Class Members further agree to indemnify and hold 3M harmless from any claims, demands, deficiencies, judgments or recoveries by any governmental entity against 3M for any amounts claimed in connection with money paid to Settlement Class Members pursuant to this Agreement which are properly taxable to Settlement Class Members, including amounts paid by 3M as taxes, attorneys' fees, fines, penalties, interest or otherwise.

**7.6 Settlement Awards Do Not Trigger Additional Benefits.** All Settlement Awards shall be deemed to be income to Settlement Class Members solely in the year in which such payments

are received by Settlement Class Members. Such Settlement Awards shall not entitle any Settlement Class Member to additional compensation or benefits under any company bonus, contest, or other compensation, stock compensation, incentive, or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Settlement Class Member to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation or any other benefits. It is the intent of this Settlement that the Settlement Awards provided for in this Agreement are the sole payments to be made by 3M to Settlement Class Members, and that the Settlement Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Awards.

## **8. PROGRAMMATIC RELIEF**

**8.1 Overview.** As part of this Settlement, 3M has agreed to take steps to increase employee awareness and understanding of its long-standing commitment to equal employment opportunity for all employees, as consistently affirmed through the 3M Human Resources Principles. The provisions set forth in this Section are not, and shall not be construed to be, an admission of any liability whatsoever by 3M, but simply confirm and reinforce 3M's existing commitment to equal employment opportunity.

**8.2 Term.** The term of the provisions of this Section 8 shall be for three (3) years from the Execution Date.

### **8.3 EEO Communications and Training.**

- (a) 3M will distribute its Equal Employment Opportunity (EEO) and Affirmative Action (AA) policy statement to all new hires and will re-issue the statement to employees annually and post it on a company intranet site that is accessible to all employees. The EEO/AA policy statement will be signed by 3M's Chief Executive Officer and will confirm 3M's commitment to prohibiting unlawful discrimination, including but not limited to discrimination based on age, in all terms and conditions of employment.
- (b) 3M will include in the Company's existing Employment Law for Leaders course content focused on age discrimination and will deliver the course to the eligible population of managers and supervisors every two years.
- (c) 3M will review the company's leadership, supervisory development, and diversity training programs for content on equal employment opportunity and non-discrimination and, to the extent there is no such content or where 3M determines that additional content would clarify the company's commitments, revise the course content to include information regarding 3M's EEO and non-discrimination commitments.

### **8.4 Performance Appraisals.**

- (a) 3M will not use rating distribution guidelines or quotas in connection with its performance appraisal processes.
- (b) 3M will provide additional guidance to supervisors to clarify criteria for placement recommendations and high potential designations used in connection with the performance appraisal process.

- (c) 3M will support a review and appeal process for employee EC&DP ratings, through which employees can challenge contribution codes, leadership attribute ratings, high potential designations and/or placement recommendations.

#### **8.5 Promotions/Transfers/Development/Training Opportunities.**

- (a) 3M will post Black Belt positions internally and will accept applications for those positions.
- (b) 3M will post on an intranet site accessible to employees program descriptions and the selection criteria and process for the ALDP I, ALDP II, and Leadership Development for Growth (“LDG”) leadership development programs.
- (c) 3M will publish job posting guidelines on an intranet site accessible by employees. Pursuant to the published posting guidelines, 3M will increase the minimum posting period for positions required to be posted to five days and will agree to post all open positions below the L3 job grade with limited exceptions where there is an important business need.
- (d) 3M will not preclude employees who receive a 2 level of contribution rating through the EC&DP process from applying for open positions in the company. 3M will make available to hiring managers and/or recruiters the past three years of EC&DP ratings for internal candidates applying for open positions.

#### **8.6 Job Eliminations/Terminations of Employment/Releases.**

- (a) 3M will use a form of release in connection with its severance plans and/or any group reductions in force which includes terms that are not materially different from those set forth in **Exhibit G** (“Approved Release Terms”), except as necessary to comply with changes in law, including but not limited to changes in the OWBPA or judicial opinions interpreting legal requirements, or otherwise as necessary to comply with 3M’s legal obligations. As of the Execution Date, and subject to changes in the OWBPA, the parties acknowledge that the Approved Release Terms comply with OWBPA. 3M also will describe the decisional unit on any eligible/ineligible lists in a manner that will allow employees affected by a group reduction to understand the contours of the affected group.
- (b) 3M will maintain a termination review process that requires approval of all terminations of employment, including those due to job elimination, by designated levels of business and human resources management. Part of the approval process will include confirmation that the selection process and resulting job elimination decisions were implemented in a manner consistent with principles of non-discrimination.
- (c) 3M will comply fully with the OWBPA, including with its requirements regarding releases of claims, and will train human resources personnel on the construction of eligible/ineligible lists under the OWBPA.

## **8.7 Implementation.**

- (a) 3M's human resources function will be responsible for implementing the programmatic relief set forth in this Section 8 and for ensuring that 3M's policies regarding equal employment opportunity and non-discrimination are enforced. 3M's Senior Vice President, Human Resources, will be ultimately responsible for implementation of Section 8 of this Agreement.
- (b) 3M will continue to maintain the company's internal grievance process through which employees have multiple channels to raise concerns and complaints, including concerns or complaints regarding unlawful discrimination, retaliation, or alleged noncompliance with this decree. 3M will increase communications to employees concerning its grievance process. 3M's grievance process will not preclude or discourage employees from complaints or expressing concerns directly to the EEOC or class counsel.
- (c) 3M's Counsel shall report to Class Counsel every twelve (12) months for a period of three (3) years from the Execution Date as to steps taken by 3M to comply with these injunctive provisions, which reports shall be maintained on a Confidential basis as defined in the stipulated protective order in the Action, which is incorporated as if set forth fully herein. Unless a different person is otherwise designated by Class Counsel, in writing, the reports set forth in this section shall be deemed duly given if addressed to Steven M. Sprenger and personally delivered, sent by U.S. Mail, or sent by confirmed facsimile or other agreed upon method. Class Counsel shall provide written notice to 3M's Counsel of any noncompliance by 3M with the terms of this Section, and 3M and Class Counsel shall attempt to informally resolve any allegation of noncompliance prior to any effort by Class Counsel to enforce the terms of this Section. Only Class Counsel shall have standing to seek relief from the Court for alleged violations of this section.
- (d) 3M shall not retaliate against any Settlement Class Member for appealing any EC&DP rating or complaining about 3M's alleged failure to comply with the terms of the Decree.

**8.8 Section 8.7(c) Void Upon Agreement Between 3M and the EEOC.** Upon the execution, during the time period identified in Section 8.7(c), of any consent decree between 3M and the EEOC resolving the EEOC's investigation of putative claims against 3M under the Age Discrimination in Employment Act ("ADEA") which shall have as terms therein provisions substantially similar to the terms set forth, in whole or in part, in Section 8.3 – 8.7, the provisions of Section 8.7(c) shall be void and of no further effect to the extent such provisions are encompassed by the aforementioned consent decree

## **9. ADDITIONAL PROVISIONS**

**9.1 No Liability for Disbursements Related to Settlement Fund.** No person shall have any claim against 3M, Class Counsel, 3M's Counsel, the Claims Administrator, or any agent designated by Class Counsel or 3M based on distributions made substantially in accordance with this Agreement or court orders, including the allocation of Settlement Awards to each Class Member.

**9.2 No Collateral Attack.** This Agreement shall not be subject to collateral attack by any individual. Prohibited collateral attacks shall include, but not be limited to, claims that a Class Member's Settlement Award was improperly calculated or adjusted.

**9.3 Confidentiality.** As a free and voluntary act, Named Plaintiffs, individually and on behalf of the Class, agree that as an essential and material element of this Agreement, they will comply with the following provisions regarding confidentiality:

- (a) Except as otherwise specifically provided in this Agreement, Named Plaintiffs will not disclose or characterize (in whole or in part) any of the terms or provisions of this Agreement or their respective release of claims against 3M, their individual Settlement Awards, or any of the negotiations leading to the making of this Agreement to any other person or entity, other than in documents filed in connection with the joint motion for preliminary approval or final approval of this settlement, except to their respective attorneys, spouses, accountants or tax advisors, or as otherwise required by law or legal process.
- (b) It shall not be a breach of this Agreement for a Named Plaintiff to disclose his individual Settlement Award to his attorneys, spouse, accountants or tax advisors; provided, however that the Plaintiff shall inform his attorneys, spouse, accountants or tax advisors of the terms of the confidentiality provisions contained in this Agreement.
- (c) In response to any inquiry made of any Named Plaintiff or Class Counsel with respect to the making of this Agreement and/or its terms and provisions, it shall not constitute a violation of this Agreement for the Named Plaintiff or Class Counsel to state, upon the Parties' motion for preliminary approval of the settlement, that "The Parties have asked the Court to preliminarily approve a \$12 million class settlement of age discrimination claims against 3M;" to state, upon the granting of the Preliminary Approval Order, that "The Court has given preliminary approval to \$12 million class settlement of age discrimination claims against 3M;" and, upon granting of the Final Approval Order, that "The Court has given final approval to a \$12 million class settlement of age discrimination claims against 3M."
- (d) Named Plaintiffs agree and acknowledge that any breach of the foregoing provisions concerning confidentiality by any Named Plaintiff shall be a material breach of this Agreement in its entirety as to that Named Plaintiff, and that upon such material breach by that Named Plaintiff, 3M's obligations under this Agreement as to that Named Plaintiff, including but not limited to payment of his Settlement Award, if unpaid, shall cease and be of no effect, and that the Named Plaintiff shall be liable to 3M in the full amount of the Settlement Award, if any, previously paid by 3M to that Named Plaintiff, as well as for other equitable and legal relief.

**9.4 Change of Time Periods.** The time periods and dates described in this Agreement regarding notices, hearings, and other events are subject to approval and change by the Court or by the written agreement of counsel for the Parties without notice to the Class.

**9.5 Voluntary Agreement.** The Parties executed this Agreement voluntarily and without duress or undue influence.

**9.6 Binding on Successors.** This Agreement will bind and inure to the benefit of the Parties' respective successors, assigns, legatees, heirs, and personal representatives.

**9.7 Parties Represented by Counsel.** The Parties acknowledge that: (a) they have been represented by independent counsel of their own choosing during the negotiation and preparation of this Agreement; (b) their respective counsel fully explained to them the contents and legal effect of this Agreement; (c) they have read this Agreement themselves; and (d) they fully understand the contents and legal effect of this Agreement.

**9.8 Authorization.** Each Party warrants and represents that there are no liens or assignments, or claims of lien or assignments in law or equity or otherwise, against any of the claims or causes of action released by this Agreement, and further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

**9.9 Entire Agreement.** This Agreement and attached exhibits contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to this subject matter. This Agreement is executed without reliance upon any promise, representation, or warranty by any Party or any representative of a Party, other than those expressly set forth in this Agreement.

**9.10 Construction and Interpretation.** Neither Party nor any of the Parties' respective attorneys will be deemed the drafter of this Agreement for purposes of interpreting any provision in this Agreement in any judicial or other proceeding that may arise between them. This Agreement has been and shall be construed to have been drafted by all the Parties so that any rule that construes ambiguities against the drafter will have no force or affect.

**9.11 Headings.** The various headings in this Agreement are used solely for the convenience of the Parties and shall not be used to interpret, define, limit, extend, or describe the scope of this Agreement or the intent of any provision in this Agreement.

**9.12 Exhibits.** The attached exhibits are integral parts of this Agreement and are incorporated by reference into this Agreement as though fully set forth herein.

**9.13 Modifications and Amendments.** No amendment, change or modification to any part of this Agreement is valid unless in writing, signed by the Parties or their counsel, and approved by the Court.

**9.14 Governing Law.** This Agreement is governed by the laws of the State of Minnesota, and should be interpreted in accordance with those laws and without regard to conflict of laws principles.

**9.15 Further Assurances.** The Parties will each execute and deliver any additional

documents or perform any additional acts reasonably necessary to carry out the express intent of this Agreement.

**9.16 Execution Date.** This Agreement will be deemed executed on the last date of execution by all of the undersigned.

**9.17 Counterparts and Copies.** This Agreement may be executed in counterparts, each of which will constitute an original, but all of which together will constitute the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete executed Agreement. Photocopies of the executed Agreement may be treated as originals.

**9.18 Recitals.** The recitals are incorporated into this Agreement.

**9.19 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law and to carry out each provision herein to the greatest extent possible, but if any provision of this Agreement is held to be void, voidable, invalid, illegal or for any other reason unenforceable, the Parties agree that the validity, legality and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby, and will be interpreted so as to effect, as closely as possible, the intent of the Parties hereto.

**9.20 No Conflict Intended.** Any inconsistency between this Agreement and the attached exhibits shall be resolved in favor of this Agreement.

**9.21 List of Exhibits.** The following exhibits are attached to this Agreement:

- Exhibit A – Proposed Order Granting Preliminary Approval of Class Settlement and Provisional Class Certification
- Exhibit B – Proposed Notice
- Exhibit C – Proposed Class Member Declaration
- Exhibit D – Proposed Claim Sheet
- Exhibit E – Proposed Final Approval Order and Judgment
- Exhibit F – List of Lawsuits and Charges
- Exhibit G – Approved Release Terms

**\*\*The rest of this page intentionally has been left blank.\*\***

THE PARTIES AND CLASS COUNSEL HAVE AGREED TO THE TERMS OF THIS AGREEMENT.

NAMED PLAINTIFFS ACKNOWLEDGE AND AGREE THAT THEY HAVE CAREFULLY READ AND VOLUNTARILY SIGNED THIS AGREEMENT, THAT THEY HAVE HAD ADEQUATE TIME TO CONSIDER THE TERMS OF THIS AGREEMENT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF THEIR CHOICE, AND THAT THEY SIGN THIS AGREEMENT WITH THE INTENT OF RELEASING 3M FROM ANY AND ALL CLAIMS SET FORTH HEREIN

Dated: 3-14-2011

PLAINTIFF CLIFFORD L. WHITAKER

By: Clifford L. Whitaker  
Clifford L. Whitaker, on behalf of himself and all others similarly situated

Dated: \_\_\_\_\_

PLAINTIFF MICHAEL V. MUCCI

By: Michael V. Mucci  
Michael V. Mucci, on behalf of himself and all others similarly situated

Dated: 3-8-2011

PLAINTIFF ROBERT W. COATS

By: \_\_\_\_\_  
Robert W. Coats, on behalf of himself and all others similarly situated

Dated: 3/14/11

PLAINTIFF MARK D. SWANSON

By: Mark D. Swanson  
Mark D. Swanson, on behalf of himself and all others similarly situated

Dated: \_\_\_\_\_

PLAINTIFF THOMAS R. BULEN

By: \_\_\_\_\_  
Thomas R. Bulen, on behalf of himself and all others similarly situated

**THE PARTIES AND CLASS COUNSEL HAVE AGREED TO THE TERMS OF THIS AGREEMENT.**

**NAMED PLAINTIFFS ACKNOWLEDGE AND AGREE THAT THEY HAVE CAREFULLY READ AND VOLUNTARILY SIGNED THIS AGREEMENT, THAT THEY HAVE HAD ADEQUATE TIME TO CONSIDER THE TERMS OF THIS AGREEMENT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF THEIR CHOICE, AND THAT THEY SIGN THIS AGREEMENT WITH THE INTENT OF RELEASING 3M FROM ANY AND ALL CLAIMS SET FORTH HEREIN**

Dated: \_\_\_\_\_

**PLAINTIFF CLIFFORD L. WHITAKER**

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

Clifford L. Whitaker, on behalf of himself and all others similarly situated

Dated: \_\_\_\_\_

**PLAINTIFF MICHAEL V. MUCCI**

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

Michael V. Mucci, on behalf of himself and all others similarly situated

Dated: \_\_\_\_\_

**PLAINTIFF ROBERT W. COATS**

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

Robert W. Coats, on behalf of himself and all others similarly situated

Dated: \_\_\_\_\_

**PLAINTIFF MARK D. SWANSON**

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

Mark D. Swanson, on behalf of himself and all others similarly situated

Dated: 2/28/2011

**PLAINTIFF THOMAS R. BULEN**

By: 

Thomas R. Bulen, on behalf of himself and all others similarly situated

**THE PARTIES AND CLASS COUNSEL HAVE AGREED TO THE TERMS OF THIS AGREEMENT.**

**NAMED PLAINTIFFS ACKNOWLEDGE AND AGREE THAT THEY HAVE CAREFULLY READ AND VOLUNTARILY SIGNED THIS AGREEMENT, THAT THEY HAVE HAD ADEQUATE TIME TO CONSIDER THE TERMS OF THIS AGREEMENT, THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF THEIR CHOICE, AND THAT THEY SIGN THIS AGREEMENT WITH THE INTENT OF RELEASING 3M FROM ANY AND ALL CLAIMS SET FORTH HEREIN**

Dated: \_\_\_\_\_

**PLAINTIFF CLIFFORD L. WHITAKER**

By: \_\_\_\_\_  
Clifford L. Whitaker, on behalf of himself and all others similarly situated

Dated: \_\_\_\_\_

**PLAINTIFF MICHAEL V. MUCCI**

By: \_\_\_\_\_  
Michael V. Mucci, on behalf of himself and all others similarly situated

Dated: 2-28-11

**PLAINTIFF ROBERT W. COATS**

By: Robert W. Coats  
Robert W. Coats, on behalf of himself and all others similarly situated

Dated: \_\_\_\_\_

**PLAINTIFF MARK D. SWANSON**

By: \_\_\_\_\_  
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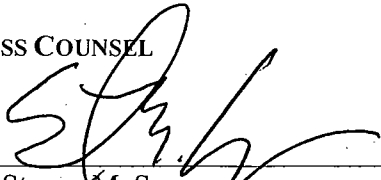
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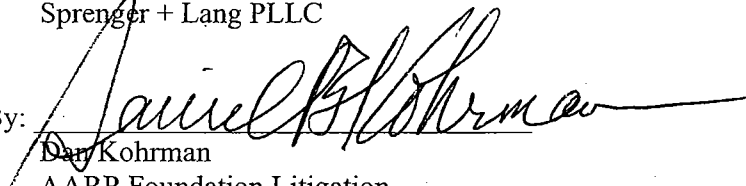
**PLAINTIFF THOMAS R. BULEN**

By: \_\_\_\_\_  
Thomas R. Bulen, on behalf of himself and all others similarly situated

Dated: 3-14-11

**CLASS COUNSEL**

By:   
Steven M. Sprenger  
Sprenger + Lang PLLC

By:   
Daniel Kohrman  
AARP Foundation Litigation

Dated: \_\_\_\_\_

**3M COMPANY**

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

Print name: \_\_\_\_\_

Position: \_\_\_\_\_

Dated: \_\_\_\_\_

**3M'S COUNSEL**

By: \_\_\_\_\_  
Paul Klaas  
Dorsey & Whitney LLP

Dated: \_\_\_\_\_

**CLASS COUNSEL**

By: \_\_\_\_\_  
Steven M. Sprenger  
Sprenger + Lang PLLC

By: \_\_\_\_\_  
Dan Kohrman  
AARP Foundation Litigation

Dated: 2/25/2011

**3M COMPANY**

By: Gregg M. Larson  
Print name: \_\_\_\_\_

Position: Gregg M. Larson  
Deputy General Counsel  
and Secretary

Dated: \_\_\_\_\_

**3M'S COUNSEL**

By: \_\_\_\_\_  
Paul Klaas  
Dorsey & Whitney LLP

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Dated: \_\_\_\_\_

**PLAINTIFF CLIFFORD L. WHITAKER**

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Clifford L. Whitaker, on behalf of himself and all others similarly situated

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Dated: \_\_\_\_\_

**CLASS COUNSEL**

By: \_\_\_\_\_  
Steven M. Sprenger  
Sprenger + Lang PLLC

By: \_\_\_\_\_  
Dan Kohrman  
AARP Foundation Litigation

Dated: \_\_\_\_\_

**3M COMPANY**

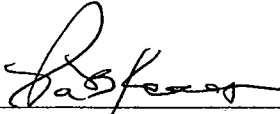
By: \_\_\_\_\_

Print name: \_\_\_\_\_

Position: \_\_\_\_\_

Dated: March 12, 2011

**3M'S COUNSEL**

By:   
Paul Klaas  
Dorsey & Whitney LLP