



# **Nevada Public Employees' Deferred Compensation Program**

## **FICA Alternative Plan Document**

**(Attachment A)**

**Effective and amended May 21, 2018**

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## **PURPOSE**

The purpose of this Plan is to require all part-time, seasonal or temporary employees of the State of Nevada or Nevada System of Higher Education (NSHE) participate in the Nevada FICA Alternative Deferred Compensation Plan, if hired on or after January 1, 2004 (State Government) or July 1, 2005 (NSHE). FICA is the Federal Insurance Contributions Act (FICA). This is an alternative to Social Security coverage as permitted by the federal Omnibus Budget Reconciliation Act of 1990 (OBRA). Participants are not subject to tax on compensation under the Old Age, Survivors and Disability Income portion of FICA.

In accordance with Section 457 of the Code, all amounts of Compensation deferred under the Plan, all property and rights purchases with such amounts and all income attributable to such amounts and all property and rights are held in trust for the exclusive benefit of Participants and their Beneficiaries and Alternate Payees pursuant to the applicable Trust Agreement.

The Plan and Trust Agreement are intended to satisfy the requirements for an eligible deferred compensation plan under Section 457(e)(1)(A) of the Code, and shall be construed and administered accordingly. To the extent that any term of the Plan is inconsistent with the provisions of Section 457 of the Code applicable to governmental employers, the inconsistent term shall, to the fullest extent possible, be treated for all purposes of the Plan as amended and reformed to conform to the applicable provisions of Section 457 of the Code.

Except as otherwise provided herein, this amendment and restatement of the Plan is effective as of the restatement date.

## ARTICLE I - DEFINITIONS

### 1.1 Plan Definitions

For purposes of this Plan, the following words and phrases shall have the meaning set forth below, unless a different meaning is plainly required by the context:

**"Account"** means each separate account established and maintained for a Participant under the Plan, including, as applicable, each Before-Tax Account, Rollover Account, Alternate Payee Account and Beneficiary Account.

**"Administrative Staff"** refers to the appointed Executive Officer and any other administrative personnel under his or her authority or assigned to the Administration of the Plan under the authority of the State of Nevada Department of Administration Director.

**"Alternate Payee"** means the person who is or was the spouse or domestic partner of the Participant or is the child of the Participant to the extent that such person is entitled to any or all of a Participant's Account under a court order that the Committee has determined to be Plan approved Qualified Domestic Relations Order.

**"Alternate Payee Account"** means the Account established for an Alternate Payee pursuant to a Qualified Domestic Relations Order (QDRO).

**"Amounts Deferred"** means the aggregate of Compensation deferred by a Participant pursuant to Article III.

**"Before Tax Account"** means the Account established under the Plan to record a Participant's Before-Tax Deferrals, and the income, gains and losses crediting thereto. A Beneficiary Account or Alternate Payee Account corresponding to the deceased or relevant Participant's Before-Tax Deferrals may also be referred to as a Before-Tax Deferral Account.

**"Beneficiary"** means the designated person or person(s) (or if none, the Participant's estate) who is entitled to receive benefits under the Plan after the death of a Participant pursuant to Article XIII to receive the amount, if any, payable under the Plan upon death of such Participant or Surviving Spouse.

**"Beneficiary Account"** means the Account established for a Beneficiary in accordance with Article IX.

**"Code"** means the Internal Revenue Code of 1986 as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

**"Compensation"** means:

- a) All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses and overtime pay that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the employer includible in the Employee's gross income for the calendar year

but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under Article III)..

- b) Any differential wage payments defined in Code Section 3401(h)(2) pursuant to the HEART act;
- c) Any accumulated sick pay, accumulated vacation pay and back pay paid to a Participant by his or her Employer, provided that such accumulated sick pay, accumulated vacation pay and back pay is received by the Plan in accordance with the timing requirements of the Treasury Regulations promulgated under Section 457 of the Code.

**"Committee"** means the Deferred Compensation Committee of the State of Nevada as authorized under Nevada Revised Statute (NRS) 287.250 to 287.370. The Committee has all of the power and authority to formally take action and deliberate on Plan design and Investment options on behalf of the Plan. The Committee may delegate administrative and managerial duties under this Plan to the appointed Executive Officer.

**"Deferrals"** means the amount of Compensation deferred by a Participant to the Plan, comprising of Employer directed Non-elective Contributions or Employer contribution when permitted.

**"Distributee"** means a person receiving funds, including a Participant or a Participant's designated Beneficiary. In addition, the Participant's spouse or former spouse who is the Alternate Payee under the Qualified Domestic Relations Order as defined in Code Section 414(p) is a Distributee with regard to the interest of the spouse or former spouse.

**"Domestic Partner"** means a domestic partner as defined in NRS 122A.030. Pursuant to IRS Revenue Ruling 2013-17, Domestic Partners cannot be treated as spouses for purposes of federal tax purposes. However, Domestic Partners shall be treated as spouses under this Plan to the extent permitted under the applicable laws of the State of Nevada..

**"Eligible Retirement Plan"** means (i) an individual retirement account described in Section 408(a) of the Code, (ii) an individual retirement annuity described in Section 408(b) of the Code, (iii) a qualified trust under Section 401(a) or 401(k) of the Code, (iv) an annuity contract described in Section 403(b) and 403(a) of the Code and (v) an eligible deferred compensation plan described in Section 457 of the Code that is maintained by a state, political subdivision of a state, any agency or instrumentality of state or political subdivision of a state. However, for an Eligible Rollover Distribution to a designated Beneficiary other than a Surviving Spouse, an Eligible Retirement Plan is only an individual retirement Account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) that is treated as an inherited IRA in accordance with Code Section 402(c)(11).

**"Eligible Rollover Distribution"** means all or any portion of the balance of the Plan to the credit of the Distributee, or a Beneficiary of a Participant, except that an Eligible Rollover Distribution shall not include (a) any distribution that is (i) one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Beneficiary or (ii) for a specified period of ten years or more, (b) any distribution to the extent such distribution is required under Section 401(a) (9) of the Code.

**“Employee”** means any natural person or individual who receives Compensation for services from the Employer, including (a) any elected or appointed officer or employee of the Employer, (b) an officer or employee of an institution under management and control of Nevada System of Higher Education (NSHE), and (c) any employee who is included in a unit of employees covered by a negotiated bargaining agreement that specifically provides for participation in the Plan. An Employee shall not include an independent contractor, a consultant or any other individual classified by the Employer as not eligible to participate in the Plan.

**“Employer”** means the State of Nevada and each Participating Employer, including but not limited to the Nevada System of Higher Education (NSHE), any authorized political subdivision of the State of Nevada, and any authorized agency or instrumentality of the State of Nevada.

**“Executive Officer”** means the State of Nevada Department of Administration division administrator for the Plan appointed pursuant to NRS 232.215. The Executive Officer serves as the primary contact and support for the Committee. As delegated by the Committee, the Executive Officer manages the day-to-day operation of the Plan and oversees and serves as the appointed certified contract manager of contracts and contractors of the Plan.

**“HEART Act”** means the Heroes Earnings Assistance and Relief Tax Act of 2008.

**“Includible Compensation”** means an Employee’s actual wages in box 1 of Form W–2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under Article 3). The amount of Includible Compensation is determined without regard to any community property laws. Pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include any payments made to a Participant who has had a Severance from Employment, provided that the Includible Compensation is paid by the later of 2 ½ months after the Participant’s Severance from Employment or the end of the calendar year that contains the date of such Participant’s Severance from Employment. In addition, pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include payments made to an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Code Section 414(u)(5)) to the extent those payments do not exceed the amount the individual would have received if the individual had continued to perform services for the Employer rather than enter qualified military service. Includible Compensation will not include Employee pick-up contributions described in Code Section 414(h)(2)..

**“Investment Option”** means the investment option(s) made available by the Committee through the Plan in accordance with Article IV.

a)

**“NDC”** refers to the State of Nevada Public Employees’ Deferred Compensation Plan.



**“Non-elective Contribution”** means an Employer directed non-elective Deferrals of 7.5% of the Employees Compensation.

**“Participant”** means an individual or Employee who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction of Non-elective Contributions and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer, as an Employee who does not otherwise qualify to participate in the State of Nevada’s prescribed Defined Benefit Public Employee Pension Plan (NVPERS), may defer Compensation under the Plan. This includes any, Employee, former Employee, beneficiary, or alternate payee who is not deceased and who has an Account or Rollover Account under the Plan and as defined in Code Section 414(p)(8).

**“Participant Account”** means the following accounts established for the Participant and maintained in the Trust Fund for each Participant pursuant to Article VI, including any earnings and losses attributable thereon:

- (a) Before Tax Deferral Account
- (b) Rollover Account

**“Participating Employer”** means any eligible governmental employer, the governing body of which has adopted the Plan by appropriate resolution with the consent and authorization of the Committee and, with the written approval of such body or entity.

**“Plan”** means State of Nevada FICA Alternative Deferred Compensation Plan and Other Participating Jurisdictions, as the same may be amended from time to time.

**“Plan Year”** means the calendar year.

**“Qualified Domestic Relations Order” (QDRO)** means a order, judgment or decree, including approval of property settlement agreement, that has been determined by the Plan appointed legal counsel or Recordkeeper, under the direction and oversight of the Executive Officer, to meet the requirements of a qualified domestic relations order within the meaning of Section 414(q) of the Code.

**“Recordkeeper”** means a contracted third party administrator that the Plan contracts with and delegates certain administrative authority to establish and keep track of Participant Accounts, including contributions, withdrawals, balances, transactions (e.g. fund transfers), and other activities authorized by the Committee and Administrative Staff. Recordkeeper(s) serve at the pleasure of the Committee and under the day-to-day oversight and management of the Program’s Executive Officer who serves as the primary contact and support for the Committee, but is appointed by and serves at the pleasure of the Director of the State of Nevada Department of Administration.

**“Required Beginning Date”** means April 1 of the calendar year following the later of the calendar year in which the Participant: (a) attains age 70½, or (b) severs from employment.

**"Rollover Account"** means the Account or Accounts established and maintained in respect of a Participant or a Beneficiary who is a Participant's Surviving Spouse or, if applicable, by a spousal Alternate Payee, pursuant to Section 5.2(c).

**"Rollover Contributions"** means a cash amount contributed by a Participant, Beneficiary who is a Participant's Surviving Spouse or Alternate Payee to a Rollover Account, or if applicable, an Alternate Payee Account determined as a Eligible Rollover Distribution in accordance with Code Section 402(c)(4), and provided that the distributing Eligible Retirement Plan shall have separately accounted for all amounts included in the Rollover Contribution.

**"Section 457 Transfer"** means a transfer made into an Account pursuant to Section 8.5.

**"Severance from Employment"** means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Executive Officer and taking into account guidance issued under Section 457 of the Code.

**"State"** means the State of Nevada.

**"Surviving Spouse"** means the survivor of a deceased Participant to whom such Participant was legally married on the date of the Participant's death. No later than June 26, 2013, for all purposes under the Plan, the term "spouse" shall include an individual married to a person of the same sex if the individual was lawfully married to a Participant under applicable laws of the state in which the marriage was celebrated, and the term "marriage" shall include such a marriage between individuals of the same sex that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex regardless of where such individuals are domiciled.

**"Treasury Regulations"** means the regulations promulgated by the Treasury Department under the Code, as now in effect or as hereafter amended. All citations to sections of the Treasury Regulations are to such sections as they may from time to time be amended or renumbered.

**"Trust Agreement"** means a written agreement (or declaration) entered into in respect of the Plan between the State of Nevada and one or more Trustees pursuant to which all cash and other rights and properties and all income attributable to such cash and rights and properties are held in a Trust Fund, as such agreement may be amended from time to time.

**"Trust Fund"** means the assets of the Plan, including cash and other rights and properties arising from Amounts Deferred, Section 457 Transfers and Rollover Contributions which are held and administered by the Trustee created pursuant to and under the Trust Agreement.

**"Trustee"** means the trustee or trustees duly appointed and currently serving under the Trust Agreement, and any successors thereto.

## **ARTICLE II - PARTICIPATION**

### 2.1 Enrollment.

Each authorized and participating Employer will determine an employee's eligibility and shall automatically enroll the employee effective with his or her initial compensation. It is mandatory that each participant declare a beneficiary at the time of enrollment by the Employer.

### 2.2 Mandatory Participation.

Participation in the Plan by Employees shall be mandatory as determined by the Employer.

### 2.3 Cessation of Participation.

The participation of a Participant shall cease upon payment to the Participant of the entire value of his or her Account or upon the Participant's death prior to such payment.

### 2.4 Corrective Action.

If an individual is erroneously included or excluded from participation, corrective action will be taken as soon as administratively practicable to correct such erroneous inclusion or exclusion.

## **ARTICLE III - CONTRIBUTIONS AND LIMITATIONS**

### 3.1 Non-Elective Contributions and Deferrals.

The Employer shall defer 7.5% of an Employee's Compensation in accordance with Internal Revenue Service Section 3121(b)(7)(f).

### 3.2 Employer Contributions.

Nothing in this Plan prohibits the Employer from making deposits to a Participant's Account as an additional compensation for services rendered, subject to the Participant's contribution limit.

### 3.3 Military Service.

a) USERRA. In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), an Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Amounts Deferred or Contributed upon resumption of employment with the Employer equal to the maximum amount that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the such amounts, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment, or if sooner, for a period equal to three times the period of the interruption or leave.

b) HEART Act. Effective for deaths occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)(5)), this Plan shall provide all applicable benefits required in accordance with Code Section 401(a)(37), but the provisions of Code Section 414(u)(9) shall not apply to this Plan. Under Section 401(a)(37), qualified retirement Plans must provide that, in the case of a participant who dies while

performing qualified military service, the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan had the participant resumed employment and then terminated employment on account of death.

## **ARTICLE IV - INVESTMENT OF AMOUNTS DEFERRED**

### 4.1 Remittance of Deferrals and Contributions.

All Amounts Deferred in accordance with Article III shall be paid by the applicable Employer or payroll center as promptly as possible to the Recordkeeper. Thereafter, Amounts Deferred or Contributed shall be invested by the Recordkeeper, in accordance with the investment instructions, as soon as administratively practicable.

### 4.2 Allocation of Deferrals and Contributions.

A Participant who has enrolled in the Plan pursuant to Article II shall be invested in an interest bearing account selected and authorized by the Committee pursuant to the guidelines in IRC Section 3121.

### 4.3 Fund Mapping or Similar Activity.

Notwithstanding anything in Article IV to the contrary, if the Committee eliminates the Investment Option or undertakes similar activity on behalf of the Plan, the Committee shall be authorized to liquidate without a Participant's consent and without the need for prior notice to the Participant the portion of each Account invested in such eliminated Investment Option and direct the proceeds of such liquidation in one or more remaining or replacement Investment Options in accordance with such liquidation and transfer procedures as the Committee may determine to be necessary or advisable in connection with such elimination.

## **ARTICLE V - ROLLOVERS AND TRANSFERS**

### 5.1 Transfers from another Governmental 457 Plan.

Compensation previously deferred (or contributed on behalf of) a Participant, a Beneficiary or a spousal Alternate Payee pursuant to another eligible deferred compensation plan under Section 457 of the Code maintained by another employer described in Section 457(e)(1)(A) of the Code shall be accepted for a plan-to-plan transfer to the Plan by the Recordkeeper in the form and in the manner prescribed by the Committee. All such Section 457 Transfers shall be credited to the applicable Participant's corresponding Account shall be invested in accordance with Section 4.2.

### 5.2 Acceptance of Assets from an Eligible Retirement Plan.

- a) Rollover Contributions in General. Amounts previously deferred by (or contributed on behalf of) a Participant, a Beneficiary or a spousal Alternate Payee under another Eligible Retirement Plan that (i) are distributed to the Participant, the Beneficiary or the spousal Alternate Payee or (ii) are directly rolled over to the Plan as an eligible rollover distribution from such Eligible Retirement Plan, may be accepted as a Rollover Contribution by the Recordkeeper in the form and in the manner specified by Recordkeeper. The Recordkeeper shall not accept any Rollover Contribution, or any portion thereof, that represents Deferrals or contributions under another Eligible

Retirement Plan that were made from compensation that was included in the Participant, Beneficiary or spousal Alternate Payee's gross income in the year the amounts were deferred or contributed.

- b) Written Request; Acceptance of Assets. The Recordkeeper, in accordance with the Code and procedures established by the Committee, shall, as soon as practicable following its receipt of the written request of a Participant, a Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee, determine whether the Rollover Contribution shall be accepted by the Plan. Any written request filed by a Participant, a Beneficiary who is a Participant's Surviving Spouse or a spousal Alternate Payee pursuant to Section 5.2(a) shall set forth the fair market value of such Rollover Contribution and a statement in a form satisfactory to the Recordkeeper that the amount to be transferred constitutes a Rollover Contribution.
- c) Rollover Account. The Rollover Contribution shall be maintained in a separate, fully vested Rollover Account for the benefit of the contributing Participant or the Beneficiary and, in the case of a spousal Alternate Payee, the Alternate Payee Account, and shall be invested in accordance with the investment direction of the applicable Participant pursuant to Article IV. All amounts so transferred shall be credited to the Participant's Rollover Account or Alternate Payee Account and shall be available for distribution at any time during the Plan Year. No other contributions shall be allocated to the Rollover Account. At the election of the Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee, any Rollover Contributions or 457 Transfers from an eligible deferred compensation plan under Section 457(b) of the Code may be held in separately designated and maintained Rollover Accounts for 457(b) Rollover Contributions; provided that any such amounts shall be segregated and held in separately designated and maintained 457(b) Rollover Accounts.

## **ARTICLE VI - ACCOUNTS AND RECORDS OF THE PLAN**

### 6.1 Participant Accounts.

- a) In General. The Committee shall establish and maintain one or more Accounts for each Participant, including a Before-Tax Deferral Account, and, as necessary, one or more Rollover Accounts with respect to each Participant. Each Account shall record the value of the portion allocable to that Account, the value of the portion of the Account, if any, that is invested in the Investment Option (both in the aggregate and by Account) and other relevant data pertaining thereto. With respect to each Participant, all Amounts Deferred, all Section 457 Transfers and all Rollover Contributions shall be credited to his or her Before-Tax Deferral Account or Rollover Account, as applicable.
- b) Written Statement. Each Participant shall be furnished with a written statement of his or her Accounts (including the value of the interest he or she has, if any, in the Investment Option and the amount of and explanation for each allocation to or deduction from his or her Accounts) at least annually, which statement shall be delivered in a manner prescribed by the Committee.

## 6.2 Beneficiary Accounts.

The Recordkeeper shall establish and maintain one or more Beneficiary Accounts, including, as applicable, separate Before-Tax Deferral Accounts, and Rollover Accounts with respect to each Beneficiary of a deceased Participant. Each such Account shall record the value of the portion of the deceased Participant's Account allocable to each of the Beneficiary's Accounts, the value of the portion of the Account, if any, that is invested in the Investment Option (both in the aggregate and by Account) and other relevant data pertaining thereto. Each Beneficiary shall be furnished with a written statement of his or her Accounts in the same manner set forth in Section 6.1(b).

## 6.3 Alternate Payee Accounts.

The Recordkeeper shall establish and maintain one or more Alternate Payee Accounts, including, as applicable, separate Before-Tax Deferral Accounts, and Rollover Accounts with respect to each Alternate Payee. The Alternate Payee Account shall separately account for all amounts received (i) from the Participant's Rollover Account and (ii) from all amounts rolled into the Plan by a spousal Alternate Payee, pursuant to Sections 5.1 or 5.2. Each such Account shall record the value of the portion of the Participant's Account allocable to the Alternate Payee's Account, the value of the portion of the Account, if any, that is invested in the Investment Option (both in the aggregate and by Account) and other relevant data pertaining thereto. Each Alternate Payee shall be furnished with a written statement of his or her Alternate Payee Accounts in the same manner set forth in Section 6.1(b).

# **ARTICLE VII - CASH OUT PROVISION**

## 7.1 Cash Out Provision.

- a) A Participant with an Account, not including the amount in the Participant's Rollover Accounts, of \$5,000 or less (or such greater amount as may be permitted by Section 401(a)(11) of the Code) may elect at any time to receive a lump sum distribution, not to exceed \$5,000, of his or her Account and Rollover Account, which distribution will be made in accordance with procedures established by the Recordkeeper, *provided* that both of the following conditions have been met: (a) there has been no Amount Deferred or Contributed by such Participant during the two-year period ending on the date of distribution; and (b) there has been no prior distribution made to such Participant pursuant to this Section 7.1.
- b) At any time the Committee can direct the Recordkeeper, under the direction and oversight of the Executive Officer, to automatically cash out a participant's Account if a Participant's Account:
  - i. Does not exceed \$1,000; and
  - ii. Participant has separated from service, but not elected a distribution;

# **ARTICLE VIII - DISTRIBUTION FROM THE PLAN AND OTHER ELIGIBLE RETIREMENT PLANS**

## 8.1 Distribution to Participants.

- a) Eligibility for Distribution. A Participant will become eligible to receive a distribution of his Account upon the occurrence of any of the following events: (i) the Participant's Severance from Employment with the Employer; (ii) the Participant's attainment of age

70½; or (iii) the Participant's absence from employment for qualifying military service as described in the HEART Act. Except as otherwise provided in Article VII, a Participant may not receive distribution of his or her Account at any time prior to the occurrence of one of the foregoing events.

- b) Distributions to Participants. Upon a Participant's eligibility for a distribution pursuant to Section 8.1(a), the Participant shall be entitled to receive his or her Account, which shall be paid in cash by the Recordkeeper in accordance with one of the methods described in Section 8.1(c) and as of the commencement date elected by the Participant in accordance with the procedures prescribed Section 8.1(c).
- c) Distribution Options. Subject to Section 8.6, any payment made under this section shall be made in one of the following methods, as the Participant (or in the case of the death of a Participant, his or her Beneficiary) may elect any of the following:
  - i A total or partial lump sum payment.
  - ii Periodic monthly, quarterly, semi-annual or annual installment payments; provided, however, that a Participant (or, in the case of the death of a Participant, his or her Beneficiary) may elect to receive (A) an initial installment payment in a specified amount and (B) the balance of his or her Account in periodic monthly, quarterly, semi-annual or annual installment payments. Installment payments may consist of (A) fixed amounts paid on each payment date as designated by the Participant (or in the case of the death of a Participant, his or her Beneficiary), or (B) formulaic amounts determined by the Recordkeeper, based on a fixed period designated by the Participant (or in the case of the death of a Participant, his or her Beneficiary), calculated by dividing the Account on the date of the payment by the number of payments remaining during the fixed period.
  - iii A Participant who elects to receive installment payments or who is currently receiving installment payments pursuant to Section 8.1(c)(ii) may elect, subject to any limitations set forth by the Committee and in accordance with procedures established by the Recordkeeper, to receive a portion of his or her Account distributed in a lump sum; Such lump sum payments shall not result in a discontinuation of subsequent installment payments; provided, however, that such subsequent payments may be re-determined in accordance with methods and procedures established by the Recordkeeper. Notwithstanding the foregoing, a Participant may not elect an installment period extending beyond the longest of (A) his or her life expectancy, (B) if his or her designated Beneficiary is his or her Spouse, the life expectancy of the Participant and his or her Spouse and (C) if his designated Beneficiary is not his or her Spouse, the life expectancy determined using the applicable table contained in the applicable Treasury Regulation.
- d) Distribution Election. In the case of the Participant's Severance from Employment with the Employer, a distribution election made by the Participant shall specify the form of payment as provided in Section 8.1(c) and the date on which payments shall commence, following the Participant's Severance from Employment; provided, further that the

timing of any distribution must be in compliance with Section 8.6. Subject to Section 8.6, a Participant who is receiving distributions under the Plan may change both the timing and the method of payment elected subject to any limitations set forth by the Committee and in accordance with procedures established by the Recordkeeper.

- e) Rollover Accounts. Notwithstanding any other provision of Section 8.1, a Participant who has one or more Rollover Accounts shall be permitted to withdraw all or any portion of such Rollover Accounts at any time during a Plan Year; provided that such withdrawal shall be paid pursuant to a method of payment elected by the Participant in accordance with Section 8.1(c) and the value of such Rollover Accounts shall be determined in accordance with Section 8.1(d).

### 8.2 Distributions to Beneficiaries.

If a Participant dies before distribution of his or her Account has commenced, a distribution election made by the Beneficiary shall specify the form of payment as provided in Section 8.1(c) and the date on which payments shall commence. If a Participant dies at any time before his or her entire Account has been distributed, then the Participant's Beneficiary may make subsequent distribution elections as provided in Section 8.1(c). Notwithstanding the foregoing, any distribution to a Beneficiary shall be made in accordance with the provisions of Section 401(a)(9) of the Code and subject to Sections 8.6(c) and (d).

- a) Determination of Benefits Upon Death of a Participant should be carried out in accordance with Section 9.2(a)
  - i. The Plan shall have the authority to retain any funds or property that are subject to any dispute, Beneficiary or otherwise, without liability for the payment of interest, and shall decline to make payment or delivery of such funds or property until a court of competent jurisdiction makes a final adjudication as to the proper disposition of said funds or property.

The Plan's contracted Recordkeeper and/or appointed legal counsel may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Participant Account of a deceased Participant or Beneficiary, as the Plan's contracted Recordkeeper and/or legal counsel may deem appropriate.

### 8.3 Distributions to Alternate Payees.

A distribution to an Alternate Payee may be paid in a single lump sum as soon as practicable following the qualification of the Qualified Domestic Relations Order and the close of all appeals to the Qualified Domestic Relations Order if the Alternate Payee consents to such lump sum distribution. In the event that the Alternate Payee does not consent to receive his or her distribution in a single lump sum as soon as practicable following the qualification of the Qualified Domestic Relations Order, the Alternate Payee may make an election to receive a distribution any time after the Earliest Retirement Date, subject to any requirements of Section 401(a)(9) of the Code and Section 8.6, by filing a distribution election specifying the form of payment as provided in Section 8.1(c) and the date on which payments shall commence.

### 8.4 Eligible Rollover Distributions.

- a) Participant Rollover Distributions. In connection with a Participant's Severance from Employment, the Distributee may elect, at the time and in the manner prescribed by the



Recordkeeper, to have all or any portion of the Participant's Accounts that qualifies as an Eligible Rollover Distribution paid directly to the trustee of an Eligible Retirement Plan; provided that such other plan provides for the acceptance of such amounts by the trustee. The Plan shall provide written information to Distributees regarding Eligible Rollover Distributions to the extent required by Section 402(f) of the Code.

Beneficiary Rollover Distributions. Upon a Participant's death, a Beneficiary may elect, at the time and in the manner prescribed in the by the Recordkeeper, under the direction of the Committee and Executive Officer as delegated by the Committee, to have all or any portion of the Participant's Accounts that qualifies as an Eligible Rollover Distribution paid directly to the trustee of an individual retirement arrangement (as defined in Section 7701(a)(37) of the Code) that is established for the purpose of receiving the distribution on behalf of such Beneficiary and that is treated as an inherited IRA in accordance with Code Section 402(c)(11). However, for an Eligible Rollover Distribution to a designated Beneficiary other than a Surviving Spouse, an Eligible Retirement Plan is only an individual retirement Account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) that is treated as an inherited IRA in accordance with Code Section 402(c)(11).

#### 8.5 457 Transfers.

The Participant may transfer his or her Account to another Section 457 maintained by another employer, if:

- a) The Participant has severed employment with the Employer and become an employee of the other employer;
- b) The other employer's plan provides that such transfer will be accepted; and
- c) The Participant and the employer have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer.

A transfer from an eligible governmental to another eligible governmental plan is permitted if the following conditions are met:

- a) The transfer is from an eligible governmental plan to another eligible governmental plan of the same employer; for this purpose, the employer is not treated as the same employer if the participant's compensation is paid by a different entity;
- b) The transferor plan provides for transfers;
- c) The receiving plan provides for receipt of transfers;
- d) The Participant or Beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer; and
- e) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual Deferrals in the receiving plan unless the Participant or Beneficiary is performing services for the entity maintaining the receiving plan.

#### 8.6 Withholding.

The Recordkeeper shall withhold or cause to be withheld from any amounts withdrawn or distributed all federal, state, city or other taxes as shall be required pursuant to any law or governmental ruling or regulation, including Treasury Regulations.

#### 8.7 Required Minimum Distributions.

- a) In General. Notwithstanding any other provision of the Plan to the contrary (except Section 8.7(b)), all distributions under the Plan shall be in accordance with the minimum distribution and timing requirements of Section 401(a)(9) of the Code (including the incidental death benefit requirements of Section 401(a)(9)(G) of the Code) and the final Treasury regulations under Sections 22.1401(a)(9)-2 through 22.1401(a)(9)-9, which are incorporated herein by reference. Such provisions shall override any distribution options in the Plan that may be inconsistent with Section 401(a)(9) of the Code. Any distributions made pursuant to this Section 8.7 in order to comply with Section 401(a)(9) of the Code shall be charged against the Account or Accounts of the Participant in such manner as designated by the Participant in accordance with procedures established by the Recordkeeper; provided, however, that if no such designation is made.
- b) 2009 Waiver. Notwithstanding anything to the contrary in Section 8.7, an Participant who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code (2009 RMDs), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Beneficiary, or for a period of at least 10 years, will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.
- c) Distributions During Participant's Life. The Account of a Participant shall be distributed (or commence to be distributed) to such Participant as soon as practicable after the Required Beginning Date. If the Participant has not made an election pursuant to Section 8.1(c) prior to such Required Beginning Date, then the Account shall be distributed in the form of installment payments commencing on the Required Beginning Date.
- d) Death of a Participant Before the Required Beginning Date.
  - i If a Participant dies before his Required Beginning Date, his Beneficiary (or if the Participant has no Beneficiary, his or her Surviving Spouse or estate, as determined under Section 9.2) shall receive a distribution of the Account over the life of the Beneficiary or over a period not exceeding the life expectancy of the Beneficiary; provided that the distribution commences no later than December 31 of the calendar year immediately following the calendar year in which the Participant dies, except as set forth in Sections 8.7(d)(i)(A) or (B) as follows:

- A. If a Participant dies before his Required Beginning Date, the Beneficiary may elect to receive the remaining portion (if any) of such Participant's Account no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death (determined without regard to 2009); or
  - B. If the sole Beneficiary is the Participant's Surviving Spouse, such Surviving Spouse may elect to receive a distribution of the Account over a period not exceeding the life expectancy of the Surviving Spouse (determined as of the date such payments commence); provided that the distribution commences on or before the later of December 31 of the calendar year immediately following the calendar year in which the Participant dies or December 31 of the calendar year in which the Participant would have attained age 70½; provided, further, that if the Surviving Spouse dies after the Participant but before distributions to the Surviving Spouse commence, Section 8.7(d) (with the exception of Section 8.7(d)(i)(B)) shall apply as if the Surviving Spouse were the Participant. (ii) The Beneficiary may elect to receive payment of the Account as a lump sum or in annual, monthly or quarterly installment payments.
- e) Death After Required Beginning Date and After Commencement of Distributions. If a Participant dies on or after the Required Beginning Date, but before his or her entire Account is distributed to him or her, the unpaid portion of his or her Plan Account shall be distributed as follows:
- i If the Participant has a designated Beneficiary, the longer of the remaining life expectancy of the Participant's Beneficiary and the remaining life expectancy of the Participant determined in accordance with Section 1.409(a)(9)-5 of the Treasury Regulations; or
  - ii If the Participant does not have a designated Beneficiary, the remaining life expectancy of the Participant determined in accordance with Section 1.409(a)(9)-5 of the Treasury Regulations; provided, however, that if a Beneficiary so elects, the Participant's remaining Account may be paid to the Beneficiary at any time in a lump sum so long as the entire Account is paid at least as rapidly as it would be paid under Section 8.7(e)(i) of this adopted Plan Document.
- f) Alternate Payee Accounts. In the case of any Alternate Payee Account, payments to the Alternate Payee must be made in accordance with the Plan and Section 401(a)(9) of the Code.

## **ARTICLE IX - DESIGNATION OF BENEFICIARIES**

### 9.1 Designation of Beneficiaries.

Each Participant shall file with the Recordkeeper a designation of one or more persons as the Beneficiary who shall be entitled to receive the Account, if any, payable under the Plan upon his or her death. A Participant may, from time to time revoke or change his or her Beneficiary designation without the consent of any prior Beneficiary by filing a new designation or change or revocation thereof. No new designation or change or revocation shall be effective unless

received by the Recordkeeper in good order prior to the Participant's death, and in no event shall it be effective as of a date prior to such receipt. For purposes of this Article IX, a Beneficiary designation shall be deemed to be received in good order only if the Recordkeeper can reasonable identify the Beneficiary or Beneficiaries named in the designation.

#### 9.2 No Beneficiaries Designated.

- a) If no such Beneficiary designation is in effect at the time of a Participant's death, or if no designated Beneficiary survives the Participant, or if no designated Beneficiary can be located with reasonable diligence by the Recordkeeper, the payment of the Account, if any, payable under the Plan upon the Participant's death shall be made by the Recordkeeper to the Participant's Surviving Spouse, if any, or if the Participant has no Surviving Spouse, or the Surviving Spouse cannot be located with reasonable diligence by the Recordkeeper, then to the deceased estate.
- b) If the Beneficiary so designated by the Participant dies after the death of the Participant but prior to receiving a complete distribution of the amount that would have been paid to such Beneficiary had such Beneficiary's death not occurred, then, for purposes of the Plan, the distribution that would otherwise have been received by such Beneficiary shall be paid to the Beneficiary's estate.

### **ARTICLE X - QUALIFIED DOMESTIC RELATIONS ORDERS**

#### 10.1 Qualified Domestic Relations Order.

Payments with respect to a Participant's Account may be made by the Recordkeeper to one or more Alternate Payees pursuant to the terms of a Qualified Domestic Relations Order. Upon segregation of the assets payable to the Alternate Payee, any such amounts paid or segregated shall no longer constitute part of the Participant's Account. No liability whatsoever shall be incurred by the Committee, NDC Administrative Staff, the Employer, or the Recordkeeper solely by reason of any act or omission undertaken in accordance with this section to comply with the terms of a Qualified Domestic Relations Order.

### **ARTICLE XI - ADMINISTRATION**

#### 11.1 Plan Administration.

Except as otherwise provided therein, the operation and administration of the Plan shall be the responsibility of the Committee and the Committee shall have all of the broad and general authority necessary or advisable to operate and administer the Plan.

The Committee shall have the power and duty to take all action and to make all decisions necessary or proper to carry out its responsibilities under the Plan. All determinations of the Committee as to any question involving its responsibilities under the Plan, including interpretation of the Plan or as to any discretionary actions to be taken under the Plan, shall be solely in the Committee's discretion and shall be final, conclusive and binding on all parties.

The Committee may delegate administrative and managerial duties to the Executive Officer.

#### 11.2 Powers and Responsibilities of the Committee.

The primary responsibilities of the Committee is to oversee the governance of the Plan for the benefit of the Participants and their Beneficiaries, subject to the specific terms adopted in the Plan. Under the delegation of the Committee, the Executive Officer will administer the Plan in accordance with its terms and will have the power and discretion, or delegate that power and discretion to a Recordkeeper under the direction and oversight of the Executive Officer, to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Executive Officer or Recordkeeper under the direction or oversight of the Executive Officer will be conclusive and binding upon all persons. The Committee or Executive Officer may establish administrative procedures and/or direct the Recordkeeper to correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as will be deemed necessary or advisable to carry out the purpose of the Plan under the delegation of the Committee; provided, however, that any procedure, discretionary act, interpretation or construction will be done in a nondiscriminatory manner based upon uniform principles consistently applied and will be consistent with the intent that the Plan will continue to be deemed a qualified plan under the terms of Code Section 457, and will comply with the terms of all Income Tax Regulations issued pursuant thereto. The Executive Officer and/or the Recordkeeper, under the direction and oversight of the Executive officer, will have all powers necessary or appropriate to accomplish duties under this Plan. The Committee will have full power to interpret and construe the Plan in a manner consistent with its terms and the provisions of Code Section 457, including the applicable Income Tax Regulations and to establish practices and procedures conforming to those provisions. In all such cases, the Committee's determination will be final and conclusive upon all persons. It is recognized that unusual circumstances may occur and questions may arise that are not specifically covered by any provision of the Plan, and the Committee will have the right to resolve all such questions.

The Committee will periodically review the performance of any contractor or representative of a contractor to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Committee or by the Executive Officer, through day-to-day management and oversight, or through other appropriate methods approved by the Committee or Executive Officer. The Executive Officer will be charged with the duties of the general administration of the Plan, and may assign, under the direction of the Executive Officer, particular duties to the Plan's Recordkeeper including, but not limited to, the following:

- a) The discretion to determine all questions relating to the eligibility of Employees and Independent Contractors to participate or remain a Participant hereunder and to receive benefits under the Plan;
- b) To require any person to furnish such information as it may request for the purpose of the proper administration of the Plan as a condition to receiving any benefit under the Plan;
- c) To authorize and direct the Recordkeeper with respect to all disbursements to which a Participant is entitled under the Plan;
- d) To maintain all necessary records for the administration of the Plan;

- e) To make and enforce such rules and regulations and prescribe the use of such forms as it shall deem necessary for the efficient administration of the Plan;
- f) To interpret the Plan and to resolve ambiguities, inconsistencies and omissions in the terms of the Plan or any document related to the Plan, and to assist any Participant regarding his/her rights, benefits, or elections available under the Plan;
- g) To decide all questions concerning the Plan and the eligibility of any Employer or other individual to participate in the Plan, and to assist any Participant regarding his/her rights, benefits, or elections available under the Plan;
- h) To enlarge or diminish any applicable time period set forth in the Plan, subject to applicable law; and
- i) To determine the methods and procedures for the implementation and use of any automated telephone, computer, internet, intranet or other electronic or automated system adopted by the Committee for purposes of Plan administration.

#### 11.4 Limitation of Liability.

Except as may be prohibited by applicable law, neither the Committee, any member thereof, nor any Administrative Staff member, shall be liable for (a) anything done or omitted to be done by it or by them unless the act or omission claimed to be the basis for liability amounted to a failure to act in good faith or was due to gross negligence or willful misconduct; (b) the payment of any amount under the Plan; or (c) any judgment or reasonable mistake of fact made by it or on its behalf by a member of the Committee or Administrative Staff. No member of the Committee or any Administrative Staff member shall be personally liable under any contract, agreement, or other instrument made or executed by him or her or on his or her behalf in connection with the Plan or Trust fund.

#### 11.5 Trustee.

The Trustee shall have responsibility for the custody and safekeeping of the assets of the Plan in accordance with the terms of the Trust Agreement and the Recordkeeper shall be responsible for implementing the aggregated investment decisions of Participants and beneficiaries by allocating the Plan assets to the various Investment Options.

#### 11.6 Investment Options.

The Committee shall have the power to add or remove the Investment Options. The Committee shall periodically review the performance and methods of such Investment Options. The Committee has the right to (i) replace any Investment Option with a successor organization or option, (ii) to select any additional Investment Option or (iii) remove any Investment Option.

#### 11.7 Delegation.

The Committee may delegate its general authority as it deems appropriate in accordance with the terms of the Plan and all applicable Code sections; provided; however, that such delegation shall be subject to revocation at any time at the discretion of the Committee. Notwithstanding any other provision of the Plan, the Committee's general authority shall include the right to review, revise, modify, revoke, or vacate any decision made or action taken by any party under the Plan to whom authority of the Committee has been delegated or to whom authority with

respect to the administration of the Plan or the custody and investment of assets of the Trust Fund has been delegated or assigned under the terms of the Plan, by the Committee or otherwise. The rights of the Committee under Section 11.6 include the right to review, revise, modify, revoke, or vacate any decision of the Recordkeeper.

#### 11.8 Plan Expenses.

- a) Assessment Against the Trust Fund. Subject to 11.7(b), the expenses of administering the Plan, including (i) the fees and expenses of the Investment Options and any Recordkeeper(s) for the performance of their duties under the Plan, including any fees and expenses associated with a change, termination or addition of an Investment Option, (ii) the fees, if any, of any member of the Committee and any Trustee and the expenses incurred by the Committee or any of its members or the NDC Administrative Staff in the performance of their duties under the Plan, including reasonable Compensation for any legal counsel, certified public accountants, consultants, and Employees of the Committee and cost of services rendered in respect of the Plan and the Trust Agreement (as provided therein), and (iii) all other proper charges and disbursements of the Investment Options, Recordkeeper, the Committee or its members (including settlements of claims or legal actions approved by counsel to the Plan).
- b) Investment Expenses. Unless the Committee determines otherwise, brokerage fees, transfer taxes and any other expenses incident to the purchase or sale of securities for any Investment Option shall be deemed to be part of the cost of such securities, or deducted in computing the proceeds there from, as the case may be. The Recordkeeper shall appropriately deduct any taxes assessed in respect of any assets held, income received, or transactions effected under the Investment Options proportionately against any Accounts that are invested in such Investment Option.

#### 11.9 Review of Claims and Appeals.

- a) Initial Claim of Rights or Benefits, Appeals, and Review. Any claims to rights or benefits under the Plan, including any purported Qualified Domestic Relations Order must be filed in writing with the Recordkeeper. Notice of denial of any claim in whole or part in part by the Recordkeeper, or by such other entity designed by the Recordkeeper, shall include the specific reasons for denial and notice of the rights granted by Section 11.8.
- b) Review of Decision. Any claimant or Participant Account who has received notice of denial or grant, in whole or in part, of a claim made in accordance with the foregoing Section 11.8(a) may file a written request within thirty (30) days of receipt of such denial for review of the decision by the Executive Officer. Within ninety (90) days after receipt of such request for review, the Committee may elect to review and discuss the decision in an open meeting in accordance with the Nevada Open Meeting Law and shall notify the claimant and, as applicable, the Participant, that the claim has been granted or denied, in whole or in part. Notice of denial of any claim in whole or in part by the Committee shall include the specific reasons for denial and shall be final, binding and conclusive on all interested persons for all purposes.
- c) Any claim or appeal to a decision or action of the Committee, Administrative Staff, or contractor of the State under the Plan, including Investment changes, Plan design changes, actions made or asserted by Administration Staff or any of the NDC

contractor(s) must be filed in writing with the NDC Administrative Staff and shall include specific details, facts, reasons for dispute, and written proof of wrong doing or damages (if applicable). The appropriate NDC Administrative Staff member is responsible for the initial review of any such claim or appeal and will attempt to determine or institute a suitable solution. The Executive Officer may consult and/or involve the State Attorney General, the Department of Administration Director, and the appointed NDC Committee Chairperson for a solution of resolution or denial of a claim or appeal which may result in the claim and/or appeal being reviewed and discussed in an open meeting in accordance with the Nevada Open Meeting Law. The Executive Officer shall notify the claimant, and as applicable, the Participant of any action or decision that was determined within 90 days of the written claim or appeal being submitted to the Executive Officer in good order.

#### 11.10 Advisers.

The Committee shall arrange for the engagement and/or the contracting of legal counsel and certified public accounts, who may be counsel or accountants for the Employer, and other consultants, including an investment consultant and/or investment adviser, and make use of agents and clerical or other personnel, for the purposes of this Plan. The Committee and Executive Officer may rely upon the written opinions of the State Attorney General and of such counsel, accountants and consultants, and upon any information supplied by the Trustee or Recordkeeper appointed in accordance with the Regulations.

#### 11.11 Limitation on Committee Power.

No member of the Committee shall be entitled to act on or decide any matters relating solely to such member or any of his or her rights or benefit under the Plan.

#### 11.12 Public Meetings.

All actions of the Committee shall be taken at a public meeting in accordance with the Nevada Open Meeting Law. The Committee shall establish its own procedures and the time and place for its meetings and provide for the keeping of minutes of all meetings.

#### 11.13 Defense of Claims.

In the event of a claim or legal action, the Committee and Administrative Staff shall be entitled to defense by the State Attorney General.

## **ARTICLE XII - ADOPTION BY AND WITHDRAWALS OF PARTICIPATING EMPLOYERS**

### 12.1 Adoption by a Participating Employer.

- a) Effective Date of Adoption. Upon a Participating Employer's adoption of the Plan, such Participating Employer shall file with NDC Administrative Staff a copy of each resolution or other legal action, consent or approval through which the Participating Employer adopted the Plan. Such Participating Employer's adoption of the Plan shall be effective upon receiving an acknowledgement of receipt of such submission from NDC Administrative Staff and a Committee motion ratifying the Participating Employer's adoption of the Plan.



## 12.2 Withdrawal of Participating Employer.

- a) Withdrawal by the Participating Employer. Any Participating Employer may terminate its adoption of the Plan by filing with the NDC Administrative Staff a copy of the resolution or other legal action, adopted in the same manner as the resolution or other legal action adopted pursuant to Section 12.1(a), specifying a termination date which shall be no earlier than the last business day of the month at least 30 days subsequent to the date such notice is received by the NDC Administrative Staff.
- b) Termination of Participating Employer's Participation by the Committee.
  - i The Committee may terminate any Participating Employer's adoption of the Plan, as of any termination date specified by the Committee, for the failure of the Participating Employer to comply with any provision of the Plan or the Regulations.
  - ii The Committee may terminate a Participating Employer's adoption of the Plan upon complete and final discontinuance of Deferrals and contributions.
- c) Treatment of Participants after Withdrawal. Upon termination of adoption of the Plan by any Participating Employer that was formerly a Participating Employer, such Participating Employer shall not permit any further Deferrals or contributions of Compensation under the Plan and all Participants who are or were Employees of such Participating Employer or if no successor plan is established, payable to or in respect of such Participants as provided in the Plan. Any distributions, transfers or other dispositions of such Participants as provided in the Plan shall constitute a complete discharge of all liabilities under the Plan with respect to such Participating Employer previous adoption of the Plan and any Participant who is or was an Employee of such Participating Employer. The rights of such Participant under the Plan shall be unaffected by the termination of the adoption of the Plan by such Participating Employer with respect to Deferrals and contributions made and Accounts in existence as of the effective date of the termination.
- d) Continued Obligations of Public Employers. Notwithstanding any other provision in Section 12.2 to the contrary, any Participating Employer who was previously a Participating Employer and whose adoption of the Plan has been terminated pursuant to Section 12.2(a) or 12.2(b) shall cooperate with the Executive Officer and Recordkeeper to provide any information or notifications needed for the continued administration of the Plan to Participants who had Accounts in existence as of the effective date of the termination, until such time as total the value of the Accounts attributable to any Participant who are current or former Employees (or who are Beneficiaries or Alternate Payees of any current or former Employees) of such Participating Employer, has been distributed or transferred to another eligible deferred Compensation plan under Section 457 of the Code, as provided under the Plan.

## **ARTICLE XIII - AMENDMENT OR TERMINATION**

### 13.1 Power to Amend or Terminate.

Subject to any requirements of state or federal law, the Committee reserves the right at any time and with or without prior notice to any person to amend, suspend or terminate the Plan, to eliminate future Deferrals for existing Participants, or to limit participation to existing Participants, in whole or in part and for any reason and without the consent of any Participating

Employer, Employee, Participant, Beneficiary or other person. No amendment, suspension or termination of any provisions of the Plan or any Deferrals or contributions there under, the Trust Agreement or any Investment Option may be made retroactively, unless such retroactively is allowed under state law, the Code and any other applicable law.

#### 13.2 Termination of the Plan.

Upon any action by the Committee to initiate a Plan termination, no Participating Employer may permit any further Deferrals of Compensation under the Plan, and the Plan termination shall become effective upon the distribution of all Accounts. After taking an action to initiate a Plan termination, the Committee may distribute all Accounts. Any distributions, transfers or other dispositions of Accounts as provided in the Plan shall constitute a complete discharge of all liabilities under the Plan. The Committee and the Trustee(s) shall remain in existence and the Trust Agreement and all of the provisions of the Plan that the Committee determines are necessary or advisable for the administration and distribution, transfer or other disposition of interests in the Trust Fund shall remain in force.

#### 13.3 Notice to Participating Employers.

The Committee, through the Executive Officer, shall give notice on a reasonably timely basis of any amendment, suspension or termination of the Plan to all Participating Employers.

### **ARTICLE XIV - GENERAL LIMITATIONS AND PROVISIONS**

#### 14.1 Plan Binding on Accounts.

The plan, as duly amended from time to time, shall be binding on each Participant and his or her Surviving Spouse, Domestic Partner, heirs, administrators, trustees, successors, assigns, and Beneficiaries and all other interested persons.

#### 14.2 No Right to Employment.

Nothing contained shall give any individual the right to be retained in the employment of the Employer or affect the right of the Employer to terminate any individual's employment. The adoption and maintenance of the Plan shall not constitute a contract between the Employer and any individual or in consideration for, or an inducement to or condition of, the employment of any individual.

#### 14.3 No Alienation of Accounts.

Except insofar as may otherwise be required by a Qualified Domestic Relations Order or applicable law, no amount payable at any time under the Plan shall be subject in any manner to alienation by anticipation, sale, transfer, assignment, bankruptcy, pledge, attachment, garnishment, charge or encumbrance of any kind, and any attempt to so alienate such amount, whether presently or thereafter payable, shall be void.

#### 14.4 Notices to the Committee or Administrative Staff.

All elections, designations, requests, notices, instructions, and other communications from a Participating Employer, an Employee, a Participant or any other person to the Committee, NDC Administrative Staff, Recordkeeper, or the Employer required or permitted under the Plan shall be in such form as is prescribed by the Executive Officer, shall be mailed by first class mail or

delivered electronically in such a form and to such location as shall be prescribed by the Executive Officer from time to time, and shall be deemed to have been given and delivered only upon actual receipt thereof at such location. Copies of all elections, designations, requests, notices, instructions and other communications from an Employee, a Participant, a Beneficiary, a Surviving Spouse or any other person to the Participating Employer shall be promptly filed with the NDC Administrative Staff or the Recordkeeper.

#### 14.5 Notices to Participants.

All notices, statements, reports, and other communications from a Participating Employer, the Trustee, Administrative Staff, or Recordkeeper to any Participant shall be deemed to have been duly given when delivered to, or when mailed by electronic delivery or other form of delivery approved by the Committee or by first class mail, postage prepaid and addressed to such Employee, Participant, Beneficiary, Surviving Spouse or other person at his or her address last appearing on the records of the Recordkeeper, the Administrative Staff, or the Participating Employer.

#### 14.6 Account Assets and Account Vesting.

- a) Account Assets Held in Trust Fund. The entire value of each Account for each Participant shall be held in the Trust Fund pursuant to the Trust Agreement for the exclusive benefit of the applicable Participant and for paying reasonable expenses of the Plan and of the Trust Fund pursuant to Section 11.7, and no part of the Trust Fund shall revert to any Employer; provided, however, that the setting-aside of any amounts to be held in the Trust Fund is expressly conditioned upon the following: If an amount is set aside to be held in the Trust Fund by an Employer in a manner which is inconsistent with any of the requirements of Section 457(b) of the Code.
- b) Vesting. Each Participant shall be 100 percent vested at all times in his or her Account.

#### 14.7 Several Liability.

The duties and responsibilities allocated to each person under the Plan and the Trust Agreement shall be the several and not joint responsibility of each, and no such person shall be liable for the act or omission of any other person.

#### 14.8 Interpretation.

- a) The term "including" means by way of example and not by way of limitation, and
- b) The heading preceding the sections hereof have been inserted solely as a matter of convenience and in no way define or limit the scope or intent of any provisions hereof.

#### 14.9 Construction.

The Plan and all rights there under shall be governed by the construed in accordance with the Code and the laws of the State.