

# **Nevada Public Employees Deferred Compensation Program**

## **INVESTMENT POLICY STATEMENT**

**June 2021**

## INTRODUCTION AND PURPOSE

This statement is set forth to provide a clear understanding of the investment policies, guidelines and objectives related to the administration of the Nevada Public Employees Deferred Compensation Program (hereinafter “Program”). The Program is a salary deferral retirement savings vehicle available to eligible employees who are interested in saving for retirement on a tax-favored basis. The Program’s purpose is to provide a vehicle for and to encourage additional savings to supplement the retirement benefits provided to employees.

This Investment Policy Statement is further intended to assist the fiduciaries of the Program in making investment-related decisions in a prudent manner. It outlines the underlying philosophies and processes for the selection, monitoring, and evaluation of the investment options and investment providers utilized by the Program. This Investment Policy Statement will be reviewed at least annually and it can be revised at any time to reflect changes in the capital markets, participant objectives, or other factors relevant to the Program.

## SUMMARY OF RESPONSIBILITIES

Program Sponsor – The State of Nevada is the Program Sponsor. The Program Sponsor’s responsibilities include but are not limited to:

- Adopting and amending the Program Documents;
- Approving Program services contracts;
- Appointing the Committee members; and
- Designating other fiduciaries of the Program.

Committee – The Nevada Public Employees Deferred Compensation Committee (hereinafter “Committee”) serve as Administrator and has responsibility for the operation and administration of the Program in accordance with the terms of the Program Documents.

It is the intent of the Committee to fulfill its fiduciary responsibilities with respect to the Program solely in the interest of the participants and beneficiaries. The Committee members, as fiduciaries, are to perform their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

The Committee’s responsibilities also include but are not limited to the following:

- Selecting the investment design features of the Program, including establishing the investment policy and objectives and the number and types of investment alternatives available to Program participants;
- Appointing, monitoring and evaluating all investment providers and managers in accordance with guidelines and benchmarks established within this document and consistent with applicable laws;
- Selecting and monitoring other Program service providers, including, but not limited to, the Program’s record-keepers, trustees, investment consultants, accountants, and/or any other providers; and
- Monitoring Program costs which are charged to Program assets and/or paid by participants, including but not limited to investment management fees, custodial fees and fees paid to other service providers from Program and/or participant assets.

**Investment Consultant** - The Committee may engage an independent investment consultant (hereinafter "Consultant") to assist in carrying out the duties and responsibilities of this Investment Policy Statement. Such Consultant must be registered with either State or Federal securities regulators pursuant to the Investment Advisors Act of 1940. The Consultant's role is to provide information and advice to the Committee on various investment related issues. The Consultant has no discretionary control or authority over the Program and its assets. In its role as an advisor to the Committee the Consultant acknowledges a fiduciary role with respect to the investment advice provided to the Committee. The services of the Consultant will be set forth in a separate agreement.

**Investment Provider** – An entity that offers investment option products and manages assets for the Program. Examples of investment option products offered by an investment provider may include mutual funds, commingled trust funds, separate accounts and/or variable annuity contracts.

**Investment Manager** – The person(s) at the Investment Provider responsible for implementing an investment option's investing strategy and managing its portfolio trading activities.

**Services Providers** – Entities engaged to assist the Program Sponsor and the Committee in regard to the administration of the Program. This assistance includes Program enrollment, communication, education, including providing general investment information to participants regarding the procedures for making investment choices under the Program and general investment information regarding each of the investment options offered under the Program, distribution processing, record keeping and other administrative functions as prescribed in an agreement entered into between the Program Sponsor and the Services Providers. The Program may engage multiple Service Providers to complete administrative functions as necessary.

## **GENERAL COMPLIANCE**

The Program's investment policies and guidelines shall be reviewed on an annual basis for modifications, as needed, but may be modified at any time as deemed necessary by the Committee.

At minimum, it is intended that participants shall be provided with the following opportunities:

- A. Choose from a minimum of three diverse investment categories, each with materially different risk and return characteristics. At least one of the categories will provide for a high degree of safety and capital preservation.
- B. Make and/or modify investment decisions at least quarterly.
- C. Receive or have access to the following information, as updated:
  - A description of the investment alternatives available under the Program including a general description of the investment objectives, risk and return characteristics, and type and diversification of assets comprising each alternative;
  - Identification of the designated Investment Providers, Managers and investment products;
  - A description of any transaction fees or expenses charged to the Program's participant's account, and information on costs and fees for an investment product that reduces the rate of return to Program participants (expense ratios); and
  - Prospectuses, annual reports, and semi-annual reports on investment products, if available.

## **GENERAL INVESTMENT POLICY, OBJECTIVES AND STANDARDS**

It is the policy of the Program to foster an investment environment that encourages and facilitates participant efforts to supplement other sources of retirement income. The Program will be structured in an attempt to provide Program participants with an array of investment options that offer competitive rates of return and reasonable overall cost. Participants in the Program are solely responsible for their own investment decisions

and bear the risks and assume responsibility for the results of the investment options that they select. The Program Sponsor and Committee make no representations, promises, or warranties regarding the suitability of Program participation for any participant's individual investment or retirement needs. Additionally, the Program Sponsor and Committee(s) make no representations, promises or warranties about the performance of the Program or the Program's investments.

The Program exists in a very dynamic marketplace in which new investment alternatives may become available over time. At present, the market offers a broad array of investment products. These products may include:

- Fixed annuity options
- Variable annuity options
- Co-mingled trust funds
- Mutual funds
- Shares of any company, association or corporation

The primary investment objective of the Program is to present participants with a range of investment options, which give participants an opportunity to increase the value of their investment assets in a manner consistent with varying levels of participant risk/reward tolerances and investment decision making skills. While the Program cannot meet all participant investment preferences and attitudes, the Program attempt to provide investment vehicles for participants at various levels of investment sophistication and with varying requirements for risk and return.

Information that may be used to select which investment products to offer includes, but is not limited to, the following:

- Age, income and other demographic data on the Program's participants
- Liquidity and administrative constraints imposed on the Program's by service providers
- Development of new investment products in the marketplace
- Level of participant usage of investment products

To enable participants to establish different investment strategies, the Program will offer investment categories that have varying return and volatility characteristics. It is the responsibility of each participant to evaluate the investment options and to select an appropriate mix.

A risk/reward structure is basic to investments. Generally, those vehicles offering the greatest return over time also carry the highest risk or volatility of return. The inherent conflict between volatility and long-range asset accumulation can be lessened through diversification among asset classes. To provide participants the opportunity to select risk/reward strategies and to diversify the Program's assets, the Program will offer a number of investment alternatives.

In addition to providing a range of investment options, the Program seeks to provide investment options that are competitive in terms of performance relative to appropriate investment performance and risk benchmarks. The performance and risk relationships of the Program's investment options will be reviewed periodically. Investment options should generally be given a full market cycle to achieve stated objectives (market cycles normally occur over 3-5 year time periods). Investment options are expected to meet or exceed their pre-determined benchmark index(es) net of fees. Where peer groups are definable, investment options are also expected to perform within the upper half of a sample of same style peers net of fees. In addition to net investment performance, the options' risk characteristics will also be reviewed. The risk associated with an investment option generally should be similar to that of the same-style peer group.

## **INVESTMENT OPTIONS**

Investment options offered by the Program will be categorized or grouped by similarities in investment objectives, style and risk. The Program's Service Provider and/or Consultant may be asked to assist in determining the categories of investment options. The Program will be structured to assist participants in meeting their long-term investment objectives by providing investment options within the following permitted investment categories (these categories are further explained in the following pages of this document):

### **A. Tier 1: Target Retirement Date Pre-Mixed Portfolios**

### **B. Tier 2: Asset Class Investment Options**

Fixed/Stable Value

- Total Return Bond
- U.S. Large-Size Company Equity
- U.S. Small/Mid-Size Company Equity
- International Equity

### **C. Tier 3: Self-Directed Brokerage**

Investment options and categories may be added or deleted as deemed necessary. At least one investment option shall be available within each investment category.

The following table outlines the objectives and performance benchmarks for each of the Program's investment options. The risk associated with an investment option will be compared to appropriate risk benchmarks or measures for a same-style group of peer investment options, where definable.



## TIER 1: TARGET RETIREMENT DATE PRE-MIXED PORTFOLIOS

Lifecycle Premixed Portfolio – Retirement Income	
Provide different levels of income and capital growth dependent upon an individual participant's specific target retirement or withdrawal date. Portfolios provide different allocations to stocks and bonds dependent upon the target retirement or withdrawal date that is selected. The portfolio will be well diversified including U.S. and international fixed income securities and U.S. and international equities. Stocks generally will comprise less than 30% of the total portfolio. The percentage of international equities generally will not exceed 50% of the equity portion of the portfolio.	
<b>Benchmark Index:</b>	Custom Blended Index
<b>Peer Groups:</b>	US Target Date Retirement Income

  

Lifecycle Premixed Portfolio – 2015, 2020, 2025	
Provide different levels of income and capital growth dependent upon an individual participant's specific target retirement or withdrawal date. Portfolios provide different allocations to stocks and bonds dependent upon the target retirement or withdrawal date that is selected. The portfolio will be well diversified including U.S. and international fixed income securities and U.S. and international equities. Stocks generally will comprise up to 55% of the total portfolio. The percentage of international equities generally will not exceed 50% of the equity portion of the portfolio.	
<b>Benchmark Index:</b>	Custom Blended Index
<b>Peer Groups:</b>	US Target Date 2015, US Target Date 2020, US Target Date 2025

  

Lifecycle Premixed Portfolio – 2030, 2035, 2040, 2045	
Provide different levels of income and capital growth dependent upon an individual participant's specific target retirement or withdrawal date. Portfolios provide different allocations to stocks and bonds dependent upon the target retirement or withdrawal date that is selected. The portfolio will be well diversified including U.S. and international fixed income securities, and U.S. and international equities. Stocks generally will comprise 55%-85% of the total portfolio. The percentage of international equities generally will not exceed 50% of the equity portion of the portfolio.	
<b>Benchmark Index:</b>	Custom Blended Index
<b>Peer Groups:</b>	US Target Date 2030, US Target Date 2035, US Target Date 2040, US Target Date 2045

  

Lifecycle Premixed Portfolio – 2050, 2055, 2060, 2065	
Provide different levels of income and capital growth dependent upon an individual participant's specific target retirement or withdrawal date. Portfolios provide different allocations to stocks and bonds dependent upon the target retirement or withdrawal date that is selected. The portfolio will be well diversified including U.S. and international fixed income securities, and U.S. and international equities. Stocks generally will comprise 85%-90% of the total portfolio. The percentage of international equities generally will not exceed 50% of the equity portion of the portfolio.	
<b>Benchmark Index:</b>	Custom Blended Index
<b>Peer Groups:</b>	US Target Date 2050, US Target Date 2055, US Target Date 2060, US Target Date 2065+

## TIER 2: ASSET CLASS INVESTMENT OPTIONS

Fixed / Stable Value	
Provide high current income relative to cash investments and a high degree of investment safety without fluctuation of principal. Investment returns are derived primarily from interest income. A Fixed or General Account option, which is a fixed rate contract that is backed by an insurance company's balance sheet, is to be of mid-investment-grade rating or higher, and backed by a diversified pool of underlying investments. A stable value option will be invested in guaranteed investment contracts (GICs), "synthetic" portfolios, money market instruments, and others, each mainly comprised of investments of short- to intermediate maturity, and which provide for an adequate degree of liquidity. The weighted-average maturity is expected to remain between two and five years at most times. The overall weighted credit-quality rating of the option shall be the equivalent of mid-investment-grade rating or higher. The rating must be obtained from at least one credit rating agency such as Moody, S&P or Duff & Phelps. If the option's weighted rating declines below this level, the option will be evaluated for corrective action.	
<b>Benchmark Index:</b>	1. 5 Year CMT Index 2. 90-Day Treasury Bills Index
<b>Peer Group:</b>	Stable Value

Total Return Bond	
Provide capital appreciation and income through a diversified fixed income portfolio. The portfolio's duration is expected to be comparable to that of its Benchmark Index, with some bandwidth allowed for the manager to exercise strategic deviation from the Benchmark. Average credit quality is expected to be investment grade. The fixed income portfolio will normally be primarily comprised of investments including money market instruments, U.S. Government and Agency bonds, mortgage-backed securities, corporate bonds, and others. The manager will be given discretion to hold securities that are not contained within the Benchmark Index, which may include Foreign Bonds, High Yield Bonds, Convertibles, Treasury Inflation Protected Securities, derivatives, and others. The portfolio's aggregated composition and risk and return characteristics however are expected to be reflective of its asset class.	
<b>Benchmark Index:</b>	Barclays Capital US Aggregate Bond Index
<b>Peer Group:</b>	US Intermediate-Term Core Bond

U.S. Large Company Equity	
Provide long-term capital appreciation through a diversified common stock portfolio with an average market capitalization greater than \$10 billion. Stocks of foreign companies that are traded in the U.S. may also be included in the portfolio, but generally should not exceed more than 20% of the total portfolio.	
<b>Benchmark Indexes:</b>	<b>Blend:</b> S&P 500 Index <b>Growth:</b> Russell 1000 Growth Index <b>Value:</b> Russell 1000 Value Index
<b>Peer Groups:</b>	<b>Blend:</b> US Large Cap Blend <b>Growth:</b> US Large Cap Growth <b>Value:</b> US Large Cap Value

## TIER 2: ASSET CLASS INVESTMENT OPTIONS

<b>U.S. Small/Mid-Size Company Equity</b>	
Provide long-term capital appreciation through a diversified common stock portfolio with an average market capitalization between \$200 million and \$10 billion. Stocks of foreign companies that are traded in the U.S. may also be included in the portfolio, but generally should not exceed more than 20% of the total portfolio.	
<b>Benchmark Indexes:</b>	<b>Blend:</b> Custom Blended Index <b>Growth:</b> Custom Blended Index <b>Value:</b> Custom Blended Index
<b>Peer Groups:</b>	<b>Blend:</b> US Mid Cap Blend <b>Growth:</b> US Mid Cap Growth <b>Value:</b> US Mid Cap Value

  

<b>International Equity</b>	
Provide long-term capital appreciation through a diversified portfolio of international equities. Unless the strategy is dedicated to emerging markets, stocks of emerging countries may be used at the discretion of the manager, but generally should not exceed more than 30% of the total portfolio.	
<b>Benchmark Indexes:</b>	<b>Blend:</b> Custom International Index (net), MSCI All Country World Index ex-U.S. (net)
<b>Peer Groups:</b>	<b>Blend:</b> US Foreign Large Blend

## TIER 3: SELF-DIRECTED BROKERAGE

<b>Self-Directed Brokerage (SDB)</b>	
For participants who consider themselves to be knowledgeable about investment principles, the Program may offer a brokerage account option. Such option may be provided through one or more broker-dealers, as defined and regulated by the National Association of Securities Dealers, Securities Exchange Committee or State Securities Departments. Assets held in an SDB will be maintained in the name of the Program Trustee or custodian for the benefit of the participant who established the account. Permissible investments for an SDB may include registered mutual funds and other securities permitted under State law. Futures and options are not permitted. It is the SDB account holder's responsibility to adhere to these and any other restrictions placed on him or her by the Committee, broker-dealer or regulatory body. It is also the account holder's responsibility not to engage in transactions prohibited by statute or any regulatory entity. Investment options available through the SDB may contain additional risks and are not monitored by the Committee. The Committee may further restrict permissible investments available in the SDB. Each SDB account holder will be responsible for his or her own commissions, fees or loads applicable to individual securities or mutual fund transactions for the account.	
<b>Benchmark Index:</b>	Not Applicable
<b>Peer Group:</b>	Not Applicable

## INVESTMENT OPTION SELECTION GUIDELINES

Investment options offered to participants will be provided through investment provider(s) accessible on the Services Provider's platform. Before introducing a new investment option, the Committee, in consultation with the Consultant and Services Provider will define the niche to be filled and assess any prospective investment option's performance, quality, and risk characteristics. At a minimum, investment options under consideration should satisfy performance and risk considerations under actual, not modeled, conditions and over an appropriate time period. Investment option selection considerations may include, but are not limited



to the following:

- The investment option should generally, but not necessarily, have a history that spans a full market cycle, normally three to five (3-5) years.
- The investment option should generally meet or exceed its predetermined benchmark index, net of fees.
- The investment option should generally perform at median or within the upper half of a recognized and defined sample of same-style peer options.
- The investment option should be able to demonstrate a consistent performance track record attributable to a specific investment manager or team of managers.
- In selecting Target Retirement Date funds, the Committee shall consider the current and prospective composition of the Target Date funds (based on their glide path), and the corresponding risk and return implications relative to the benchmark and peer group constituents.

## **INVESTMENT OPTION REVIEW GUIDELINES AND MONITORING**

Investment providers and investment managers are required to comply with all applicable laws, rules, and regulations. However, the Committee takes no responsibility for the failure of such option and/or investment manager to comply with any and all applicable laws, rules or regulations.

It is recognized that certain stable value and Fixed options often have liquidity restrictions. Investment options with sales loads, redemption fees, or other non-investment management related expenses will be avoided to the extent possible.

Investment option performance, risk and style consistency is intended to be evaluated on a quarterly basis. Performance and risk results will be evaluated using comparisons with this policy, pertinent market indices and against other same-style peers, where definable. When necessary, investment option performance and risk may be reviewed more frequently.

The Committee will periodically review the investment options' progress in meeting the Program's investment objectives. Investment options will be expected to comply with all stated investment objectives, guidelines and applicable rules contained in the prospectus or fund fact sheet. The Committee will review the performance of investment options quarterly to determine if they are achieving the established objectives. Investment performance reviews may include, but are not limited to, a review of:

- Investment portfolios;
- Fees and expenses;
- Investment style, process and philosophy;
- Investment management personnel; and
- Index tracking error.

The performance review will also include measuring the options' investment performance relative to stated benchmarks or respective indexes and peer groups; as well as the monitoring risk measures. The following will be evaluated:

### **Quantitative Measures**

**Active Investment Strategies.** Options employing active management are expected to outperform their stated asset class or style benchmark net of all management fees over a trailing five year time period; and to rank above the 50<sup>th</sup> percentile of the appropriate peer group for the same trailing five year time period. It is also expected that the risk of each option, as defined by standard deviation of returns, be commensurate with the prescribed strategy relative to the appropriate market index and/or peer group.

**Passive Investment Strategies.** Passive Options are expected to track the performance of the index strategy that the option is designed to replicate, less management fees, with marginal tracking error. It is also expected that the risk of each passive option, as defined by standard deviation of returns, be commensurate with the appropriate market index.

### **Qualitative Measures**

The options will also be monitored on an ongoing basis for other material changes which the Committee may determine are of importance to the decision of whether or not to retain an investment option, such as personnel departures; organizational changes; or alterations in investment style, philosophy, or strategy; and adherence to stated guidelines.

**Time Periods.** The Committee acknowledges that fluctuating rates of return characterize the securities markets, particularly during short-term time-periods. Recognizing that short-term fluctuations may cause variations in an option's performance, the Committee intends to employ investment options with long-term investment strategies and will evaluate option performance from a long-term perspective. Performance over market cycles of three to five years will be weighted more heavily than performance over shorter time periods, such as one year or less.

In addition to the qualitative and quantitative measures referenced above, the Committee will also review the investment options' risk characteristics in relation to that performance. Risk will be measured in various ways including, but not limited to:

- Standard deviation
- Downside risk or semi-variance
- Risk/return ratios such as Sharp or Treynor Ratios
- Other statistical measures such as Beta, Alpha and Variance

### **INVESTMENT OPTION TERMINATION AND WATCH GUIDELINES**

Generally, all investment options are expected to remain true to their stated investment objectives and to perform as well as or better than their prescribed performance benchmarks, net of fees. The Committee recognizes the long-term nature of retirement plan investing and the variability of market returns. Periodic underperformance in any of the criteria outlined in this Investment Policy will not necessitate the termination of an option; however, any underperformance will result in consideration by the Committee of the factors causing underperformance and possible courses of action that the Committee may take.

The Committee may, at any time, place any investment option that it views as having a pattern of underperformance on a watch-status. Reasons the Committee might place an option on a watch status, include but are not limited to, the following:

### **Quantitative Measures**

#### **Actively Managed Options**

- Performance below the prescribed benchmark index over a trailing five year period, combined with
- Performance below the median of its peer group over a trailing five year period

#### **Passively Managed Options**

- Net of fee performance tracking error relative to the respective index that is greater than 15 basis points over a trailing five-year period

Target Date funds will be evaluated based on the performance of the entire suite as held within the Program.

A Target Date suite will normally be viewed as being in violation of investment policy performance criteria if over one-half of the funds in a Target Date suite held within the Program lag this Investment Policy Statement's prescribed performance measures. The Committee may elect to deviate from this approach if it appears reasonable to do so.

Certain passive investment options operate in a marketplace that includes foreign markets whose exchanges close prior to that of the United States. In these instances, some fund managers may engage in a method of "Fair Value Pricing," whereby the managers adjust the pricing of securities in the Fund to reflect any information that has become available after the close of the applicable foreign market. Discrepancies in performance between the applicable investment option and its performance benchmark that are due to "Fair Value Pricing" will be taken into consideration in evaluating performance of the affected investment options.

#### **Qualitative Measures**

- Management team or other significant personnel turnover;
- Changes in the product's investment philosophy, process, style or risk profile;
- Excessive or rapid asset growth or decline;
- Pending regulatory investigations or material legal proceedings;
- Changes to firm ownership;
- Significant increase in management fees or expense ratio.
- In the case of monitoring Target Retirement Date funds, the Committee shall consider the current and prospective composition of the Target Date funds (based on their glide path) and the corresponding risk and return implications relative to the benchmark and peer group constituents.

An investment option may remain on watch status until the Committee decides to take further action. Committee actions include, but are not limited to, the following:

- Removing the investment option from watch status; and
- Terminating the investment option and reallocating the assets to an alternate or replacement investment option by Committee direction.

To be removed from quantitative, performance related watch status, generally, performance for the preceding five year trailing periods should be above the benchmark index or median for at least two consecutive quarters. However, barring any breakdown in process, the Committee may decide to leave an option on watch for as long as they believe it is prudent to do so.

The Committee reserves the right to terminate investment option relationships at any time, for any reason when it determines such termination is in the best interests of the Program and its participants and beneficiaries. Upon termination, further contributions or transfers to an investment option may be frozen, or the option may be replaced with or without transferring existing assets from the replaced option. Once the decision to terminate an option and remove it from the Program is made, asset transfer and liquidation should be handled to the best advantage of the Program, with due consideration given to the anticipated effect on affected participants and beneficiaries.

#### **INVESTMENT OVERSIGHT RESPONSIBILITY AND PROXY VOTING**

The Committee shall have overall responsibility for the selection, monitoring and termination of all investment managers. Additionally, the Committee shall be responsible for reviewing and maintaining these investment policies and guidelines. Proxy votes required by investment managers shall be cast by those parties designated by the Committee. Voting rights shall be exercised in the best interest of the participants and beneficiaries of the Program. The Committee may insist that they exercise their voting rights themselves by communicating their intention to do so in a timely manner.

## **GLOSSARY**

### **Annualized Return**

Rate of return of the account smoothed as though the return occurred equally over twelve-month periods. When the specified time frame is for less than a year, the rate of return is projected as though the same performance continues to occur for a twelve-month period.

### **Benchmarks**

A standard against which the performance of the portfolio can be measured, typically against a standard index, although a client manager may also set the benchmark.

### **Duration**

The weighted maturity of a fixed-income investment's cash flows, used in the estimation of the price sensitivity of fixed-income securities for a given change in interest rates. Time periods are weighted by multiplying by the present value of its cash flow divided by the bond's price (a bond's cash flows consist of coupon payments and repayment of capital). A bond's duration will almost always be shorter than its maturity, with the exception of zero-coupon bonds, where maturity and duration are equal.

### **Growth Style Investing**

Growth investors purchase companies that have above-average earnings growth and/or above-average sales growth rates.

### **Investment Objectives**

The overall financial objectives of an investor. For example, whether the investor requires income or capital appreciation. The investor's objectives govern the investment strategy.

### **Large Cap**

Large Capitalization – refers to those companies with a market capitalization of greater than \$10 billion.

### **Liquidity**

The ability to buy or sell an asset quickly and in large volume without substantially affecting the asset's price.

### **Market Capitalization**

The dollar value of a public company based on the total number of shares of stock available multiplied by the price per share.

### **Mid Cap**

Mid Capitalization – refers to those companies with a market capitalization between \$2 and \$10 billion.

### **Net of Fees**

After subtraction of management fees.



## **GLOSSARY - CONTINUED**

### **Peer Group**

Contemporaries of the same asset class that can be compared against one another to achieve a larger sense of how the particular portfolio is performing.

### **Portfolio**

Refers to the complete list of securities held in an investment vehicle.

### **Small Cap**

Small Capitalization – refers to those companies with a market capitalization between \$500 million and \$1.99 billion.

### **Standard Deviation**

Measures the range of returns and is based on a Normal Curve. Managers with lower standard deviations than the index have historically had returns that tended to fall closer to their mean return compared to the index. Managers with higher standard deviations than the index have historically had returns that tended to be further dispersed around the mean than the index. This is another measure of volatility, but it doesn't distinguish downside performance from upside performance.

### **Value Style Investing**

Value investors rely on an examination of the underlying or unrealized value of a company as the primary criterion for deciding whether or not to buy a company's stock. Value stocks are often priced lower than growth stocks due to slower growth expectations, recent financial difficulty, or a host of other reasons.

On behalf of the State of Nevada Deferred Compensation Program, this Investment Policy Statement is adopted by the Committee and effective on this date:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Robert R. Boehmer  
Executive Officer

Date: \_\_\_\_\_

July 9, 2021



**Nevada Public Employees  
Deferred Compensation Program**

**Plan Document**

**(Attachment A)**

Amended and Effective January 2021

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## **Purpose**

The purpose of this Plan is to provide a supplemental retirement plan with quality, cost-effective investment options and excellent customer service. A Participant's Account value will depend upon the investment results achieved by the Investment Options in which the Participant chooses to invest. Each Participant shall be 100% vested at all times in his or her Plan Account in accordance with the terms of the Plan.

In accordance with Section 457 of the Code, all amounts of Compensation deferred or contributed 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 Agreements 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 Effective 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 Deferral Account, Roth 457(b) 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.

**"Age 50 Plus Catch-Up Contribution"** means the catch-up contribution for Participants who attain age 50 by the end of the calendar year, as permitted under Code Section 414(v) and pursuant to Section 3.2(d).

**"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 Qualified Domestic Relations Order.

**"Amounts Deferred or Contributed"** means the aggregate of Compensation deferred or contributed by a Participant pursuant to Article III, including Before-Tax Deferrals and Roth 457(b) Contributions.

**"Before-Tax Deferral Account"** means the Elective Deferral Account (s) 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.

**"Before-Tax Deferrals"** means that part of a Participant's Compensation which is deferred into the Plan and is not includable in the Participant's taxable income which, in the absence of a Participant's election to defer such Compensation under Article III, would have been paid to the Participant and would have been includable in the Participant's taxable income.

**"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 IX to receive the amount, if any, payable under the Plan upon the death of such Participant or Surviving Spouse.

**"Beneficiary Account"** means the Account established for a Beneficiary in accordance with Section 6.2.

**"Business Day"** means, subject to 4.4(b), any day (measured in accordance with State time) on which the New York Stock Exchange is open for the trading of securities.

**"CARES ACT Qualified Individual"** is defined as:

(I) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention; or

(II) whose spouse or dependent (as defined in section 152 of the Internal Revenue Code of 1986) is diagnosed with such virus or disease by such a test; or

(III) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of childcare due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary's delegate).

**"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.

**"Coronavirus-Related Distribution"** Except as provided in paragraph (2) of Section 2202 the CARES Act, the term Coronavirus-Related Distribution or "CRD" means any distribution from an eligible retirement plan made—

- (i) on or after January 1, 2020, and before December 31, 2020,
- (ii) to a "CARES Act Qualified Individual"

(I) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention,  
(II) whose spouse or dependent (as defined in section 152 of the Internal Revenue Code of 1986) is diagnosed with such virus or disease by such a test, or  
(III) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of childcare due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary's delegate).

**"Deferrals"** means the amount of Compensation deferred by a Participant to the Plan, comprising of Elective Deferrals and, if elected by the Committee in the Plan and the Participant so elects on a Participation Agreement, Roth 457(b) Contributions.

**"Designated Roth Employer"** means an Employer that permits (in accordance with any applicable procedures as may be required by the Committee) Participants who are its Employees to make Roth 457(b) Contributions pursuant to Section 3.1(c).

**"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.

**"Elective Deferrals"** means amounts made by the Employer to the Plan on a voluntary pre-tax or after-tax basis pursuant to a Participation Agreement entered into by a Participant.

**"Eligible Adoptee"** means any individual (other than a child of the taxpayer's spouse) who has not attained age 18 or is physically or mentally incapable of self-support.

**"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; and (f) a Roth IRA. 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, and (c) any distribution due to a hardship of the Distributee, including, without limitation, an unforeseen emergency pursuant to Section 4.8.

**"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).

**"In-Plan Roth Conversion"** means a rollover contribution to the Plan that consists of a distribution from an Elective Deferral Account, a 457(b) Rollover Account or a non-457(b) Rollover Account under the Plan that the Participant rolls over to the Participant's In-Plan Roth

457(b) Rollover Account in the Plan, in accordance with Code Section 402A(c)(4) and in compliance with Section 8.4(d) of this Plan Document.

**"Investment Option"** means each of the investment options made available by the Committee through the Plan in accordance with Section 6.4.

**"NDC"** refers to the State of Nevada Public Employees' Deferred Compensation Plan.

**"Normal Retirement Age"** means, for purposes of Section 3.2(b) any age designated by the Participant (i) beginning no earlier than the earliest age at which a Participant has the right to retire under the Employer's pension plan, if any, and to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later age specified in such retirement plan or, in the case of a Participant who does not participate in such basic pension plan, any age that is on or after the earlier of age 65, and (ii) ending no later than age 72. The Normal Retirement Age is used for the Special Section 457 Catch-up Contribution election under Section 3.2 (b). The Employer is not permitted to have more than one Normal Retirement Age for each Participant under all plans under Code Section 457(b) that it (together with any other entity required to be aggregated with the Employer under Code Section 414(b), (c), (m) or (o)) sponsors.

**"Participant"** means an individual or Employee who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction 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 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) Roth 457(b) Account
- (c) Rollover Account

**"Participation Agreement"** means an agreement in writing or in such other form approved by the Executive Officer pursuant to which the Employee elects to reduce his or her Compensation paid and to have Amounts Deferred or Contributed into the Plan on his or her behalf in accordance with the terms of the Plan. The document may be labeled as the **"Payroll Contribution Form"**.

**"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 the Nevada Public Employees' Deferred Compensation Plan (NDC) and other participating jurisdictions, as the same may be amended from time to time.

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

**“Qualified Birth and Adoption”** means any distribution from an applicable eligible retirement plan to an individual if made during the 1- year period beginning on the date on which a child of the individual is born or on which the legal adoption by the individual of an “Eligible Adoptee” is finalized.

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

**“Qualified Roth Contribution Program”** means a qualified Roth contribution program as defined in Section 402A of the Code.

**“Recordkeeper”** means a contracted third-party administrator that the Plan may contract 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 Plan’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 72, 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 an 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.

**“Roth 457(b) Account”** means the Account(s) established under the Plan to record a Participant’s Roth 457(b) Contributions, and the income, gains, and losses credited thereto. A Beneficiary Account or Alternate Payee Account corresponding to the deceased or relevant Participant’s Roth 457(b) Contributions may also be referred to as a Roth 457(b) Account.

**“Roth 457(b) Contributions”** means amounts contributed pursuant to Section 3.1 by a Participant who is an Employee of a Designated Roth Employer, which amounts are:

- a) Designated irrevocably by the Participant at the time of the contribution election as Roth 457(b) Contributions that are being made from Compensation pursuant to Section 3.1(c); and



- b) Treated by the Designated Roth Employer as includible in the Participant's income at the time the Participant would have received that amount in Compensation.

**"Roth IRA"** has the meaning set forth in Section 408A of the Code. Roth IRA Rollover Contributions are not permitted in the Plan.

**"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.

**"Special Section 457 Catch-up Contributions"** means the catch-up contribution for a Participant in the three consecutive years prior to the year in which the Participant reaches Normal Retirement Age, as permitted under Code Section 457(b)(3) and pursuant to Section 3.2 (b).

**"State"** means 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 or Contributed, 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.

**"Unforeseeable Emergency Distribution"** An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the

Participant, the Participant's spouse, or the Participant's dependent (as defined in section 152(a)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, *e.g.*, as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in section 152(a) of the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 7.1, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

**"Valuation Date"** means each Business Day that the New York Stock Exchange is open unless otherwise provided in the Plan.

## **ARTICLE II - PARTICIPATION**

### **2.1 Enrollment**

- a) **Eligibility and Enrollment.** Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by an eligible and authorized Employer, and shall commence such participation in the Plan by filing a Participation Agreement, pursuant to Section 2.1(c), and any enrollment forms or other pertinent information concerning the Employee and his or her Beneficiary with the Administrative Staff, or directly with the Plan's Recordkeeper in a manner prescribed and adopted by the Committee or Executive Officer. In no event shall any deferral or contribution be accepted until the first administratively possible payroll period that is on or after the first day of the calendar month following the month in which such Participation Agreement is filed. Deferrals and contributions may be accepted for newly hired Employees for the first administratively possible pay period of the calendar month in which the individual first becomes an Employee if the Participation Agreement is filed in the month before the Employee's first day of service.
- b) **Information Provided by the Participant.** Each Employee enrolling in the Plan should provide to the Administrative Staff at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrative Staff to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code section 457(b) or that the Executive Officer determines is necessary or advisable for the administration of the Plan or to comply with applicable law.
- c) **Election Required for Participation.** An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as an Annual Deferral on his or her behalf) and filing it with the Administrative Staff. This participation election shall be made on the authorized Participation Agreement provided by the Executive Officer under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Committee may

establish a minimum deferral amount, and may change such minimums from time to time. The participation election shall also include designation of investment funds and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed.

- d) Contributions Made Promptly. Annual Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.
- e) Amendment of Annual Deferrals Election. Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her annual Deferrals, his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change in the amount of the annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Executive Officer on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrative Staff or Recordkeeper.
- f) Leave of Absence. Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, annual Deferrals under the Plan shall continue to the extent that Compensation continues.
- g) Disability. A disabled Participant may elect annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

## 2.2 Voluntary Participation.

Participation in the Plan by Employees shall be voluntary.

## 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 Participant Deferrals and Contribution Authorization.

- a) Initial Authorization. A Participant may elect to defer or contribute Compensation under the Plan by authorizing, on the authorized Participation Agreement provided by the Executive Officer regular payroll deductions or contributions that do not individually or in the aggregate exceed the limitations in Section 3.2 and pursuant to the parameters listed in Section 2.1(a).
- b) Modifications. A Participant may increase or decrease the rate of deferral or contribution of his or her Compensation, and may make separate elections with respect to the increase and decrease of the rate of his or her Before-Tax Deferrals and Roth 457(b) Contributions, within the limitations set forth in Section 3.2, by filing a new or modified Participation Agreement, or such other form authorized by the Executive Officer with the Administrative Staff which shall be reflective in the first pay period following the month in which the request was executed thereafter.
- c) Roth 457(b) Contribution. Effective January 1, 2012 and thereafter, a Participant who is an Employee of a Designated Roth Employer shall be permitted to make Roth 457(b) Contributions from his or her Compensation by designating an amount of his or her initial authorization or modification authorization described in Sections 3.1(a) and 3.1(b) as Roth 457(b) Contributions, which designation shall be reflective the first pay period following the month in which the request was executed thereafter.
- d) Discontinuance or Suspension. A Participant may discontinue or temporarily suspend his or her Deferrals or contributions, and may make separate elections with respect to discontinuance or suspension of his or her Before-Tax Deferrals and Roth 457(b) Contributions, by giving notice thereof to their respective authorized payroll center, , NDC Administrative Staff, or Recordkeeper. The deferral or contribution shall be discontinued or suspended to reflect the first administratively possible payroll period that is on or after the first day of the calendar month following the month in which such Participation Agreement is filed..

e) **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.

### 3.2 General Deferral and Contribution Limitations and Catch-Up Limitations.

- a) In General. The aggregate amount of Before-Tax Deferrals and Roth 457(b) Contributions that may be deferred or contributed by a Participant for any Plan Year shall not exceed the lesser of:
  - i. An amount as may be permitted pursuant to Section 457(e)(15) of the Code, and
  - ii. 100% of Participant's Includible Compensation for the Plan Year

Provided, however, the maximum amount that a Participant may defer or contribute for any Plan Year may be calculated after accounting for mandatory and permissive payroll deductions, as reasonably determined by the Employer.

- b) 457 Special Catch-Up Contributions. In any one or more of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age, the Participant may elect to make Deferrals in an amount not exceeding the lesser of (1) twice the dollar amount permitted as a general deferral under Section 3.1 or (2) the sum of the maximum deferral permitted under Section 3.1 for the current tax year and as much of the applicable deferral limit under Code Section 457(b)(2) in prior years before the current tax year that had not previously been used ("underutilized amount"). For purposes of this Section, a prior year will be taken into account only if such year began after December 31, 1978, and the Participant was eligible to participate in the Plan during all or a portion of the prior year. A Participant may only make this election under this subsection once with respect to any plan under Code Section 457(b) of the Employer.
- c) In determining a Participant's underutilized amount, the Plan will take into consideration:
  - (1) Prior to 2002, if a Participant made Deferrals to the Plan and deferrals to any other plan under Code Section 457(b), salary reduction contributions made to plans under Code Section 401(k), plans under Code Section 403(b), simplified employee pension (SARSEP) plans under Code Section 402(h)(1), simple retirement accounts under Code Section 408(p), and amounts deferred under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), such deferrals to the other plans will be taken into account in determining a Participant's underutilized amount under Code Section 457(b)(2). In addition, Includible Compensation will be limited to the limitation in effect in the calendar year in which the deferrals were made. If such deferrals cumulatively exceed the then-applicable dollar amount in Code Section 457(b)(2) in the year that such amounts were deferred, then there will be no underutilized amount for that year.
  - (2) To the extent that the Employer did not maintain a plan under Code Section 457(b), no underutilized limitation is available to a Participant for that prior year.

(3) After 2001, only deferrals to plans under Code Section 457(b) will be taken into account for purposes of determining the underutilized amount.

(4) Age 50 Plus Catch-Up Contributions will not be taken into account for purposes of determining a Participant's underutilized amount.

- d) Age 50 Catch-Up. All Participants who have attained age 50 before the close of a Plan Year and who are not permitted to defer or contribute additional Compensation pursuant to Section 3.2(b) for such Plan Year, due to the application limitation imposed by the Code or the Plan, shall be eligible to make additional catch-up contributions in the form of Before-Tax Deferrals or Roth 457(b) Contributions or a combination thereof in accordance with, and subject to, the limitations of Section 3.2(c) of the Plan and Section 414(v) of the Code. Age 50 catch-up contributions pursuant to Section 3.2(c) shall not exceed the lesser of:
- i. The excess of the 100% of Participant's Includible Compensation for the Plan Year, over the sum of any other Amounts Deferred or Contributed by the Participant for such Plan Year; and
  - ii. An amount as may be permitted by Section 414(v) (2) (B) of the Code.
- e) Dual Eligibility. Notwithstanding anything in Section 3.2(b) and (c) to the contrary, if a Participant who is eligible to make additional catch-up contribution under 3.2(c) for a Plan Year in which the Participant has elected to make a catch-up contribution under Section 3.2(b), such Participant is entitled to the greater of:
- i. The 457 catch-up contribution amount under Section 3.2(b); and
  - ii. The age 50 catch-up contribution under Section 3.2(c).
- f) Excess Contributions and Deferrals. In the event that any Amounts Deferred or Contributed under the Plan for any Plan Year exceed the limitations provided for in Section 3.2, any such excess Deferrals or contributions shall be distributed to the Participant with allocable net income, in the following order (unless otherwise directed by the Participant): first, from Before-Tax Deferrals and second, from Roth 457(b) Contributions, as determined in accordance with methods and procedures established by the Recordkeeper, as soon as practicable after the Recordkeeper, payroll center or Administrative Staff determines that the amount was an excess deferral or contribution. Distributions under Section 3.2(e) will be reportable as taxable income to the extent required by applicable law.

### 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 OR CONTRIBUTED AND ROLLOVER CONTRIBUTIONS**

### 4.1 Remittance of Deferrals and Contributions

All Amounts Deferred or Contributed 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, by filing a direction with the Recordkeeper in writing or in such other manner as the Executive Officer may authorize, specify the percentages (in multiples of one percent) of his or her Amounts Deferred or Contributed that shall be allocated to each Investment Option made available by the Committee. A Participant's investment allocation elections shall be applied in the same manner to both Before-Tax Deferrals and Roth 457(b) Contributions. All such Deferrals and contributions shall be invested by the Recordkeeper in the Investment Options in accordance with such direction(s) as soon as administratively practicable.

### 4.3 Continuation of Deferral and Contribution Allocation.

Any deferral and contribution allocation direction given by a Participant shall be deemed to be a continuing direction until changed by the Participant. A Participant may change his or her deferral or contribution allocation direction with respect to future Amounts Deferred or Contributed, by completing and submitting a newly executed Participation Agreement or in such other manner as the Executive Officer may authorize to the Recordkeeper or Administrative Staff. Any change to a Participant's deferral and contribution allocation direction shall be applied in the same manner to both Before-Tax Deferrals and Roth 457(b) Contributions. All such future Deferrals and contributions shall be invested by the Recordkeeper in the Investment Options in accordance with such changed direction.

#### 4.4 Transfer of Assets among Investment Options.

- a) Transfer of Assets. As of any Valuation Date, a Participant may direct the Recordkeeper, by giving notice in writing or in such other manner as the Executive Officer may authorize, to liquidate his or her interest in any of the Investment Options and transfer the proceeds thereof to one or more other Investment Options in proportions directed by such Participant. Participants may make separate transfer directions for their Before-Tax Deferrals (and Accounts relating to Rollover Contributions involving Before-Tax Deferrals) and their Roth 457(b) Accounts (and Accounts relating to Rollover Contributions involving Roth Contributions). Such direction must be made in accordance with the requirements and procedures established by the Committee and in effect at the time and in multiple of one percent or one dollar increments of the Participant's interest in the applicable Investment Option.
- b) Committee's Right to Reduce or Deny Transfer Request. If the Recordkeeper, or the Committee otherwise determines, that it is not reasonably able to prudently liquidate the necessary amount and transfer it from one Investment Option to another, the amount to be transferred with respect to each Participant who duly requested such a transfer may be reduced in proportion to the ratio which the aggregate amount that the Recordkeeper has advised the Committee may not prudently be transferred bears to the aggregate amount that all Participants have duly requested be so transferred. Regardless of any Participant's investment direction, no transfer between Investment Options may be made in violation of any restriction imposed by the terms of the agreement between the Committee or Recordkeeper providing any Investment Option or of any applicable law.

#### 4.5 Administrative Actions with Regard to Investment Directions.

The Recordkeeper shall have the right to decline to implement any investment direction upon its determination that: (i) the person giving the direction is legally incompetent to do so; (ii) implementation of the investment direction would be contrary to the Plan or applicable law or governmental ruling or regulation; (iii) implementation of the investment direction would be contrary to a court order, including a Qualified Domestic Relations Order; (iv) implementation of the investment direction would be contrary to the rules, regulations or prospectuses of the Investment Options.

#### 4.6 Participant Responsibility for Deferrals, Contributions and Investment Allocations.

Each Participant is responsible for the allocation of his or her Amounts Deferred or Contributed, and each Participant is solely responsible for the investment allocation of his or her Account, in each case, in and among the Investment Options. Each Participant shall assume all risk in connection with the allocation of amounts in and among the Investment Options and for any losses incurred or deemed to be incurred as a result of the Participant's allocation or failure to allocate any amount the Participant's allocation or failure to allocate any amount to an Investment Option or any decrease in the value of any Investment Option. The Committee, Executive Officer, Administrative Staff and Recordkeeper are not empowered or authorized to advise a Participant as to the manner in which the Participant's Account shall be allocated among the Investment Options. The fact that a particular Investment Option is available to Participants for investment under the Plan shall not be construed by any Participant as a recommendation for investment in such Investment Option. If the Committee has elected to make available investment guidance services or investment advice services to Participant such services shall be utilized only at the voluntary election of the Participant, and shall not limit the

Participant's responsibility under Section 4.6 for the allocation of his or her Accounts in and among the Investment Options.

#### 4.7 Investment Allocation of Alternate Payee Accounts.

Notwithstanding any other provision of the Plan, during any period when an Alternate Payee Account is created and segregated on behalf of an Alternate Payee pursuant to a Qualified Domestic Relations Order from the Accounts of the related Participant, the Alternate Payee shall be entitled to direct the allocation of investments of such Alternate Payee Account in accordance with Sections 4.2 and 4.4, as applicable, and shall be subject to the provisions of Sections 4.5 and 4.6, but only to the extent provided in such order. In the event that an Alternate Payee fails to specify an investment direction on the date of creation of the Alternate Payee Account pursuant to Section 4.9, such Alternate Payee's Alternate Payee Account shall be invested in the same manner as the relevant Participant's corresponding Before-Tax Deferral Account, Roth 457(b) Account and Rollover Accounts on such date and, except as otherwise provided by the Qualified Domestic Relations Order, shall remain invested in accordance with such initial allocation until the Alternate Payee directs otherwise or until such time as the Alternate Payee ceases to have an Alternate Payee Account under the Plan by reason of distribution or otherwise.

#### 4.8 Investment Allocation of Beneficiary Accounts.

Notwithstanding any other provision of the Plan, during any period following the death of a Participant and prior to distribution of the entire Account(s) of such Participant, such Participant's Beneficiary shall be entitled to direct the allocation of investments of such Account(s) in accordance with Section 4.4, or, as applicable, his or her proportional interest in such Account(s), in accordance with Section 4.4 and shall be subject to the provisions of Sections 4.5 and 4.6. In the event that a Beneficiary fails to specify an investment direction on the date of creation of the Beneficiary Account pursuant to Section 4.4, such Beneficiary's Beneficiary Account shall be invested in the same manner as the relevant Participant's corresponding Before-Tax Deferral Account, Roth 457(b) Account and Rollover Accounts on such date.

#### 4.9 Initial and Ongoing Investment Allocation with Respect to Rollover Contributions and Section 457 Transfers.

Unless otherwise directed by the Participant, the same deferral and contribution allocation direction applicable to a Participant pursuant to Sections 4.2 or 4.3, as applicable shall apply to all Section 457 Transfers and Rollover Contributions. Notwithstanding the foregoing, in accordance with procedures established by the Recordkeeper, a Participant may make an alternative initial allocation election in accordance with the procedures set forth in Section 4.4 for any applicable Section 457 Transfer or Rollover Contribution. Thereafter, such Participant may direct the Recordkeeper to liquidate his or her interest in any of the Investment Options and transfer the proceeds thereof to one or more other Investment Options in accordance with Section 4.4 (in each case subject to the limitations set forth in Sections 4.5 and 4.6). All Rollover Contributions shall be invested by the Recordkeeper in the Investment Options in accordance with such directions as soon as administratively practicable.

#### 4.10 Fund Mapping or Similar Activity.

Notwithstanding anything in Article IV to the contrary, if the Committee eliminates one or more of the Investment Options 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.

#### 4.11 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.

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

#### 5.1 Transfers from another Governmental 457 Plan.

Compensation previously deferred or contributed by (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 Before-Tax Deferral Account or Roth 457(b) Account (or a combination thereof) and shall be invested in accordance with Section 4.9.

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

- a) Rollover Contributions in General: Amounts previously deferred or contributed by (or contributed on behalf of) a Participant, a Beneficiary or a spousal Alternate Payee under another Eligible Retirement Plan (other than a Roth IRA) 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 the Recordkeeper; *provided*, that Rollover Contributions of amounts from a Qualified Roth Contribution Program must be directly rolled over to the Plan. Notwithstanding the foregoing, other than Rollover Contributions from a Qualified Roth Contribution Program as described in the preceding sentence, 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 Section 4.9. 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. Any Rollover Contributions of amounts from a Qualified Roth Contribution Program shall be segregated and held in a separately designated and maintained Rollover Account from those amounts not from a Qualified Roth Contribution Program. 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 from a Qualified Roth Contribution Program and any such amounts not from a Qualified Roth Contribution Program shall be segregated and held in separately designated and maintained 457(b) Rollover Accounts.

#### 5.3 Rollover of Assets to Purchase Retirement Service Credit.

With respect to trustee-to-trustee transfers, a Participant or Beneficiary may elect, in accordance with procedures established by the Committee, to have all or any portion of the value of his or her Account transferred to the trustee of a defined benefit governmental plan as described in Section 414(d) of the Code; *provided, however*, that such transfer is for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan or a repayment of contributions and earnings with respect to a forfeiture of service under such plan.

### **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, a Roth 457(b) Account (to the extent applicable) and, as necessary, one or more Rollover Accounts (including a segregated Rollover Account relating to contributions from a Qualified Roth Contribution Program) 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 each Investment Option (both in the aggregate and by Account) and other relevant data pertaining thereto. With respect to each Participant, all Amounts Deferred or Contributed, all Section 457 Transfers and all Rollover Contributions shall be credited to his or her Before-Tax Deferral Account, Roth 457(b) 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 each Investment Option and the amount of and explanation for each allocation to or deduction from his or her Accounts) at least quarterly, 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, Roth 457(b) 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 each 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, Roth 457(b) 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 each 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).

### 6.4 Investment Options and Investment Funds.

The Trust Fund shall be invested at the direction of Participants, in accordance with Article IV, in and among the Investment Options made available through the Plan from time to time by the Committee. Investment Options may include a brokerage account or similar investment window through which Participants may direct the investment of their Accounts into Mutual Funds (as defined below) or other available investment products that the Committee designates as available for investment through such window and any other investment alternative that the Committee may make available through the Plan. Investment Funds may consist of open-end investment companies registered under the Investment Company Act of 1940, as amended ("Mutual Funds"), separately managed accounts, unregistered commingled funds, group or commingled trusts, or any combination thereof as approved from time to time by the Committee for the investment of the assets of the Trust Fund.

## **ARTICLE VII - WITHDRAWALS FOR UNFORESEEN EMERGENCIES; WITHDRAWALS OF SMALL AMOUNTS**

### 7.1 Distribution for an Unforeseeable Emergency.

- 1) A Participant or Beneficiary may request an Unforeseeable Emergency Distribution subject to the following requirements:
  - a) The request for an Unforeseeable Emergency Distribution will be processed by the Recordkeeper under the direction of the Executive Officer based on the requirements of the Plan and Code on the Participant's or Beneficiary's relevant facts, circumstances and parameters listed in the Plan Document.
  - b) The request for an Unforeseeable Emergency may be made only to the extent that such emergency is or may not be relieved through:
    - i) reimbursement or compensation from insurance or otherwise;
    - ii) liquidation of the Participant's or Beneficiary's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
    - iii) cessation of the Participant's Deferrals to the Plan.
  - c) In accordance with Section 8.1(e), a Participant must take a distribution of his or her Rollover Account before the Participant may be eligible to request a distribution for an Unforeseeable Emergency.
  - d) Distributions due to an Unforeseeable Emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).
- 2) A Participant or Beneficiary may request an Unforeseeable Emergency withdrawal by submitting that request in writing on the Plan's approved form to the Administrative Staff or directly to the Recordkeeper, who will review and approve the request. If the request is denied, a request for review of the determination may be made in writing to Executive Officer. If the Executive Officer's review of the determination fails to confirm a claim of Unforeseeable Emergency, an appeal may be made to the Committee in writing. If at any time a request of an Unforeseeable Emergency withdrawal is approved, the Executive Officer may direct the Recordkeeper to distribute so much of the Participant Account as is necessary to provide the amount approved to meet the Unforeseeable Emergency, as determined by the Committee.
- 3) Unforeseeable Emergency withdrawals will be made in accordance with the procedures established by the Committee.



## 7.2 Distribution from a Small Inactive Account.

- 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 7.2.
- 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.

## 7.3 Loans to State of Nevada Employees

- a) Participants employed by the State of Nevada, Participants who have retired or separated service from the State of Nevada, or Alternate Payee(s) and/or Beneficiary(s) of a Participant who is currently or was previously employed by the State of Nevada may receive a loan from their 457(b) Elective Deferral Account. Any such loan may not be for an amount less than one-thousand dollars (\$1,000.00). Unless authorized and directed by the Committee, Participants, Beneficiary(s), or Alternate Payee(s) who are currently or were previously employed by the Nevada System of Higher Education or an authorized and participating Political Sub-Division are not authorized to receive loans from their 457(b) Elective Deferral Account.
- b) The Recordkeeper, in accordance with the Committee's direction and under the direction and oversight of the Executive Officer, may make loans to Participants or Alternate Payee(s) and/or Beneficiary(s) of a Participant who is currently or was previously employed by the State of Nevada under the following circumstances: (1) loans will be made available to all State of Nevada Participants on a reasonably equivalent basis; (2) loans will bear a reasonable rate of interest, i.e., prime plus one percent; (3) loans will be adequately secured; and (4) will provide for periodic repayment over a reasonable period of time not to exceed 57 months for general purpose loans and up to ten years (120 months) for qualified residential loans.
- c) Pursuant to IRC Section 72(p), no loan made pursuant to this Section will exceed the lesser of:
  - a) One-half (1/2) of the value of the State Participant's Account balance; or
  - b) Fifty thousand dollars (\$50,000).
- d) The terms of the loan shall:
  - a) Require level amortization with payments to be made not less frequently than monthly; except for
    - a. A borrower who is on a leave of absence for the performance of uniformed service within the meaning of Section 414(u) of the Internal Revenue Code may elect to suspend payment for the period of uniformed service. If the borrower so elects, then upon the borrower's return from uniformed service, the loan repayment period shall be extended by a period equal to the length of the uniformed service.

- b) Require the loan to be repaid over a period not to exceed 57 months. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a principal residence of the State of Nevada Participant will, provide for periodic repayment over a reasonable period of up to ten (10) years (120 months).
- e) Security for loan; default
  - a) Any security interest held by the Plan by reason of an outstanding loan to the Participant will be taken into account in determining the amount of the death benefit or single lump-sum payment
  - b) Default. In the event that a Participant fails to make a loan payment by the last business day of the calendar month following the calendar month in which the payment is due, a default on the loan shall occur. In the event of such default:
    - a. All remaining payments on the loan shall be immediately due and payable;
    - b. The Participant shall not be allowed to initiate another loan from the Plan until the defaulted amount is repaid; and
    - c. A default may be considered a taxable event.
- f) Repayment
  - a) The Participant shall be required, as a condition to receiving a loan, to enter into an agreement authorizing the Recordkeeper, in accordance with the Committee's direction, to establish and make automatic monthly (ACH) deductions from the Participant's personal bank account only.
  - b) Notwithstanding paragraph 1, a Participant may prepay the entire outstanding balance of his/her loan at any time, in whole or in part, provided that a partial prepayment shall not change the payment schedule or the interest rate on the loan.
  - c) If any automatic monthly (ACH) deductions cannot be made in full because of insufficient funds or due to a closed, suspended, or restricted bank account, the Participant shall pay directly to the Plan's Recordkeeper the full amount that would have been deducted from the Participant's bank account, with such payment to be made by the last business day of the calendar month in which the amount would have been deducted. The Participant would be required to re-establish the automatic monthly (ACH) deductions from the Participant's personal bank account with the Plan's Recordkeeper prior to the next amortized scheduled draft date or be considered in default.
- g) Loan Fees
  - a) The Recordkeeper, in accordance with the Committee's direction, will charge and collect a one-time loan fee of one-hundred, twenty-five dollars (\$125.00) for each loan, of which a fee of twenty-five dollars (\$25.00) will be reimbursed back to the Plan by the Recordkeeper to cover any expense incurred by the Plan in operating the loan program. The loan Fee will be deducted from the Participant's Account balance.
- h) Loan Authorization
  - a) The Recordkeeper, in accordance with the Committee's direction, will authorize loans, based on the loan provisions in the IRC Section 72(p), corresponding regulations and terms of the loan program and NDC Plan Document.
- i) The Committee may establish such rules with respect to the loan program as the Committee deems advisable, including without limitation, rules regarding the number of

loans that may be outstanding for any Participant at any time. Maximum number of loans that may be outstanding at any time, regardless of type, is one (1).

- j) Loans are not available from an Employee's Roth Elective Deferral Account, but these Roth 457(b) Accounts may be taken into account in determining the maximum loan that a Participant may obtain under the provisions of this Section.
- k) Coronavirus Related Loan- From March 27, 2020 through September 23, 2020, participant may apply for and receive a second general purpose loan from the balance of his or her account up to a maximum \$100,000 or the present value of the nonforfeitable accrued benefit of the employee under the Plan, whichever is less, pursuant and in accordance with the provisions outlined in Section 2202 of the Coronavirus Aid, Relief and Economic Security Act (CARES Act), provided that the second general purpose loan must satisfy all the requirements and limits applicable under this Section. This provision is applicable to State of Nevada Employees ONLY.
  - a) Pursuant to subsection 7.3(k) above and Section 2202 of the CARES Act, Loan repayment relief is adopted and afforded to Qualified Individuals who take (or have previously taken) Plan Participant loans throughout the remainder of 2020 as well as in accordance of any procedures required by the Plan Administrative Staff and contracted Recordkeeper.

#### 7.4 Coronavirus-Related Distribution (CRD)

- a) Effective January 1, 2020 to December 30, 2020, a Participant who meets the criteria of a "Qualified Individual", as such term is defined in Section 2202 of the CARES Act and any amendments thereto, including any later-issued guidance from the IRS, may take up to \$100,000 as a CRD from the Participant's Account prior to Termination of Employment. The Plan Administrative Staff and contracted Recordkeeper may rely on the Participant's certification the Participant meets the eligibility requirements of a qualified individual. Any CRD paid pursuant to this section will be made in accordance with all applicable IRS guidance as it exists at the time of payment from, and any repayment to the Plan.

#### 7.5 Withdrawal for "Qualified Birth of Child or Adoption".

- a) Effective January 1, 2021, a participant may take up to \$5,000 as a Qualified Birth or Adoption distribution, as defined by Code Section 72(t)(2)(H)(iii)(I), from the Participant's Account Prior to Termination of Employment. Such distribution must satisfy all requirements of Code Section 72(t)(2)(H) and applicable guidance from IRS, as well as any procedures required by the Plan Administrative Staff and contracted Recordkeeper. A Participant who takes a distribution under this Section 7.4 may repay the distribution to the participant's account in accordance with Code Section 72(t)(2)(H)(iv)(I) and procedures established by the Plan Administrative Staff and contracted Recordkeeper.

## **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

72; 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(e).
- 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 redetermined in accordance with methods and procedures established by the Recordkeeper.
  - iv. A Participant who is an eligible retired public safety officer, as defined in Section 402(l) of the Code, may elect, at the time and in the manner prescribed by the Recordkeeper, to have up to \$3,000 per year (or such greater amount as may be permitted under applicable guidance issued by the Internal Revenue Service) of amounts from his or her Before-Tax Deferral Account distributable under the Plan used to pay qualified health insurance premiums for an accident or health plan or long-term care insurance contract covering the Participant and his or her spouse and dependents. Such amounts are excludible from the Participant's gross income to the extent the qualified health insurance premiums are paid directly to the provider of the accident or health plan or long-term care insurance contract (determined in

accordance with Section 402(l) of the Code) by deduction from a distribution to the Plan.

- v. For each distribution election under Section 8.1(c), a Participant shall designate the percentage of each distribution that will come from his or her Before-Tax Deferral Account and the percentage that will come from his or her Roth 457(b) Account. For the avoidance of doubt, for purposes of the limitations and restrictions described in this Section 8.1(c), each distribution election made by a Participant and each payment made in accordance thereto shall be deemed to be one election and one payment, even if payment is made both from the Participant's Before-Tax Deferral Account and from his or her Roth 457(b) Account.

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(d) and (e).

- 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 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 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.
- b) Beneficiary Rollover Distributions. Upon a Participant's death, a Beneficiary may elect, at the time and in the manner prescribed 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).
- c) Roth IRA Rollover Distribution. In connection with a Participant's Severance from Employment or upon a Participant's death, as the case may be, a Participant or a Beneficiary 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 rolled over to a Roth individual retirement arrangement (as defined in Section 7701(a)(37) of the Code, and designated as a Roth arrangement at the time of its establishment). Such amounts will be included in gross income as if the distribution had been made to such Participant or Beneficiary.

- d) In-Plan ROTH Conversion. A Participant, the surviving Spouse of a deceased Participant, or a Participant's spouse or former spouse who is designated as an Alternate Payee under a Qualified Domestic Relations Order, may elect an In-Plan Roth Conversion in accordance with this section 8.4(d).
- a. An In-Plan Roth Conversion is a transfer of amounts held in a Participant's account under the Plan that is not a designated Roth Account to a designated Roth Account established on the Participant's behalf. An In-Plan Roth Conversion shall comply with the provisions of Code 402A(c)(4) and the regulations and guidance issued under that Code section.
  - b. An In-Plan Roth Conversion shall be one of two types:
    - i. A "Distributable Amount Conversion," which is a qualified transfer of an amount otherwise distributable under the Plan, as described in Code 402(c)(4); or
    - ii. A "Non-distributable Amount Conversion," which is a qualified transfer of an amount not otherwise distributable under the Plan, as described in Code 402A(c)(4)(E).
  - c. A Distributable Amount Conversion may be accomplished by either a direct transfer within the Plan, or by a distributee's rollover contribution made within the 60 days after receipt of an eligible distribution. A Non-distributable Amount Conversion cannot be made in the form of a 60-day rollover.
  - d. Amounts for any of the Participant's Accounts under the Plan (other than as a current Roth Account), including from an Employer Contribution Account, if applicable, may be transferred to a designated Roth account under the Plan as an In-Plan Roth Conversion.
  - e. A Distributable Amount Conversion is subject to the rollover notice requirements of Code 402(f). A Non-distributable Roth Conversion is not subject to such notice Requirements.
  - f. A designated Roth Account to which a Non-distributable Amount Conversion is transferred will remain subject to the restrictions on distributions that apply to the amounts transferred. Consequently, distributions from such designated Roth Accounts generally cannot be made prior to the Participant's termination of employment or attainment of age 72.
  - g. The Value of either a Distributable Amount Conversion or a Non-distributable Amount Conversion from an In-Plan Roth Conversion is included in the Participant's or other electing individual's gross income for the year of the conversion.

#### 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 1.401(a)(9)-2 through 1.401(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, such distributions shall be charged first against the Before-Tax Deferral Account, second against the Roth 457(b) Account, third against the Rollover Account or Rollover Accounts not relating to Rollover Contributions of amounts from a Qualified Roth Contribution Program, and fourth against the Rollover Account or Rollover Accounts relating to Rollover Contributions of amounts from a Qualified Roth Contribution Program
- b) 2009 Waiver. Notwithstanding anything to the contrary in Section 8.7, a 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)(1) or (2) as follows:
    - 1. 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
    - 2. 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 72; 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.
  - 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 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 Article IX, a Beneficiary designation shall be deemed to be received in good order only if the Recordkeeper can reasonably 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 then 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 Article 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, general authority necessary or advisable to operate and administer the Plan

The Committee shall have the power and the 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;
- 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 for purposes of Plan administration.

### 11.3 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.

#### 11.4 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.

#### 11.5 Investment Options.

The Committee shall have the power to add or remove one or more 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.

#### 11.6 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.

#### 11.7 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.

#### 11.8 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, or request

for an Unforeseeable Emergency Withdrawal must be filed in writing with the Recordkeeper. Notice of denial of any claim in whole or 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 days of receipt of such denial for review of the decision by the Executive Officer. Within 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 person(s) 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 Executive Officer and shall include specific details, facts, reasons for dispute, and written proof of wrong doing or damages (if applicable). The Executive Officer 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 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.

#### 11.9 Advisers.

The Committee shall arrange for the engagement and/or the contracting of certified public accountants and other consultants, including an investment consultant and/or investment adviser, for the purposes of the Plan. The Committee and Executive Officer may rely upon the written opinions of the State Attorney General and of, contracted accountants and consultants, and upon any information supplied by the Trustee or Recordkeeper appointed in accordance with the Regulations.

#### 11.10 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.

#### 11.11 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.

#### 11.12 Defense of Claims.

In the event of a claim or legal action, the Committee and NDC 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.

Effective Date of Adoption. Upon a Participating Employer's adoption of the Plan, such Participating Employer shall file with the 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, specifying a termination date which shall be no early 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 Participating 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 and contributions 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 or contributions 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, legally designated estate 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 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, 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 by email or other form of delivery approved by the Committee including 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 Trust Sole Source of Accounts.

The Trust Fund shall be the sole source of benefits under the Plan and, except as otherwise required by applicable law, neither the Committee, Administrative Staff, the Employer nor any officer or Employee of an Employer assume any liability or responsibility for payment of such benefits, and each Participant, his or her spouse or Beneficiary, or other person who shall client the right to any payment under the Plan shall be entitled to look only to the Trust Fund for such payment and shall not have any right, claim, or demand therefore against the Committee or any member thereof, Administrative Staff, the Employer or officer or Employee of an Employer. Nothing in Section 14.7 shall relieve an Employer of its obligation to defer or contribute Amounts Deferred or Contributed to the Trust Fund within two Business Days after the applicable payroll date, in the manner contemplated by Section 4.1.

#### 14.7 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.

14.8 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.

14.9 Interpretation.

(i) The term "including" means by way of example and not by way of limitation, and (ii) 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.

14.10 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.



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

## **FICA Alternative Plan Document**

**(Attachment A)**

**Effective and amended January 2021**

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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, Nevada System of Higher Education (NSHE), or any other Committee authorized and participating political subdivision in the State of Nevada to participate in the Nevada FICA Alternative Deferred Compensation Plan, if hired on or after January 1, 2004 (State Government), July 1, 2005 (NSHE), or after date of Committee approval and adoption of any participating political subdivision within the State of Nevada. 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 purchased 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 Adoptee"** means any individual (other than a child of the taxpayer's spouse) who has not attained age 18 or is physically or mentally incapable of self-support.

**"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.

**"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 Birth and Adoption”** means any distribution from an applicable eligible retirement plan to an individual if made during the 1- year period beginning on the date on which a child of the individual is born or on which the legal adoption by the individual of an “Eligible Adoptee” is finalized.

**“Qualified Domestic Relations Order” (QDRO)** means an 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 Office, 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 72, 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

72; (iii) the Participant's absence from employment for qualifying military service as described in the HEART Act; or (iv) for a Qualified Birth or Adoption pursuant to Code Section 72(t)(2)(H)(iii)(I). Effective January 1, 2021, a participant may take up to \$5,000 as a Qualified Birth or Adoption distribution from the Participant's Account Prior to Termination of Employment. Such distribution must satisfy all requirements of Code Section 72(t)(2)(H) and applicable guidance from IRS, as well as any procedures required by the Plan Administrative Staff and contracted Recordkeeper. A Participant who takes a distribution under this Section 8.1(iv) may repay the distribution to the participant's account in accordance with Code Section 72(t)(2)(H)(iv)(I) and procedures established by the Plan Administrative Staff and contracted Recordkeeper. . 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 he 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.
- d) 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.

- e) 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.
- f) 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 1.401(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 72; 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 reasonably 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 Option(s). The Committee shall periodically review the performance and methods of such Investment Option(s). 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 11.8(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 11.9.
- 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 11.9(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 wrongdoing 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.

## **DEFERRED COMPENSATION FOR STATE EMPLOYEES**

**NRS 287.250 Definitions.** As used in [NRS 287.250](#) to [287.370](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 287.260](#) to [287.310](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by [1977, 893](#); A [1995, 1868](#); [1999, 33](#); [2017, 1601](#))

**NRS 287.260 “Committee” defined.** “Committee” means the Committee to Administer the Public Employees’ Deferred Compensation Program.

(Added to NRS by [1977, 894](#); A [2017, 1601](#))

**NRS 287.270 “Deferred compensation” defined.** “Deferred compensation” means income which a state employee or employee of the Nevada System of Higher Education may legally set aside under the Program, which may consist of one or more plans authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 457 or 3121, including, without limitation, a FICA alternative plan, or any other plan authorized by any federal law to reduce taxable compensation or other forms of compensation, and which income, while invested under the Program, is exempt from federal income taxes on the employee’s contributions and interest, dividends and capital gains.

(Added to NRS by [1977, 894](#); A [1979, 797](#); [1985, 1122](#); [1987, 1823](#); [1993, 386](#); [2001, 1004](#); [2003, 1408](#))

**NRS 287.275 “Executive Officer” defined.** “Executive Officer” means the Executive Officer of the Public Employees’ Deferred Compensation Program appointed by the Director of the Department of Administration pursuant to [NRS 232.215](#).

(Added to NRS by [2017, 1597](#))

**NRS 287.300 “Investment” defined.** “Investment” means a savings account, certificate of deposit, fixed or variable annuity contract, life insurance contract, mutual fund or other investment which the Committee has approved for the Program.

(Added to NRS by [1977, 894](#))

**NRS 287.310 “Program” defined.** “Program” means the Public Employees’ Deferred Compensation Program authorized by [NRS 287.250](#) to [287.370](#), inclusive.

(Added to NRS by [1977, 894](#); A [2017, 1601](#))

**NRS 287.320 Employer may agree with employee to defer compensation; investment of withheld money; deferred compensation and related property, rights and income held in trust.**

1. The State may agree with any of its employees, and the Board of Regents of the University of Nevada may agree with any of its employees, to defer the compensation due to them in accordance with a program approved by the Committee which may consist of one or more plans authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 457 or 3121, including, without limitation, a FICA alternative plan, or any other plan authorized by any federal law to reduce taxable compensation or other forms of compensation. The Board of Regents may agree with any of its employees to defer the compensation due to them as authorized by 26 U.S.C. § 403(b) without submitting the program to the Committee for its approval. An employee may defer compensation under one or more plans in the Program.

2. The employer shall withhold the amount of compensation which an employee has, by such an agreement, directed the employer to defer.

3. The employer may invest the withheld money in any investment approved by the Committee or, in the case of deferred compensation under 26 U.S.C. § 403(b) for employees of the Nevada System of Higher Education by the Board of Regents of the University of Nevada.

4. The investments must be underwritten and offered in compliance with all applicable federal and state laws and regulations, and may be offered only by persons who are authorized and licensed under all applicable state and federal regulations.

5. All amounts of compensation deferred pursuant to the Program, all property and all rights purchased with those amounts and all income attributable to those amounts, property or rights must, in accordance with 26 U.S.C. § 401(a), 401(k), 403(b), 457(g) or 3121, including, without limitation, a FICA alternative plan, or any other federal law authorizing a plan to reduce taxable compensation or other forms of compensation, as applicable, be held in trust for the exclusive benefit of the participants in the Program and their beneficiaries.



(Added to NRS by [1977, 894](#); A [1979, 797](#); [1985, 1122](#); [1987, 1823](#); [1993, 386](#); [1999, 32](#); [2001, 1004](#); [2003, 1408](#); [2017, 1601](#))

**NRS 287.325 Committee to Administer Public Employees' Deferred Compensation Program: Appointment, terms and compensation of members; vacancies.**

1. The Governor shall appoint the Committee to Administer the Public Employees' Deferred Compensation Program. The Committee must consist of:

(a) Two members who are employed by state agencies whose payrolls are administered by the Division of Human Resource Management of the Department of Administration; or

(b) One member who is employed by:

(1) A state agency whose payroll is administered by the Division of Human Resource Management of the Department of Administration; or

(2) A political subdivision that participates in the Program;

(c) One member who is employed by a state agency whose payroll is administered by an entity other than the Division of Human Resource Management of the Department of Administration; and

(d) One member who has retired from employment by the State of Nevada or the Nevada System of Higher Education.

↪ Each member of the Committee must be a participant in the Program, have participated in the Program for not less than 2 years and have been nominated for membership by five or more persons who have each participated in the Program for not less than 6 months.

2. After their initial terms, members of the Committee serve terms of 4 years or until their successors have been appointed and have qualified.

3. A vacancy on the Committee occurs when a member dies, resigns or becomes ineligible for membership on the Committee. A person becomes ineligible for membership on the Committee when:

(a) The person ceases to be a participant in the Program; or

(b) Except as otherwise provided in this paragraph, the person ceases to have the qualifications for membership required by the paragraph of subsection 1 under which the person was appointed. A member of the Committee who ceases to have those qualifications may serve the remainder of the member's term if that period does not exceed 24 months.

4. The member appointed pursuant to paragraph (d) of subsection 1 must be compensated \$80 per day from money appropriated from the Program pursuant to [NRS 287.365](#) for attending a meeting of the Committee and for acting at the direction of or on behalf of the Committee.

5. For the purposes of this section, "participant in the Program" means a person who is:

(a) Deferring compensation pursuant to the Program;

(b) Maintaining deferred compensation in the Program; or

(c) Receiving payments of deferred compensation pursuant to the Program.

(Added to NRS by [1995, 1867](#); A [1997, 25](#); [2017, 1601](#))

**NRS 287.330 Committee to Administer Public Employees' Deferred Compensation Program: Duties; powers; exemption from liability for certain decisions relating to investments; delegation of administrative duties; standards for exercising delegated duties.**

1. The Committee shall:

(a) At its first meeting each year, designate one of its members to serve as Chair of the Committee for a term of 1 year or until the Chair's successor has been designated.

(b) Act in such a manner as to promote the collective best interests of the participants in the Program.

2. The Committee may:

(a) Create an appropriate account for administration of money and other assets resulting from compensation deferred pursuant to the Program.

(b) With the approval of the Governor, delegate to one or more state agencies or institutions of the Nevada System of Higher Education the responsibility for administering the Program for their respective employees, including:

(1) Collection of deferred compensation;

(2) Transmittal of money collected to depositories within the State designated by the Committee; and

(3) Payment of deferred compensation to participating employees.

(c) Contract with a private person, corporation, institution or other entity, directly or through a state agency or institution of the Nevada System of Higher Education, for services necessary to the administration of the plan, including, without limitation:

- (1) Consolidated billing;
  - (2) The keeping of records for each participating employee and the Program;
  - (3) The purchase, control and safeguarding of assets;
  - (4) Programs for communication with employees; and
  - (5) The administration and coordination of the Program.
3. The Committee and its individual members are not liable for any decision relating to investments if the Committee has:
  - (a) Obtained the advice of qualified counsel on investments.
  - (b) Established proper objectives and policies relating to investments.
  - (c) Discharged its duties regarding the decision:
    - (1) Solely in the interest of the participants in the Program; and
    - (2) With the care, skill, prudence and diligence that, under the circumstances existing at the time of the decision, a prudent person who is familiar with similar investments would use while acting in a similar capacity in conducting an enterprise of similar character and purpose.
  - (d) Solicited proposals from qualified providers, record keepers or third-party administrators of plans at least once every 5 years.
  - (e) Monitored the plan and investments to ensure that fees and expenses are reasonable.
4. The Committee may delegate administrative duties for the Program to the Executive Officer. The Executive Officer and the staff of the Program shall act to discharge their duties in the collective best interest of the participants of the Program and with the care, skill, prudence and diligence that, under the circumstances existing at the time of the actions, a prudent person who is familiar with similar programs would use while acting in a similar capacity in conducting an enterprise of similar character and purpose.

(Added to NRS by [1977, 894](#); A [1979, 797](#); [1985, 1122](#); [1991, 1759](#); [1993, 387](#); [1995, 1868](#); [1997, 278](#); [2007, 1236](#); [2017, 1602](#))

**NRS 287.335 Interest and income earned on money in deferred compensation account.** The interest and income earned on the money in the deferred compensation account created pursuant to subsection 2 of [NRS 287.330](#) in the State General Fund, after deducting any applicable charges, must be credited to the account.

(Added to NRS by [1999, 33](#))

**NRS 287.337 Employment of staff or consultants by Executive Officer.** The Executive Officer may, within the limits of money available for this purpose, employ or enter into a contract for the services of such employees or consultants as is necessary for the performance of the duties of the Executive Officer.

(Added to NRS by [2017, 1597](#))

**NRS 287.338 Procedure for awarding contracts to vendors.**

1. The Program is subject to the provisions of [chapter 333](#) of NRS.
2. The Committee shall act as the chief of the using agency for the purposes of [NRS 333.335](#).
3. If a committee to evaluate proposals for a contract of the Program is established pursuant to [NRS 333.335](#), any number of members of the Committee may be appointed to the evaluation committee. If one or more members of the Committee are appointed to an evaluation committee:
  - (a) No action or deliberation regarding any business of the Committee other than the confidential review of the proposals pursuant to [NRS 333.335](#) may be taken or conducted by the evaluation committee.
  - (b) Except as otherwise provided in paragraph (a), a meeting of the evaluation committee is not subject to [chapter 241](#) of NRS.
4. The Committee shall review the results of any evaluation of proposals for a contract for the Program pursuant to [NRS 333.335](#) in a closed meeting.
5. The Committee shall take the following actions pursuant to [NRS 333.335](#) only in an open meeting:
  - (a) Award the contract pursuant to [NRS 333.335](#);
  - (b) Cancel a request for proposals; or
  - (c) Reissue a modified request for proposals.

(Added to NRS by [2017, 1597](#))

**NRS 287.340 Deferrals of compensation: Deductions from payroll; limitation on amount deferred.**

1. Deferrals of compensation may be withheld as deductions from the payroll in accordance with the agreement between the employer and a participating employee.

2. The amount of deferred compensation set aside by the employer to a plan under the Program during any calendar year may not exceed the amount authorized by 26 U.S.C. § 401(a), 401(k), 403(b), 457 or 3121, including, without limitation, a FICA alternative plan, or any other federal law authorizing a plan to reduce taxable compensation or other forms of compensation, as applicable.

(Added to NRS by [1977, 895](#); A [1979, 798](#); [1985, 1123](#); [1987, 1823](#); [2001, 1005](#); [2003, 1409](#))

**NRS 287.350 Federal requirements prerequisite for operation of plan; taxation of deferred income by State or political subdivision.**

1. No plan in the Program becomes effective and no deferral may be made until the plan meets the requirements of 26 U.S.C. § 401(a), 401(k), 403(b), 457 or 3121, including, without limitation, a FICA alternative plan, or any other federal law authorizing a plan to reduce taxable compensation or other forms of compensation, as applicable, for eligibility.

2. Income deferred during a period in which no income tax is imposed by the State or a political subdivision may not be taxed when paid to the employee.

(Added to NRS by [1977, 895](#); A [1979, 798](#); [1987, 1824](#); [2001, 1005](#); [2003, 1409](#))

**NRS 287.360 Program additional to other retirement, pension and benefit systems.** The Program must be established in addition to other retirement, pension and benefit systems established by the State or the Nevada System of Higher Education, and does not supersede, make inoperative, or reduce benefits provided by the Public Employees' Retirement System or by any other retirement, pension or benefit program established by law.

(Added to NRS by [1977, 895](#); A [1985, 1123](#); [1993, 387](#))

**NRS 287.365 Use of money withdrawn or appropriated from Program; deposit of certain money withdrawn from Program in deferred compensation account.**

1. No money may be withdrawn or appropriated from the Program, except:

(a) For payment to a participant or beneficiary of a participant pursuant to the terms of the Program;

(b) In the amount required to pay the necessary expenses of administering the Program;

(c) As specifically authorized by federal law or regulation or by a special act of the Legislature; or

(d) To compensate the member of the Committee appointed pursuant to paragraph (c) of subsection 1 of [NRS 287.325](#).

2. All money withdrawn from the Program pursuant to paragraphs (b) and (d) of subsection 1 must be deposited in the State General Fund for credit to the deferred compensation account created pursuant to subsection 2 of [NRS 287.330](#).

(Added to NRS by [1995, 1867](#); A [1997, 26](#); [1999, 33](#))

**NRS 287.370 Use of appropriated money in administration of Program.** No appropriated money of the State may be spent in connection with the administration of the Program except as compensation for employees who participated in the administration as part of their regular duties, including without limitation:

1. Members of the Committee;

2. The Executive Officer and employees of the Program; and

3. Employees of the state agency or the institution of the Nevada System of Higher Education selected to administer the Program.

(Added to NRS by [1977, 895](#); A [1985, 1123](#); [1993, 387](#); [2017, 1603](#))

**DEFERRED COMPENSATION FOR EMPLOYEES OF POLITICAL SUBDIVISIONS**

**NRS 287.381 Definitions.** As used in [NRS 287.381](#) to [287.480](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 287.391](#), [287.401](#) and [287.411](#) have the meanings ascribed to them in those sections.

(Added to NRS by [1979, 799](#))

**NRS 287.391 "Committee" defined.** "Committee" means the committee established to administer the program.

(Added to NRS by [1979, 799](#))

**NRS 287.401 "Deferred compensation" defined.** "Deferred compensation" means income which an employee of a political subdivision may legally set aside under the program, which may consist of one or more plans

authorized by 26 U.S.C. § 401(a), 401(k) or 457 and which income, while invested under the program, is exempt from federal income taxes on the employee's contributions and interest, dividends and capital gains.

(Added to NRS by [1979, 799](#); A [1985, 1124](#); [2001, 1005](#))

**NRS 287.411 "Program" defined.** "Program" means the deferred compensation program for employees of political subdivisions authorized by [NRS 287.381](#) to [287.480](#), inclusive.

(Added to NRS by [1979, 799](#))

**NRS 287.420 Employer may agree with employee to defer compensation; investment of withheld money.**

1. A political subdivision may agree with any of its employees to defer the compensation due to them in accordance with a program approved by the committee which may consist of one or more plans authorized by 26 U.S.C. § 401(a) or 457. An employee may defer compensation under one or more plans in the program.

2. The political subdivision shall withhold the amount of compensation which an employee has, by such an agreement, directed the political subdivision to defer.

3. The political subdivision may invest the withheld money in any investment permitted by law and approved by the committee.

4. The investments must be underwritten and offered in compliance with all applicable federal and state laws and regulations, and may be offered only by persons who are authorized and licensed under all applicable state and federal regulations.

(Added to NRS by [1979, 799](#); A [2001, 1005](#))

**NRS 287.430 Fund for administration of money and other assets; deferred compensation and related income, property and rights held in trust.**

1. The governing body of a political subdivision may create an appropriate fund for administration of money and other assets resulting from compensation deferred under the program.

2. All amounts of compensation deferred pursuant to the program, all property and rights purchased with those amounts, and all income attributable to those amounts, property or rights must, in accordance with 26 U.S.C. § 401(a) or 457(g), as applicable, be held in trust for the exclusive benefit of the participants in the program and their beneficiaries.

(Added to NRS by [1979, 799](#); A [1999, 161](#); [2001, 1005](#))

**NRS 287.440 Governing body may appoint committee to administer program; powers of committee.**

1. The governing body of a political subdivision may appoint a committee to which it may delegate the responsibility for administering the program for its employees, including:

- (a) Collection of deferred compensation;
- (b) Transmittal of money collected to depositories within the State; and
- (c) Payment of deferred compensation to participating employees.

2. The committee may contract with a private person, corporation, institution or other entity, directly or through an agency of the political subdivision, for services necessary to the administration of the plan, including without limitation:

- (a) Consolidated billing;
- (b) Recordkeeping for each participating employee and the program;
- (c) Purchase, control and safeguarding of assets;
- (d) Communication with its employees; and
- (e) Administration and coordination of the program.

(Added to NRS by [1979, 799](#))

**NRS 287.450 Deferrals of compensation: Deductions from payroll; limitation on amount deferred.**

1. Deferrals of compensation may be withheld as payroll deductions in accordance with the agreement between the political subdivision and a participating employee.

2. The amount of deferred compensation set aside by the political subdivision to a plan under the program during any calendar year may not exceed the amount authorized by 26 U.S.C. § 401(a) or 457, as applicable.

(Added to NRS by [1979, 800](#); A [2001, 1005](#))

**NRS 287.460 Federal requirements prerequisite for operation of plan; taxation of deferred income by State or political subdivision.**

1. No plan in the program becomes effective and no deferral may be made until the plan meets the requirements of 26 U.S.C. § 401(a) or 457, as applicable, for eligibility.

2. Income deferred during a period in which no income tax is imposed by the State or a political subdivision may not be taxed when paid to the employee.

(Added to NRS by [1979, 800](#), A [2001, 1006](#))

**NRS 287.470 Program additional to other retirement, pension and benefit systems.** The program is in addition to other retirement, pension and benefit systems available to employees of the political subdivision and does not supersede, make inoperative or reduce benefits provided by the Public Employees' Retirement System or by any other retirement, pension or benefit program established by law.

(Added to NRS by [1979, 800](#))

**NRS 287.480 Use of appropriated money in administration of program.** No appropriated money of the political subdivision may be spent in connection with the administration of the program except as compensation for employees who participated in the administration as part of their regular duties.

(Added to NRS by [1979, 800](#))

## DEFERRED COMPENSATION

**NAC 287.700 Definitions.** ([NRS 287.330](#)) As used in [NAC 287.700](#) to [287.735](#), inclusive, unless the context otherwise requires:

1. “Committee” means the Committee established to administer the Program.
2. “Investment consultant” means a private person, corporation, institution or other entity that provides advice on investments and operations of the Program, including, without limitation, advice provided for the purposes of paragraph (a) of subsection 3 of [NRS 287.330](#) and [NAC 287.735](#).
3. “Program” means the Public Employees’ Deferred Compensation Program authorized by [NRS 287.250](#) to [287.370](#), inclusive.
4. “Recordkeeper” means a corporation, institution or other entity that offers investment options and other services which are necessary to the administration of the Program and to the proper investment of the money of the employees who are participants in the Program. The term does not include a private person.

(Added to NAC by Com. to Admin. Pub. Employees’ Deferred Comp. Prog., eff. 9-13-91; A by R066-13, 12-23-2013)

**NAC 287.703 Interlocal contract with political subdivision: Entry; requirements.** ([NRS 287.330](#))

1. The Committee will, pursuant to [NRS 277.180](#), enter into an interlocal contract with a political subdivision to enable any employee of the political subdivision to participate in the Program if the Committee determines, by a majority vote of all its members, that entering into the contract is in the best interest of the Program.

2. In addition to the requirements of [NRS 277.180](#), an interlocal contract entered into pursuant to subsection 1 must provide that:

(a) The contract continues in effect until terminated by:

- (1) The mutual consent of the parties;
- (2) One of the parties giving 60 days’ written notice to the other party; or
- (3) The withdrawal, limitation or impairment of any money provided to the Committee by the State or the Federal Government for the administration of the Program.

(b) Except as otherwise provided by the terms of the contract, an employee of the political subdivision participates in the Program subject to the same terms and conditions that apply to state employees and employees of the Nevada System of Higher Education.

3. As used in this section, “political subdivision” includes, without limitation, a county, city, town, school district or special district.

(Added to NAC by Com. to Admin. Pub. Employees’ Deferred Comp. Prog. by R128-15, eff. 4-4-2016)

**NAC 287.705 Purpose.** ([NRS 287.330](#)) The purpose of [NAC 287.705](#) to [287.735](#), inclusive, is to set forth the procedures for the selection of investment consultants and recordkeepers for the Program.



(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R015-98, 5-29-98; R066-13, 12-23-2013)

**NAC 287.710 Recordkeepers: Selection and removal. ([NRS 287.330](#))**

1. The Committee will select recordkeepers for the Program. The Committee will contract with more than one recordkeeper if the Committee deems it necessary and in the best interests of the participants.

2. The selection of recordkeepers will be made as often as the Committee deems necessary, but not less frequently than every fifth year.

3. Recordkeepers serve at the pleasure of the Committee and are subject to removal at any time by a majority vote of the Committee.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R015-98, 5-29-98; R066-13, 12-23-2013)

**NAC 287.715 Recordkeepers: Procedures for selection. ([NRS 287.330](#))** In selecting a recordkeeper, the Committee will follow the procedures set forth in [chapter 333](#) of NRS, the applicable regulations and the State Administrative Manual.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R015-98, 5-29-98; R066-13, 12-23-2013)

**NAC 287.730 Appointment of subcommittee to review proposals for position of recordkeeper and make recommendations; general meeting of Committee regarding applicants; negotiation of changes to accepted proposals. ([NRS 287.330](#))**

1. The Chair shall, if he or she deems it appropriate, appoint a subcommittee to review the proposals from applicants for the position of recordkeeper and make recommendations to the full Committee.

2. The Chair shall call a general meeting of the Committee to:

(a) Accept information from appropriate sources pertaining to any applicant.

(b) Conduct interviews of the applicants.

(c) Select one or more of the applicants for appointment as a recordkeeper.

3. Acceptance of an applicant's proposal does not preclude the Committee from negotiating specific changes to the proposal which are in the best interests of the State of Nevada.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R015-98, 5-29-98; R066-13, 12-23-2013)

**NAC 287.735 Investment consultants: Selection and removal. ([NRS 287.330](#))**

1. The Committee will select such investment consultants as are necessary to provide services needed for the selection of recordkeepers and for the administration of the Program and the investment of the money of the participants.

2. Such an investment consultant serves at the pleasure of the Committee and may be removed from the position at any time by a majority vote of the Committee.

(Added to NAC by Com. to Admin. Pub. Employees' Deferred Comp. Prog., eff. 9-13-91; A by R015-98, 5-29-98; R066-13, 12-23-2013)

## **3800 Deferred Compensation**

### **3802 Authority**

The State of Nevada and the Board of Regents of the Nevada System of Higher Education are authorized by law to agree with any of their employees to defer compensation due to them in accordance with the program authorized by 26 U.S.C 401(a), 401(k), 403(b) or 457 and approved by the Deferred Compensation Committee.

The Board of Regents can agree with any of its employees to defer compensation authorized by 26 U.S.C. 403(b) without Committee approval. According to the plan, the employer shall withhold the amount of compensation that an employee has directed the employer to defer.

The employer may invest the withheld money in any investment approved by the Committee on Deferred Compensation.

All compensation amounts deferred pursuant to the program, all property and rights purchased with those amounts and all income attributable to those amounts remain solely the property or rights of the State of Nevada or the Nevada System of Higher Education, subject only to the claims of general creditors, until made available to the participants in the program or their beneficiaries. (NRS 287.320)

### **3804 Deferred Compensation Committee**

The Governor is authorized to appoint a committee to administer the Deferred Compensation Program. The committee's responsibilities include:

1. Creation of an appropriate fund for administration of money and other assets resulting from compensation deferred under the program;
2. With the approval of the Governor, delegation to one or more State agencies or institutions of the Nevada System of Higher Education, the responsibility for administering the program for their respective employees including:
  - a. Collection of deferred compensation;
  - b. Transmittal of money collected to depositories within the State designated by the Committee;
  - c. Payment of deferred compensation to participating employees;
3. Contracting with a private person, incorporation, institution or other entity directly or through a State agency or institution of the Nevada System of Higher Education, for services necessary to the administration of the plan including without limitation:
  - a. Consolidated billing;
  - b. The keeping of records for each participating employee in the program;
  - c. The purchase, control and safeguarding of assets;
  - d. Programs for communication with employees; and
  - e. Administration coordination for the program.

The Committee and individual members are not liable for any decision relating to investments if the Committee has:

1. Obtained the advice of qualified counsel in investments;
2. Established proper objectives and policies relating to investments; and



3. Discharged its duties regarding the decision:
  - a. Solely in the interest of the participants in the program; and
  - b. With the care, skill, prudence and diligence test that, under the circumstances existing at the time of the decision, a prudent person who is familiar with similar investments would use while acting in a similar capacity in conducting an enterprise of similar character and purpose.
4. Selected at least one Record Keeper that will provide record keeping services for the program.
5. Solicited proposals from qualified Record Keepers at least once every five years.

## **3806 Deferrals of Compensation; Deductions from Payroll; Limitations**

Compensation may be withheld or deducted from payroll in accordance with the agreement between the employer and participating employee. The amount of compensation set aside by the employer under the program during any calendar year may not exceed the amount authorized by 26 U.S.C. 401(a), 401(k), 403(b) or 457.

## **3808 Federal Requirements**

No program becomes effective and no deferral may be made until the program meets the requirements of 26 U.S.C 401(a) and 457 for eligibility. Income deferred during a period in which no income tax is imposed by the State or political subdivision may not be taxed when paid to the employee.

## **3810 Program in Addition to Retirement or Pension Program**

The Deferred Compensation Program must be established in addition to other retirement, pension or benefit systems established by the State or Nevada System of Higher Education and does not supersede, make inoperative, or reduce benefits provided by the Public Employees' Retirement System or by any other retirement, pension or benefit program established by law.

## **3811 FICA Alternative Plan**

All State of Nevada employees hired after December 31, 2003 who are ineligible for participation in the Public Employees' Retirement System must participate in the plan sponsored FICA Alternative Plan. Each affected employee upon employment must select a Record Keeper to administer his sponsored FICA Alternative Plan if the program contracts with more than one Record Keeper.

All State of Nevada employees hired before January 1, 2004 who are ineligible for participation in the Public Employees' Retirement System may participate in the plan sponsored FICA Alternative Plan. Each affected employee must select a Record Keeper to administer his sponsored FICA Alternative Plan prior to participation if the program contracts with more than one Record Keeper.

## **3812 Use of Appropriated Money Forbidden**

No State money may be spent on the administration of the program except as compensation for employees who participated in the administration as part of their regular duties, including without limitation:

1. Members and staff of the Committee; and
2. Employees of the State agency or institution of the Nevada System of Higher Education selected to administer the program.

## **3814 Administration**

The Committee on Deferred Compensation has selected Record Keepers for the program. Further information can be obtained from each payroll center.



# **Administrative Policy Manual**

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

**Updated January 2021**

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## **Definitions**

The same definitions apply in this Administrative Manual as are designated in the *Plan Document* for the State of Nevada Public Employees Deferred Compensation Program and in Nevada Revised Statutes (NRS) 287.250 et seq.

## **Article I Mission and Goals**

### 1.1 - Mission

The Nevada Public Employees Deferred Compensation Program (NDC or Program), a voluntary tax-deferred supplemental savings plan created pursuant to section 457(b) of the Internal Revenue Code, provides participants and their beneficiaries with a supplement to their retirement savings. The Program operates solely in the interest of plan participants and beneficiaries. The Committee, appointed by the Governor pursuant to NRS 287.325, oversees the Program investment management and Plan design governance and strives to provide quality investment options at minimal costs while maintaining high standards of customer service. The Committee and State Department of Administration appointed Executive Officer, Administrative Staff, or designee monitor the NDC contracted Recordkeeper, communicate the importance of supplemental savings through seminars, group meetings, workshops, newsletters, maintaining the Division and other informational efforts, and administer the Program in accordance with state and federal guidelines. All Program expenses are paid by the Plan participants by revenue generated from the Plans adopted cost structure.

### 1.2 - Primary Goals

(a) Exercise functions solely in the interest of the participants and beneficiaries, and be responsive and flexible to strive meet participants' needs, within the overall best interest of the participant base as a whole;

(b) Promote the collective best interests of the participants in the Program (Section 1(b) of NRS 287.330);

(c) Provide a selection of core investment options in accordance with the Program's Statement of Investment Policy and ensure that the options represent a reasonable choice as to investment risk, return, style, cost and asset class; and

(d) Ensure that the NDC Program Administrative staff and contracted Recordkeeper provides quality service and education to the participants and those approved participating entities supported.

### 1.3 - FICA-Alternative/3121 Plan Mission

Part-time, seasonal, and temporary employees of the State of Nevada or the Nevada System of Higher Education that do not qualify to participate in the State of Nevada

Public Employees' Retirement System Pension Plan are required to participate in the Nevada FICA Alternative Deferred Compensation Plan, if hired on or after January 1, 2004 (State Government) or July 1, 2005 (Higher Education).

FICA is the Federal Insurance Contributions Act, and Section 3121 refers to the section under Title 26, Chapter 21 of the Internal Revenue Code. This is an alternative to Social Security coverage as permitted by the federal Omnibus Budget Reconciliation Act of 1990 (OBRA). By participating in the Plan, Participants are not subject to tax on compensation under the Old Age, Survivors and Disability Income portion of FICA. Participants are subject to the Medicare portion of FICA.

#### 1.4 – Goals of FICA-Alternative Plan

The goal of this plan is to assist participants with maintaining an account for the purpose of capital preservation during their employment with the State of Nevada, the Nevada System of Higher Education and/or approved participating political subdivision.

#### 1.5 - Program Rules and Regulations

The Program's Rules and Regulations are adopted by the State of Nevada Deferred Compensation Committee, and are designated in the Program's *Plan Documents*, the FICA Alternative Plan Document, and in the Nevada Revised Statutes (NRS) 287.250 et seq.

## **Article II Legal and Procedural**

#### 2.1 - Federal Law

Nevada's Deferred Compensation Program plans are established under and intended to operate as a Section 457(b) plan under the Internal Revenue Code and related regulations and any amendments.

#### 2.2 - State Law

The enabling statutes for the Plans are found in NRS 287.250 through 287.370.

#### 2.3- Committee Documents

The Committee shall maintain and periodically review all plan documents in accordance with Section 457(b) of the Internal Revenue Code to establish and operate the Plans. The NDC Executive Officer, Administrative Staff, or designee shall have the authority to implement any Committee approved changes to the adopted plan documents.

The Committee shall maintain and periodically review a Statement of Investment Policy to identify guidelines and procedures used by the Committee to review and evaluate the various investment options offered in the Program. The NDC Executive Officer,

Administrative Staff, or designee shall have the authority to implement any Committee approved changes to the adopted Investment Policy Statement.

This Administrative Manual is intended to outline other established policies and procedures of the Committee and Administrative Staff for Program administration.

#### 2.4 - Committee Election Procedure

In accordance with NRS 287.330, the Committee at its first regularly scheduled quarterly meeting each year shall designate one of its members to serve as Chair and may also select one to serve as Vice-Chair of the Committee for a term of one year or until a successor has been designated.

#### 2.5 –National Association of Government Defined Contribution Administrators (NAGDCA)

The Program will maintain membership and participation in the National Association of Government Defined Contribution Administrators (NAGDCA), including attendance at designated meetings, conferences, and training opportunities as appropriate and as funds are available.

### **Article III Coordination of Audits**

The Program will routinely have audits conducted. Audits will include an annual financial audit conducted by an independent third party and a Program compliance audit performed typically every three to five years, but may be performed as often the Committee deems necessary for proper Plan governance. The Compliance Audit may be provided as a requirement of the Investment Consultant contract.

3.1 - Audit Objectives – Audits are performed for different purposes. Common audit objectives are:

(a) To ensure compliance with federal and state laws, standards, rules and regulations.

(b) To evaluate Program efficiency and effectiveness, including investment providers, fund managers, and payroll centers processes and procedures.

(c) To attest to the validity of financial information, recordkeeping, and accounting.

(d) To ensure appropriate management and internal control systems are in place.

i. On January 2017 The NDC Administration developed and executed the following internal control per the Counsel provided by the State of Nevada's Internal Audits Division:



- a. Monthly, Staff receives a report that illustrates contributions submitted by each participating pay center in each Plan.
- b. Staff verifies a random sampling of confirmations directly with the pay center to ensure balancing for the month and document confirmations monthly.
- c. Should a discrepancy arise, the Executive Officer will address the discrepancy as soon as admiratively possible with all parties and document the resolution. Discrepancies will be managed in accordance to the existing service guarantees within the contract and reflected in the contractor regular evaluation and/or reviewed with the Pay Center amending their processes to meet compliance.

3.2 - Audit Process – The audit process normally consists of the following elements:

(a) Audit Assignment – The point at which it has been determined that an audit will be undertaken.

(b) Initial Meeting – Staff meets with auditors and selected entities payroll and Human Resources administrative personnel to discuss audit process, scope of work, audit timeline, expected participation requirements, and audit objectives.

(c) Field Work – The auditors' procedures for obtaining audit evidence and developing findings and recommendations. The type and extent of field work will vary according to the objectives of the audit. For example, field work may entail detailed Recordkeeper transaction-by-transaction review, payroll center(s) contribution review or may only consist of a review of the processes and procedures.

(d) Closing – Auditors formally present findings to the NDC Executive Officer, Administrative Staff or designee.

(e) Response – The opportunity for the NDC contracted Recordkeeper and payroll centers to respond to the auditor's findings and recommendations.

(f) Follow-Up – Staff and auditors follow the progress toward resolution of any audit exceptions, significant deficiencies, or material weaknesses.

Staff and/or auditors will present a final report, including action steps for appropriate solutions or need to develop and maintain internal controls to resolve any noted significant deficiencies or material weaknesses, to the Committee.

## **Article IV Records Retention**

The NDC Administrative Staff will meet the requirements on the General Records Retention and Disposition Schedules (NRS 239.080). The most current version is available through the Records Management Program and at:

<http://nsla.nevadaculture.org/dmdocuments/generalschedules.pdf>

## **Article V Committee Operation**

### 5.1 - Meeting Schedule

The Committee will endeavor to meet at least quarterly, to review the status of investment offerings and conduct other business of the Program. The Committee may elect to engage, at their discretion, in an annual strategic planning meeting outside of the four regular quarterly meetings to discuss future governance changes, administration changes, and/or other communication/marketing administration for the upcoming year. Special meetings may be called by the Committee Chair or NDC Executive Officer, Administrative Staff, or designee as deemed necessary and reasonable, and should be budgeted accordingly. All Program governance decisions are to be made in a open public meeting as established in and in accordance with NRS 241.

### 5.2 - Meeting Agenda

The meeting agenda will be drafted by the NDC Administrative Staff and circulated to the designated Committee Chair and to Committee members for input. The final agenda will be approved by the Committee Chair and posted by the NDC Administrative Staff in accordance with Nevada's Open Meeting Law (NRS 241.020(3)(a)), which requires that notice of a meeting be posted no later than 9:00 am on the third working day prior to the meeting.

### 5.3 - Committee Action

If a quorum (at least 3 members) is present at meetings, action can be taken by the Committee. Motions will be passed or voted down by a simple majority vote. The Committee Chair is eligible to vote on all motions. Committee members may participate at meetings via telephone, videoconference, or other appropriate electronic media approved by the Committee and shall be treated as present for the purpose of determining a quorum, voting on motions, and other lawful actions of the Committee. Meetings will be conducted in accordance with standard rules of order that the Committee may adopt from time to time.

### 5.4 - Meeting Record

Minutes shall be prepared by NDC Administrative Staff, formally approved by the NDC Committee, and maintained by NDC Administrative Staff pursuant to statutory guidelines (see NRS 241.035). Members of the public may request from the NDC Administrative Staff that their names be placed on the mailing or e-mail list for distribution of agendas. Documents provided to the Committee during meetings will be provided to members of the public upon request, as appropriate, or posted to the Program's website.

The Committee welcomes the participation of Plan participants and the public. There will be two comment periods allowing for three minutes of public comment with the first comment period allowing for public comment relative to items on the agenda for the meeting, and the second allowing for public comment on any item under the jurisdiction of the Committee.

#### 5.5 - Budget Review and Approval

NDC Administrative Staff will meet with appropriate State of Nevada Department of Administration staff to develop a budget for submission to the Governor upon approval of the Department of Administration Director or designee, and the NDC Administrative Executive Officer will provide the Committee status updates of the Program budget during the quarterly meetings.

### **Article VI Plan Administration**

#### 6.1 - Activity reports

The NDC Administrative Staff will provide quarterly activity reports to the Committee, including, but not limited to reports on the overall Plan activities and evaluations of the NDC contracted Recordkeeper, making comparisons when appropriate concerning plan assets, enrollment analysis, program participation analysis, etc. NDC Administrative Staff will focus primarily on the administrative activities of the Program.

#### 6.2 - Analysis of Investment Performance

An analysis of investment performance will be reviewed by the Committee at its quarterly meetings. The report prepared by the NDC contracted investment consultant (see definition in Article VII, Section 7.7) shall include investment option performance, in-depth economic market data, asset allocation, updates on the fund watch list, any recommendations from the NDC contracted investment consultant, and other information requested by the Committee or Executive Officer as necessary for proper monitoring.

#### 6.3 - Quarterly Newsletter

The NDC Administrative Staff shall publish a quarterly newsletter for Participants. Newsletters shall be published as soon as administratively possible after the end of each quarter of the Calendar year.

#### 6.4 - Fund Settlement Policy

If directed by the Committee, all fund settlement amounts will be calculated based on the effected fund(s), shareholders and timeframe of the settlement. Identified shareholders will receive settlement monies in accordance with their proportionate share based on their account balances at the time of the settlement. Shareholders due less than \$10 will not receive payment, rather this amount will be returned back to the other eligible shareholders. If settlement amounts and calculations determine all shareholders are ineligible due to the \$10 di minimus then the amounts will be used for Plan expenses.

#### 6.5 – Administrative Account Management and Distribution of Unused Plan Revenue; if any

The Committee has the authority to create and maintain an administrative account in which the Plan's generated revenue used to administer the Program will be managed within. NDC Administrative Staff will continually monitor and manage the Administrative Account along with managing all accounts payable and accounts receivable activities as it pertains to agency budget and revenue management. At regular intervals throughout each calendar year, NDC Administrative Staff will reconcile and manage the amount of revenue generated by fees collected through the Program. In the event that excess revenue is generated by the Plan, the Committee may direct NDC Administrative Staff to credit the unused portion of Program revenue back to eligible participant accounts, or execute a "Fee Holiday" if deemed appropriate and directed by the Committee

#### 6.6 – Review of Claims and Appeals; Process and Policy

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 Executive Officer or designee and shall include specific details, facts, reasons for dispute, and written proof of wrongdoing or damages (if applicable). The NDC Executive Officer or designee 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 or designee 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 NDC Executive Officer or designee 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 NDC Executive Officer or designee in good order.

## **Article VII**

### **Roles, Responsibilities and Duties**

#### **7.1 - Committee**

The Committee is responsible to meet on a quarterly basis and conduct its business in accordance with the mission and primary goals as outlined in Article I of this document or established annually, along with the applicable state laws and federal requirements for the Plan. In order to discharge their fiduciary duties, members of the Committee are responsible for preparing for and participating in meetings of the Committee.

A fiduciary compliance checklist of duties and responsibilities that the Committee has governance over and responsibility for, or that they may delegate to the Executive Officer is established and provided in the **Addendum Section** of this Administrative Manual. The Committee shall self-evaluate the following categories of duties and responsibilities regularly:

- I. General Fiduciary Responsibilities-**
- II. Committee Structure**
- III. Plan & Committee Procedures**
- IV. Investment Management**
- V. Plan Administration and Compliance**
- VI. Plan Safeguards**
- VII. Communications**

#### **7.2 – NDC Administrative Staff**

NDC Administrative Staff is responsible for the day-to-day administration of the Program under the direction of the State of Nevada Department of Administration Director. The Executive Officer or designee is responsible for the following:

- Operations management, including but not limited to the day to day oversight; employer relations; budget oversight; employee management and oversight; and the oversight and management of participant customer service.
- Administrative Staff management to include the following:
  - a. Employee recruiting, hiring, evaluations, and termination per the established State of Nevada Department of Administration Human Resource Management guidelines and standards.
  - b. Providing proper training opportunities to all employees when initially hired and refresher training as needed or mandated, either internally or externally.

- Committee business management, including but not limited to preparation and organization of agendas and meeting materials.
- Contractual management, including but not limited to Recordkeeping, Program Administration, investment management oversight, program compliance, and legislative management.
- Handling all participant complaints or concerns at the Plan level to ensure resolution if possible. The Executive Officer will determine whether a participant Complaint should be brought in front of the Committee for review, discussion, and/or further and final action at one of their scheduled Committee meetings. The Executive Officer is charged with the responsibility to gather all data and facts pertinent to a participant complaint and work with the Program contractor(s) to achieve a suitable resolution that is in-line with the Program's adopted Plan Document, Administrative Manual, and State/Federal regulations and/or Codes.

The Executive Officer, under the direction and discretion of the State of Nevada Department of Administration, may employ administrative State of Nevada employees and/or contract with an independent employment company to employ a part-time or temporary administrative personnel to assist with meeting preparation, transcription of minutes, processing participant change forms, and other duties as assigned by the Executive Officer or requested by the Committee on an as needed basis.

#### 7.4 – Executive Officer's Review Process

The State of Nevada Department of Administration Director will be responsible for conducting regular performance reviews of the Executive Officer. The Department of Administration Director may consult Committee members as to the performance of the Executive Officer, and will also review and approve any potential compensation changes based on current level as well as legislative action as it relates to all State employees.

#### 7.5 - Legal Counsel

The Attorney General's Office provides legal counsel to the Committee and NDC Administrative Staff. The Deputy Attorney General assigned to the Program is responsible for reviewing all contracts and other legal documents and to provide legal advice and assistance relating to the work of the Committee and Staff.

## 7.6 – Political Sub-Divisions

The Committee at its discretion may allow local government entities or qualifying political sub-divisions to join the Program. NDC Administrative Staff will work with legal counsel and the entity's designated representative to ensure the proper documentation is obtained to join the Program. NDC Administrative Staff will periodically meet with political sub-division representatives to ensure compliance with current federal and state rules and regulations, and the participating political subdivision is subject to and must conform with all financial and compliance audit testing or sampling when selected by the Executive Officer or designee.

Eligible political sub-division representatives will submit a Program Certification which will include acknowledgement of the receipt of the following items:

- Interlocal Agreement
- Plan Document, including any amendments
- Plan Summary
- Investment Policy Statement
- Administrative Manual
- Remittance of contributions electronically
- Remittance of employee termination data within (30) thirty days of an employee termination

The designated representative(s) (appointed approved representatives) will complete the necessary certification. NDC Administrative Staff will work with each of the political sub-division's designated representative(s) to ensure each entity has an understanding of the Program requirements and provide training as applicable.

NDC Administrative Staff will work with eligible governmental entities to ensure the following are being administered in accordance to Plan rules and regulations:

- Per IRC Section 414(h), pick-up contributions for participants who contribute to Nevada PERS "employee paid" system are being excluded from participant contributions based on percentage of pay;
- Data and money remittances must be sent electronically; and
- Working with the NDC contracted Recordkeeper to ensure participants are not exceeding the Internal Revenue Code annual contribution limits.
- Treas. Reg. Section 1.457-4(b)(1) **Annual Deferrals, Deferral Limitations, and Deferral agreements Under Eligible Plans**- adherence and compliance to the mandatory "First of the Month Rule", maximum deferral limitations, and 50+ Catch-Up and Special 457(b) Catch-Up Provision rules and guidelines.
- Ensuring that all employees enrolling or being enrolled in the NDC Program(s) declare at least a single primary beneficiary associated with their account. Should the participant not make a beneficiary designation, the payment of the account



shall be distributed according to provisions established and adopted within the Plan's current Plan Document specifically Article IX, Section 9.2(a)(b).

#### 7.7 - Professional Advisors

The Committee shall contract with qualified advisors to discharge its fiduciary duty. Investment consultant(s) shall be contracted under the direction and management of the NDC Executive Officer and retained to ensure the Plan funds are invested effectively with proper risk controls. Committee members are not liable for investment decisions made by Plan members provided advisors are qualified and proper investment policies are in place, adhered to, and monitored.

#### 7.8 - Recordkeeper(s)

The NDC Administrative Staff and the Plan's contracted Recordkeeper will work together, under the direction and oversight of the NDC Executive Officer, to ensure all contract parameters are being met, and the following are being administered in accordance with Plan rules and regulations:

- To ensure compliance with IRC Section 457(b) and 414(v), excess deferrals must be distributed to the participant, with allocable net income, as soon as administratively practicable after the Plan, Recordkeeper, or designated payroll center determine that the amount is an excess deferral. The excess deferral amount is always taxed in the year it was contributed to the plan, and the earnings are taxed in the year distributed. Governmental plans report excess deferrals on Form 1099-R. Please note amounts of less than \$1 will not be refunded or corrected.
- Contribution Data and money remittances must be sent electronically.
- Work with the eligible governmental entities to ensure participants are not exceeding the IRC annual contribution limits.

### **Article VIII Code of Ethics**

As Committee members appointed by the Governor of the State of Nevada and Program Administrative Staff appointed by and under the authority of the State of Nevada Department of Administration, as well as public employees of the State in most cases, members of the Committee and NDC Administrative Staff are subject to the provisions of the Nevada Ethics in Government Law in NRS 281A.010-281A.500, inclusive. Committee members and NDC Administrative Staff are encouraged to review the entire chapter and be especially familiar with the general requirements of the Code of Ethical Standards in NRS 281A.400, as well as Executive Order 2011-02 *Establishing Ethics Requirements for Certain Public Officers and Employees*, signed by the Governor January 3, 2011.



The keys to interpretation of the ethics statutes are reasonableness, objectivity, and disclosure. If any Committee members or NDC Administrative Staff members have questions concerning specific situations, they should feel free to consult with the Deputy Attorney General representing the Deferred Compensation Program. The following are excerpts from the Code of Ethical Standards which are most relevant to the business of the Deferred Compensation Committee.

NRS 281A.400 Subsection 1 provides that a public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

NRS 281A.400 Subsection 2 provides that a public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person.

NRS 281A.400 Subsection 5 provides that if a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further the pecuniary interests of the public officer or employee or any other person or business entity.

NRS 281A.400 Subsection 10 provides that a public officer or employee shall not seek other employment or contracts through the use of his official position.

Additional standards pertinent to the Committee are set forth in NRS 281A.420 Subsection 1. This subsection provides that a public officer or employee shall not approve, disapprove, vote, and abstain from voting or otherwise act upon a matter:

- (a) Regarding which the public officer or employee has accepted a gift or loan;
- (b) In which the public officer or employee has a pecuniary interest; or
- (c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others, without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or

employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body.

NRS 281A.420 Subsection 3 states: Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

- (a) The public officer's acceptance of a gift or loan;
- (b) The public officer's pecuniary interest; or
- (c) The public officer's commitment in a private capacity to the interests of others.

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of others, accruing to the other persons, is not greater than that accruing to any other member of the general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer has properly disclosed the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others.

## **Article IX**

### **Educational Travel and Conferences**

The Committee and Executive Officer are charged with exercising fiduciary responsibility for the Program solely in the interest of the participants and their beneficiaries. As

fiduciaries, they are expected to be capable of carrying out their duties and responsibilities. To accomplish this, subject to Committee and budgetary approval, Committee members and NDC Administrative Staff shall avail themselves of educational opportunities to secure adequate training to fulfill those responsibilities, including attendance at appropriate off-site meetings, events, or conferences.

Subject to budgetary limitations and authority, each Committee member and NDC Administrative Staff members shall have the opportunity to attend the NAGDCA Annual Conference, with all conference fees, airfare, lodging and any other reasonable expenses paid by the program. Committee members and NDC Administrative Staff members may attend other educational conferences to meet training needs subject to the availability of budgetary funds and subject to the NDC Program's established Travel Policy in Article X.

## **Article X Travel Policy**

All Committee members and NDC Administrative Staff travel will be in accordance with State Administrative Manual (SAM) 0200 and NRS 281.160. The following internal controls have been established by the Agency:

It is the responsibility of all NDC Committee members and Administrative Staff to know and adhere to State Administrative Manual (SAM) Chapter 0200. All Travel Related Claims and Expenditures must be in accordance with applicable laws, the State Administrative Manual (SAM), and policies and procedures of the NDC Administrative Manual. Travel expenditures are administered in compliance with (SAM 202.0 -0256.0). All NDC Committee members and Administrative Staff must obtain prior authorization to travel from the State of Nevada Department of Administration through the NDC Administrative Staff who will verify adequate budgetary authority. Prior authorization is accomplished by completing a Travel Request and Authorization form provided by NDC Administrative Staff no later than four (4) weeks prior to the first date of travel unless otherwise authorized by the Department of Administration Director or his designee. . The accompanying Travel Request and Authorization form must also clearly identify and separate out all business and personal travel times and costs under the parameters outlined in the travel policy adopted by the State of Nevada Department of Administration. The Travel Expense Reimbursement Claim form must clearly demonstrate that the costs borne by the State are not increased due to personal travel. The employee MUST bear any costs related to combining the State travel with personal travel. Per SAM 0210, all travel expenses of State of Nevada employees will be charged to the budget account specifically appropriated or authorized to provide for the employees' salary (if applicable) and /or Travel expenses.

The rate of reimbursement for lodging, meals, and incidentals must be compliant with the Federal government's GSA rate based on travel destination and SAM Section 200. The GSA rates can be found via the following link:

<http://www.gsa.gov/portal/category/104877>

1. If the GSA website does not recognize the county/city that you will be traveling to, the rate defaults to the standard CONUS rates for lodging, meals, incidentals (M&IE).
2. The GSA hotel rates are maximum allowable rate in most circumstances. SAM 200 allows for adjustments when the conference rate exceeds the GSA rate. The State Department of Administration Budget Division must approve all exceptions to this rule or any projected expense over the established reimbursement rate in advance of the travel on an Out-Of-Budget Travel Request.
3. (Also refer to table below)

Hours and Conditions for Claiming Meals are as follows:

1. Per Diem for meals may be claimed when employees are required to be at least 50 miles (one way) from their duty station. Meal per diem timeframes are stipulated below:
  - a. **Breakfast:** Employee or Committee member departs before 7:00am and/or returns after 9:00am
  - b. **Lunch:** Employee or Committee member departs before 11:30am and/or returns after 1:00PM
  - c. **Dinner:** Employee or Committee member departs before 6:00PM and/or returns after 7:00PM
2. Per Diem reimbursements for meals are not allowed when meals are included in conference or registration fees.
3. Employees or Committee members may voluntarily claim amounts less than the established rates. When attending conferences or seminars, a copy of the agenda must be submitted with the Travel Expense Reimbursement Claim form in order for meals to be reimbursed.
4. Any special dietary needs that affect the application of these meal reimbursements policies for conference/seminars must be declared on the Travel Request Form prior to traveling.

Incidental Reimbursement is as follows:

Reimbursement for incidentals will occur only when travel consists of an overnight stay.

Mileage Reimbursement requests can be requested and paid as follows:

When an employee or Committee member uses his/her personal vehicle for the State's convenience, he/she can be reimbursed at the current standard mileage reimbursements rate declared by the State of Nevada. In the event that an employee or Committee member does not report to their duty station before going directly to a scheduled meeting, workshop, presentation, etc., the amount of mileage that is reimbursable is only the mileage over and above the employee or Committee member's normal commute total from their principal residence to their duty station.

Description	Receipts Required	Rates
Breakfast	No	Refer to GSA rate table & Hours and Conditions below
Lunch	No	Refer to GSA rate table & Hours and Conditions below
Dinner	No	Refer to GSA rate table & Hours and Conditions below
Lodging	Yes	Refer to GSA rate table
Incidentals - ( <u>Overnight Travel Only</u> )	No	Refer to GSA rate table
Transportation (parking, taxi, subway/bus, etc.)	Yes	Reasonable cost with original receipt
Mileage (State's Convenience)-Based on Federal Income Tax Rate. (See Department of Administration's Policy Directive webpage for current mileage information)	No	Refer to the Policy Directives section of the Dept. of Admin., Budget Division website
Mileage (Employee's Convenience)-Based on Federal Income Tax Rate. (See Department of Administration's Policy Directive webpage for current mileage information)	No	Refer to the Policy Directives section of the Dept. of Admin., Budget Division website

All Travel Claims will be submitted to NDC Staff for processing, approval, and reimbursement. Efforts should be made to submit Travel Expense Reimbursement Claim ("Travel Claims") within 15 business days of travel, but, no later than 30 days of travel unless prohibited by exceptional circumstance per SAM 0220.

## **Addendum A**

### **Fiduciary Compliance Checklist**

#### **I. General Fiduciary Responsibilities- Does the Committee:**

- Act solely in the interest of plan participants and beneficiaries and with the exclusive purpose of providing a benefit to them
- Defray the reasonable costs of administration
- Act with the skill and diligence of a prudent person knowledgeable in the action being taken and in the best interest of the Program as a whole.
- Diversify plan investments
- Act in accordance with the established plan documents and look towards ERISA established standards as widely used practices within the industry; adopting policies if the Committee deems feasible.
- Avoid conflicts of interest and prohibited transactions

#### **II. Committee Structure**

- Are the Committee members aware of their fiduciary status
- Do Committee members participate in fiduciary training when appointed, and is annual ongoing fiduciary training provided by the contracted Investment consultant or designated investment management or compliance professional?
- Do Committee members participate in the Nevada Open Meeting Law (OML) and Nevada Boards and Commissions Training provided by the State of Nevada Attorney General's Office at time of appointment and reviewed or refreshed at least annually during tenure, and other annual training opportunities and support?
- Do Committee members meet and maintain the Committee requirements outlined in NRS 287.325 to carry out their fiduciary duties?
- Does the State of Nevada contract with or employ knowledgeable experts in Investment Management, Recordkeeping, and Plan Administration to ensure fiduciary compliance?
- Have all fiduciaries to the Plan been identified? Do all fiduciaries have control over the management or disposition of assets and/or Plan Design?
- Do the fiduciaries have discretionary authority over administration of the Plan?
- Does the Plan provide a platform for participants to receive investment advice for a fee (with intent that it be acted upon by choice and direction of the participants)
- Does the committee have a charter, if applicable?

#### **III. Plan and Committee Procedures**

- Has the Mission Statement of the Plan been established and reviewed at least annually, and are ongoing goals and objectives of the plan formally reviewed, discussed, amended (if needed), and documented on at least an annual basis?
- Are there formal policies and procedures established for the following:
  - i. Frequency of meetings (quarterly, etc.)
  - ii. Monitoring of service providers and other professionals (E.g., frequency of vendor searches, contract management, contract evaluation, etc.).
  - iii. Determining the prudence of investments
  - iv. Determining the reasonableness of fees
  - v. Determining reasonableness of service contract terms and conditions
  - vi. Appointing and/or replacing committee members
- Is there an Investment Policy Statement (IPS) established and adopted?
  - i. Is the IPS regularly consulted when making investment decisions?
  - ii. Is the IPS regularly reviewed and updated as appropriate?
- Is there documentation of the minutes of each committee meeting?
- Does the Plan follow the State of Nevada's Records Retention requirements?

IV. **Investment Management-** Does the Committee engage in regular monitoring of the following:

- Investment Structure:
  - i. Is the investment structure appropriate for underlying participants?
  - ii. Are the number of investment options appropriate?
  - iii. Do the investment options span the risk return spectrum?
  - iv. Can the participants understand the investment options?
  - v. Are there any voids in the current investment lineup?
- Qualified Default Investment Option (QDIA) (target date funds) Review:
  - i. Has a QDIA been adopted and ensure that an investment qualifying as a QDIA is appropriate as a single investment capable of meeting a worker's long-term retirement savings needs and the Plan's financial wellness goals and objectives
  - ii. Review the Plans employee demographics of the Plan and the current allocation by age
  - iii. Does the Committee regularly examine the asset allocation of the current QDIA to ensure it is appropriate for the generational employment demographic of the participating workforce of the Plan?
  - iv. Regularly review the current QDIA versus comparable vehicles
- Conduct at least an annual IPS Review
- Engage in an Investment Fund Performance Analysis: (at least quarterly):



- i. Review fund performance and risk measures vs. benchmarks and peer groups
- ii. Review plan level fund and contribution asset allocations
- iii. Assess fund performance and attributes vs. Investment Policy Statement criteria
- iv. Provide fund recommendations: Additions, Replacements, Watch List
- v. Conduct a Global Capital Market Review:
  - i. Review of activity in domestic and foreign markets
  - ii. Review of returns for various domestic, foreign and fixed income asset classes to include observations and trends
- vi. Conduct regular Fee Monitoring & Benchmarking (at least annually): versus plans in same industry and with similar number of participants and program demographics
  - i. Review participant, record keeper/administrative and investment fees for transparency and competitiveness
  - ii. Are the fees deemed "reasonable"?
- vii. Regularly review trends, developments, legal updates within the defined contribution environment as part of a compliance audit, review, or a provision of the Recordkeeping Services and/or Investment Consultant Contract(s).

**V. Plan Administration and Compliance**

- a. Are the plan documents and supporting documents (SPD, FICA Plan Doc, etc.):
  - i. Regularly reviewed to ensure compliance with its terms?
  - ii. Regularly updated and amended to comply with legal and regulatory requirements?
  - iii. Available for easy review by participants and/or beneficiaries?
- b. Are there written procedures in place for the following:
  - i. Preventing/correcting operational errors
  - ii. Processing contributions timely
  - iii. Monitoring various statutory limits
  - iv. Conducting an annual financial audit
  - v. Processing and management of Plan loans
  - vi. Processing and management of QDROs
  - vii. Processing and management of Unforeseeable Emergency/Hardship distributions

**VI. Plan Safeguards**

- a. Although the Plan is NOT subject to ERISA Section 404(c), are the following safeguards considered or established if adopted:
  - i. Are participants provided with the following:



1. The right to direct their own investments, if applicable
  2. Reasonable opportunity to provide investment direction to the record keeper on a timely basis
  3. A diversified range of investments to choose from
  4. Investment education
- b. Are plan expenses monitored and benchmarked against industry averages?
  - c. Are vendors providing and updating 408(b)(2) disclosures
  - d. Is a Qualified Default Investment Alternative ("QDIA") provided under the plan?
    - i. Are QDIA notices distributed on a timely basis?
  - e. Is a Fidelity bond required by the State of Nevada? If so, has it been purchased and regularly renewed?
  - f. Is the plan covered by fiduciary liability insurance?
  - g. Does the employer have cyber security insurance, and/or does it require it's contractors to maintain cyber security insurance?

## **VII. Communications**

- a. Is there a written and adopted communication plan?
- b. Are participants provided with timely distribution of the following documents:
  - i. Summary Plan Document
  - ii. Summary of Material Modifications
  - iii. Annual Plan Report
- c. Are participants provided with all required notices on a timely basis (during the established on-boarding period and at least annually thereafter); including, but not limited to:
  - i. Enrollment materials
  - ii. Quarterly benefit statements (Annual Benefits Statement for FICA Alternative Plan)
  - iii. Annual and quarterly 404(a)(5) disclosures (if required)
  - iv. 30-day notice for changes to investment fund lineup
  - v. Automatic contribution arrangement notice, (if applicable)
  - vi. Blackout notices (if applicable)
  - vii. Safe harbor notices (if applicable)
- d. Is the effectiveness of investment education materials being measured regularly?

## **Addendum B- Fee Policy Statement**

### **NEVADA PUBLIC EMPLOYEES' DEFERRED COMPENSATION PROGRAM**

#### **FEE AND EXPENSE POLICY STATEMENT**

#### **STATE OF NEVADA**

**December 2020**

#### **Introduction and Purpose**

The purpose of this Fee and Expense Policy Statement is to detail fees and expense-related procedures for the State of Nevada's 457(b) Deferred Compensation and 3121 FICA Alternative Programs. This document is reviewed at least annually by the Nevada Deferred Compensation ("NDC") Committee ("Committee") which serves as a Fiduciary to the Plans.

#### **Participant Expenses**

457 (b) Plan Administrative Fees: Effective January 1, 2020, a \$10.25 administrative flat per-account charge (\$41 per year) will be withdrawn quarterly for all participants with a total account balance of \$1,000 or more, regardless of how they are invested. 457 (b) Plan Administrative Fees do not subsidize the 3121 FICA Alternative Plan.

3121 FICA Alternative Plan Administrative Fees: Effective January 1, 2020, a \$0.55 administrative flat per-account charge (\$2.20 per year) will be withdrawn quarterly for all participants. 3121 FICA Alternative Plan Administrative Fees do not subsidize the 457 (b) Plan.

Fund Management fees depend on the investment option chosen. NDC will strive to offer the lowest cost share classes of funds (on a NET basis). All revenue share, if applicable, is provided back to participants as appropriate. Please refer to the Contract Prospectus Summary for each individual fund fee information.

#### **Payment of Excess Plan Expenses**

State of Nevada is the Plans' Sponsor. All expenses incidental to the administration or protection of the Plans, and the management of the assets of the Plans, shall be paid from the assets of the Plans or by the Plan participants; unless the Plan Sponsor chooses to pay such expenses directly.

To the extent permitted by law, the Plans' Administrative Allowance Account ("Account") may be reimbursed from the Plans for any direct expenses properly and actually incurred in connection with the performance of services for the Plans.

Expenses may be paid or reimbursed from the Account only upon the review and approval of the Committee, or by such other appropriate fiduciary of the Plans.

### **Qualified Expenses**

The expenses that may be paid from, or which may be reimbursed to the Plan Sponsor for its payment of, include, and are not limited to, the following:

- (a) Ongoing Plan administrative expenses, such as record keeping, legal, auditing, annual reporting, claims processing and similar administrative expenses;
- (b) Investment advisory, investment management, administrative investment or service fees and expenses;
- (c) Costs incurred in preparing, printing and distributing plan-related documents and other Participant communication materials;
- (d) Costs associated with benefit distributions and transactions;
- (e) Expenses to provide investment assistance and education to Participants; and
- (f) Costs for providing on-going education, including the costs of attending seminars and conferences, for members of the Committee, fiduciaries and staff with respect to the Plans as necessary or appropriate to assist in the discharge of their responsibilities to the Plans.

### **Participant Fees in Excess of Plans' Administration Service Provider Costs**

The agreements entered into between the Plan Sponsor and Plan Administration Service Provider state that participants shall pay an explicit fee which shall be used to pay for various aspects of Plan Administration. This fee may exceed the amount retained by the Plan Administration Service Provider to pay for its services.

Fees collected in excess of those retained by the Plan Administration Service Provider and received by the Plan shall be held in an unallocated trust assets account maintained under the Plan, to be called the Administrative Allowance Account.

Thereafter funds accrued in this account shall be used exclusively for the benefit of Participants and their Beneficiaries, or to defray the reasonable expenses of administering and managing the Plan.

### **Allocation of Excess Plan Administration Fees**

Excess revenue remaining in the Administrative Allowance Account may be allocated to Plan participants at the Committee's discretion. Such amounts shall be allocated to Plan participants based on their pro-rata share of Plan assets.

### **Amendment**

This Fee Policy may be amended by a majority vote of the Committee at a properly noticed meeting called for that purpose.

**On behalf of the Nevada Deferred Compensation Committee, this Fee and Expense Policy Statement is adopted by the Committee and effective on this date:**



Signature:

NDC Executive Officer

Name: Robert R. Boehmer

Date: 01/06/2021

# Plan Governance Best Practices and Future Considerations Checklist

(Based on Request from NDC Chair as a result of 2020/2021 Compliance Audit)

The Following items were offered in the 2020/2021 NDC Compliance Review completed by the NDC contracted Investment Consultant, Hyas Group, as potential consideration the NDC Committee and Program Administration may want to consider in the future:

- Improving Employee Engagement – This has been a consistent theme of the Compliance Reviews in 2013, 2017, and 2021. While metrics in NDC's Plans were generally healthy, participation and contributions could be improved. NDC and Voya would continue to discuss methods for improvement as it related to employee engagement.
- Addition of Separate Bylaws/Charter document; this may also be attached as an addendum to the Administrative Manual
- Addition of Cybersecurity Policy; this may also be attached as an addendum to the Administrative Manual
- If applicable, implement SECURE Act 2.0 legislative changes, as necessary
- If applicable, determine potential Plan modifications related to DIA audit 21-05
- Continue to evaluate employee engagement programs to further improve plan participation and retirement outcomes
- Continue to evaluate auto-enrollment and its potential applicability to NDC
- Continue to monitor DOL guidance and its relevance to NDC Plans