

**Nevada Public Employees Deferred  
Compensation Program, 401(a) Defined  
Contribution, and FICA Alternative  
Plans**

**INVESTMENT POLICY STATEMENT**

January 202~~4~~<sup>3</sup>

## 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, [401\(a\) Defined Contribution Plan, and FICA Alternative Plans](#) (hereinafter collectively referred to as “Program” for brevity). 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 (this is the only option available in the FICA Alternative Plan)
- 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

<b>Lifecycle Premixed Portfolio – Retirement Income</b>	
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
<b>Lifecycle Premixed Portfolio –2020, 2025</b>	
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 2020, US Target Date 2025
<b>Lifecycle Premixed Portfolio – 2030, 2035, 2040, 2045</b>	
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
<b>Lifecycle Premixed Portfolio – 2050, 2055, 2060, 2065, 2070</b>	
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

<b>Fixed / Stable Value</b>	
<p>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&amp;P or Duff &amp; Phelps. If the option's weighted rating declines below this level, the option will be evaluated for corrective action.</p>	
<b>Benchmark Index:</b>	1. 5 Year CMT Index 2. 90-Day Treasury Bills Index
<b>Peer Group:</b>	Stable Value

<b>Total Return Bond</b>	
<p>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.</p>	
<b>Benchmark Index:</b>	Bloomberg US Aggregate Bond Index
<b>Peer Group:</b>	US Intermediate-Term Core Bond

<b>U.S. Large Company Equity</b>	
<p>Provide long-term capital appreciation through a diversified common stock portfolio whose average market capitalization may be categorized as Large Cap by an industry standard data provider. 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.</p>	
<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 whose average market capitalization may be categorized as Small/Mid Cap by an industry standard data provider. 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" and other common index fund tracking factors (such as the timing of market closures, management fees, benchmark nuances, and others) 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 categorized as Large Cap by an industry standard data provider.

### **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 categorized as Mid Cap by an industry standard data provider.

## **GLOSSARY - CONTINUED**

### **Net of Fees**

After subtraction of management fees.

### **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 categorized as Small Cap by an industry standard data provider.

### **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, 401(a) Defined Contribution, and FICA Alternative Plans, this Investment Policy Statement is adopted by the Committee and effective on this date:

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

Name:

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



**Nevada Public Employees  
Deferred Compensation Program**

**Plan Document**

**(Attachment A)**

Amended and Effective 02/23/2023

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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 in which the individual first becomes an Employee must be transferred to a trust within a period that is not longer than is reasonable for the proper administration of the accounts (if any). (Treas. Reg. Section 1.457-8(a)(2)(ii))
- 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 soon as administratively practicable. 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 as soon as administratively practicable. .
- 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 as soon as administratively practicable. .
- 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 date 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 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 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.

VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY  
**NON-STANDARDIZED GOVERNMENTAL 401(a) PRE-APPROVED PLAN**

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**ARTICLE I  
DEFINITIONS**

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

**1.1 "Account"** means any separate notational account established and maintained by the Administrator for each Participant under the Plan. To the extent applicable, a Participant may have any (or all) of the following notational Accounts:

- (a) "Combined Account" means the account representing the Participant's total interest under the Plan resulting from Employer contributions. In addition, Forfeitures are part of the Combined Account to the extent they are reallocated.
- (b) "Mandatory Contribution Account" means the account established hereunder to which mandatory Employee contributions made pursuant to Section 4.8 are allocated, to the extent such contributions are not picked-up by the Employer pursuant to Code §414(h). A Participant's Mandatory Contribution Account shall be fully Vested at all times.
- (c) "Rollover Account" means the account established hereunder to which amounts transferred from a qualified plan or individual retirement account in accordance with Section 4.6 are allocated.
- (d) "Transfer Account" means the account established hereunder to which amounts transferred to this Plan from a direct plan-to-plan transfer in accordance with Section 4.7 are allocated.
- (e) "Voluntary Contribution Account" means the account established hereunder to which after-tax voluntary Employee contributions made pursuant to Section 4.9 are allocated.

**1.2 "Administrator"** means the Employer unless another person, entity or committee has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.

**1.3 "Adoption Agreement"** means the separate agreement which is executed by the Employer and sets forth the elective provisions of this Plan as specified by the Employer.

**1.4 "Affiliated Employer"** means any entity required to be aggregated with the Employer pursuant to Code §414.

**1.5 "Alternate Payee"** means an alternate payee pursuant to a qualified domestic relations order that meets the requirements of Code §414(p).

**1.6 "Anniversary Date"** means the last day of the Plan Year.

**1.7 "Annuity Starting Date"** means, with respect to any Participant, the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.

**1.8 "Beneficiary"** means the person (or entity) to whom all or a portion of a deceased Participant's interest in the Plan is, or may become, payable upon the Participant's death as identified in records maintained by the Plan, subject to the restrictions of Sections 6.2 and 6.6.

**1.9 "Code"** means the Internal Revenue Code of 1986, as it may be amended from time to time and includes applicable Internal Revenue Service (IRS) guidance.

**1.10 "Compensation"** means, with respect to any Participant, the amount determined in accordance with the following provisions, except as otherwise provided in the Adoption Agreement.

- (a) **Base definition.** One of the following, as elected in the Adoption Agreement:
  - (1) Information required to be reported under Code §§6041, 6051 and 6052 (Wages, tips and other compensation as reported on Form W-2). Compensation means wages, within the meaning of Code §3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code §§6041(d), 6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).
  - (2) Code §3401(a) Wages. Compensation means an Employee's wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in

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wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(3) 415 safe harbor compensation. Compensation means wages, salaries, Military Differential Pay, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Regulation §1.62-2(c))), and excluding the following:

- (i) Employer contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan to the extent such contributions are excludable from the Employee's gross income, or any distributions from a plan of deferred compensation;
- (ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
- (iv) Other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts under Code §125), whether or not the contributions are actually excludable from the gross income of the Employee.

(b) **Paid during "determination period."** Compensation shall include only that Compensation which is actually paid to the Participant during the "determination period". Except as otherwise provided in this Plan, the "determination period" is the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the "determination period" shall be the Plan Year.

(c) **Inclusion of deferrals.** Notwithstanding the above, unless otherwise elected in the Adoption Agreement, Compensation shall include all of the following types of elective contributions and all of the following types of deferred compensation:

(1) Elective contributions that are made by the Employer on behalf of a Participant that are not includible in gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) and 403(b). If specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), amounts under Code §125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(2) Compensation deferred under an eligible deferred compensation plan within the meaning of Code §457(b).

(3) Employee contributions described in Code §414(h)(2) that are picked-up by the employing unit and thus are treated as Employer contributions.

(d) **Post-severance compensation – Code §415 Regulations.** The Administrator shall adjust Compensation for amounts that would otherwise be included in the definition of Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Plan Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of Compensation) if:

- (i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
- (ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

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(2) **Leave cash-outs.** Compensation shall include leave cash-outs if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** Compensation shall include deferred compensation if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential Pay.** Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** Compensation shall include compensation paid to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled.

(e) **Compensation Dollar limitation.** For any Plan Year (or other applicable determination period) Compensation in excess of \$290,000 shall be disregarded for all. The dollar amount shall be adjusted by the Commissioner for increases in the cost-of-living in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any "determination period" beginning with or within such calendar year. If a "determination period" consists of fewer than twelve (12) months, the \$290,000 annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the "determination period," and the denominator of which is twelve (12). In applying any Plan limitation on the amount of matching contributions, where such limits are expressed as a percentage of Compensation, the Administrator may apply the Compensation limit under this Section annually, even if the matching contribution formula is applied on any time interval which is less than the full Plan Year or the Administrator may pro rate the Compensation limit.

In the case of an "eligible Participant," the dollar limitation under Code §401(a)(17) shall not apply to the extent the amount under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993. For purposes of this provision, an "eligible Participant" is an individual who first became a Participant before the first Plan Year beginning after the earlier of (i) the Plan Year in which the Plan was amended to reflect Code §401(a)(17), or (ii) December 31, 1995.

(f) **Non-eligible Employee.** If, in the Adoption Agreement, the Employer elects to exclude a class of Employees from the Plan, then Compensation for any Employee who becomes eligible or ceases to be eligible to participate during a "determination period" shall only include Compensation while the Employee is an Eligible Employee.

(g) **Amendment.** If, in connection with the adoption of any amendment, the definition of Compensation has been modified, then, except as otherwise provided herein, for Plan Years prior to the Plan Year which includes the adoption date of such amendment, Compensation means compensation determined pursuant to the terms of the Plan then in effect.

(h) **Affiliated Employers.** Affiliated Employers are treated as one Employer for purposes of Compensation. If, however, one or more Affiliated Employers are Participating Employers and the Plan (including the Adoption Agreement or a participation agreement) allocate Employer Contributions separately among the Employees directly employed by a Participating Employer, then, in computing such allocations, Compensation paid by other Participating Employers is excluded Compensation.

**1.11 "Contract" or "Policy"** means any life insurance policy, retirement income policy, or annuity contract (group or individual) issued by the Insurer. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

**1.12 "Custodian"** means a person or entity that has custody of all or any portion of the Plan assets.

**1.13 "Directed Trustee"** means a Trustee who, with respect to the investment of Plan assets, is subject to the direction of the Administrator, the Employer, a properly appointed Investment Manager, or Plan Participant.

**1.14 "Discretionary Trustee"** means a Trustee who has the authority and discretion to invest, manage or control any portion of the Plan assets.

**1.15 "Early Retirement Date"** means the date specified in the Adoption Agreement on which a Participant has satisfied the requirements specified in the Adoption Agreement (Early Retirement Age). If elected in the Adoption Agreement, a Participant shall become fully Vested upon satisfying such requirements if the Participant is still employed at the Early Retirement Age.



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A Participant who severs from employment after satisfying any service requirement but before satisfying the age requirement for Early Retirement Age and who thereafter reaches the age requirement contained herein shall be entitled to receive benefits under this Plan (other than any accelerated vesting and allocations of Employer contributions) as though the requirements for Early Retirement Age had been satisfied.

**1.16 "Effective Date"** means the date this Plan, including any restatement or amendment of this Plan, is effective. Where the Plan is restated or amended, a reference to Effective Date is the effective date of the restatement or amendment, except where the context indicates a reference to an earlier Effective Date. If any provision of this Plan is retroactively effective, the provisions of this Plan generally control. However, if the provision of this Plan is different from the provision of the Employer's prior plan document and, after the retroactive Effective Date of this Plan, the Employer operated in compliance with the provisions of the prior plan, then the provision of such prior plan is incorporated into this Plan for purposes of determining whether the Employer operated the Plan in compliance with its terms, provided operation in compliance with the terms of the prior plan do not violate any qualification requirements under the Code, Regulations, or other IRS guidance.

The Employer may designate special effective dates for individual provisions under the Plan where provided in the Adoption Agreement or under Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). If one or more qualified retirement plans have been merged into this Plan, the provisions of the merging plan(s) will remain in full force and effect until the effective date of the plan merger(s).

**1.17 "Eligible Employee"** means any Eligible Employee as elected in the Adoption Agreement and as provided herein.

(a) **"Reclassified Employees."** An individual shall not be an Eligible Employee (unless otherwise elected in Appendix A to the Adoption Agreement) if such individual is a "Reclassified Employee." A "Reclassified Employee" is any person the Employer does not treat as a common law employee or as a self-employed individual (including, but not limited to, independent contractors, persons the Employer pays outside of its payroll system and out-sourced workers) for federal income tax withholding purposes under Code §3401(a), irrespective of whether there is a binding determination that the individual is an Employee or a Leased Employee of the Employer. Self-Employed Individuals are not "Reclassified Employees."

(b) **Affiliated Employers.** Employees of an Affiliated Employer will not be treated as Eligible Employees prior to the date the Affiliated Employer adopts the Plan as a Participating Employer.

(c) **Union Employees.** If, in the Adoption Agreement, the Employer elects to exclude union employees, then Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining, shall not be eligible to participate in this Plan to the extent of employment covered by such agreement, unless the agreement provides for coverage in the Plan (see Section 4.1(d)). For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service in each respective category are treated separately.

(d) **Nonresident Employees.** If, in the Adoption Agreement, the Employer elects to exclude nonresident aliens, then Employees who are nonresident aliens (within the meaning of Code §7701(b)(1)(B)) who received no earned income (within the meaning of Code §911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code §861(a)(3)) shall not be eligible to participate in this Plan. In addition, this paragraph shall also apply to exclude from participation in the Plan an Employee who is a nonresident alien (within the meaning of Code §7701(b)(1)(B)) but who receives earned income (within the meaning of Code §911(d)(2)) from the Employer that constitutes income from sources within the United States (within the meaning of Code §861(a)(3)), if all of the Employee's earned income from the Employer from sources within the United States is exempt from United States income tax under an applicable income tax convention. The preceding sentence will apply only if all Employees described in the preceding sentence are excluded from the Plan.

**1.18 "Employee"** means any person who is employed by the Employer. The term "Employee" shall also include any person who is an employee of an Affiliated Employer and any Leased Employee deemed to be an Employee as provided in Code §414(n) or (o).

**1.19 "Employer"** means the governmental entity specified in the Adoption Agreement, any successor which shall maintain this Plan and any predecessor which has maintained this Plan. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan. This plan may only be adopted a state or local governmental entity, or agency thereof, including an Indian tribal government, and may not be adopted by any other entity, including a federal government and any agency or instrumentality thereof.

**1.20 "Fiscal Year"** means the Employer's accounting year.

**1.21 "Forfeiture"** means that portion of a Participant's Account that is not Vested and is disposed of in accordance with the provisions of the Plan.

A Forfeiture will occur on the following, as elected by the Employer in the Adoption Agreement:

- (a) The last day of the Plan Year in which a Participant incurs five (5) consecutive 1-Year Breaks in Service, or
- (b) The distribution of the entire Vested portion of the Participant's Account of a Participant who has severed employment with the Employer. For purposes of this provision, if the Participant has a Vested benefit of zero, then such Participant shall be deemed to have received a distribution of such Vested benefit as of the year in which the severance of employment occurs. For this purpose, a Participant's Vested benefit shall not include: (i) qualified voluntary employee contributions within the meaning of Code §72(o)(5)(B), and (ii) the Participant's Rollover Account.
- (c) As soon as reasonably practical after the date a Participant severs employment.

Regardless of the preceding, if a Participant is eligible to share in the allocation of Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the first Plan Year for which the Participant is not eligible to share in the allocation of Forfeitures. Furthermore, the term "Forfeiture" shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

**1.22 "Former Employee"** means an individual who has severed employment with the Employer or an Affiliated Employer.

**1.23 "415 Compensation"** means, with respect to any Participant, such Participant's (a) Wages, tips and other compensation on Form W-2, (b) Code §3401(a) wages or (c) 415 safe harbor compensation as elected in the Adoption Agreement for purposes of Compensation (and as defined in Subsections 1.10(a)(1)-3 respectively). 415 Compensation shall be based on the full Limitation Year regardless of when participation in the Plan commences. Furthermore, regardless of any election made in the Adoption Agreement, 415 Compensation shall include any elective deferral (as defined in Code §§402(e)(3), 402(k) and 402(h)(1)(B)) and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code §§125, 457, and 132(f)(4). If the Plan contains pick-up provisions (certain contributions designated as employee contributions, that are then "picked-up" by the Employer), then those pick-up contributions are not includible as Compensation for purposes of IRC §415 & Reg. §1.415-2(d)(2)(i). In addition, Military Differential Pay is treated as 415 Compensation.

(a) **Deemed 125 compensation.** If elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), 415 Compensation shall also include deemed §125 compensation. Deemed §125 compensation is an amount that is excludable under §106 that is not available to a participant in cash in lieu of group health coverage under a §125 arrangement solely because the participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code §125 pursuant to the preceding sentence only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(b) **Post-severance compensation.** The Administrator shall adjust 415 Compensation for amounts that would otherwise be included in the definition of 415 Compensation but are paid by the later of 2 1/2 months after a Participant's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Participant's severance from employment with the Employer, in accordance with the following, as elected in the Compensation Section of the Adoption Agreement. The preceding time period, however, does not apply with respect to payments described in Subsections (4) and (5) below. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation, even if payment is made within the time period specified above.

(1) **Regular pay.** 415 Compensation shall include regular pay after severance of employment (to the extent otherwise included in the definition of 415 Compensation) if:

- (i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
- (ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer.

(2) **Leave cash-outs.** 415 Compensation shall include leave cash-outs if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

(3) **Deferred compensation.** 415 Compensation shall include deferred compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the Participant's severance from employment with the Employer, and the amounts are received pursuant to a nonqualified unfunded deferred compensation plan, but only if the

payment would have been paid if the Participant had continued in employment with the Employer and only to the extent the payment is includible in the Participant's gross income.

(4) **Military Differential Pay.** 415 Compensation shall include payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(5) **Disability pay.** 415 Compensation shall include compensation paid to a Participant who is permanently and totally disabled, as defined in Code §22(e)(3), provided, as elected by the Employer in the Compensation Section of the Adoption Agreement, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a highly compensated employee (within the meaning of Code §414(q)) immediately before becoming disabled.

(c) **Back pay.** Back pay, within the meaning of Regulations §1.415(c)-2(g)(8), shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(d) **Dollar limitation.** 415 Compensation will be limited to the same dollar limitations set forth in Section 1.10(e) adjusted in such manner as permitted under Code §415(d).

(e) **Amendment.** Except as otherwise provided herein, if, in connection with the adoption of any amendment, the definition of 415 Compensation has been modified, then for Plan Years prior to the Plan Year which includes the adoption date of such amendment, 415 Compensation means compensation determined pursuant to the terms of the Plan then in effect.

**1.24 "Hour of Service"** means (a) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties during the applicable computation period (these hours will be credited to the Employee for the computation period in which the duties are performed); (b) each hour for which an Employee is directly or indirectly compensated or entitled to Compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, incapacity (including disability), jury duty, lay-off, military duty or leave of absence) during the applicable computation period; (c) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (a) or (b), as the case may be, and under (c).

Notwithstanding (b) above, (1) no more than 501 Hours of Service will be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (2) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, or unemployment compensation or disability insurance laws; and (3) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. Furthermore, for purposes of (b) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

Hours of Service will be credited for employment with all Affiliated Employers and for any individual considered to be a Leased Employee pursuant to Code §414(n) or 414(o) and the Regulations thereunder.

Hours of Service will be determined using the actual hours method unless one of the methods below is elected in the Adoption Agreement. If the **actual hours** method is used to determine Hours of Service, an Employee is credited with the actual Hours of Service the Employee completes with the Employer or the number of Hours of Service for which the Employee is paid (or entitled to payment).

If the **days worked** method is elected, an Employee will be credited with ten (10) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the day.

If the **weeks worked** method is elected, an Employee will be credited with forty-five (45) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the week.

If the **semi-monthly payroll periods worked** method is elected, an Employee will be credited with ninety-five (95) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the semi-monthly payroll period.

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If the **months worked** method is elected, an Employee will be credited with one hundred ninety (190) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the month.

If the **bi-weekly payroll periods worked** method is elected, an Employee will be credited with ninety (90) Hours of Service if under the Plan such Employee would be credited with at least one (1) Hour of Service during the bi-weekly payroll period.

**1.25 "Insurer"** means any legal reserve insurance company which has issued or shall issue one or more Contracts or Policies under the Plan.

**1.26 "Investment Manager"** means a person or entity which renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or property of the Plan and which is appointed in accordance with Section 2.1(b).

**1.27 "Joint and Survivor Annuity"** means an immediate annuity for the life of a Participant with a survivor annuity for the life of the Participant's Spouse which is not less than fifty percent (50%), nor more than one hundred percent (100%) of the amount of the annuity payable during the joint lives of the Participant and the Participant's Spouse which can be purchased with the Participant's Vested interest in the Plan reduced by any outstanding loan balances pursuant to Section 7.4.

**1.28 "Late Retirement Date"** means the date of, or the first day of the month or the Anniversary Date coinciding with or next following, whichever corresponds to the election in the Adoption Agreement for the Normal Retirement Date, a Participant's actual retirement after having reached the Normal Retirement Date.

**1.29 "Leased Employee"** means any person (other than an Employee of the recipient Employer) who, pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization"), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code §414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include compensation from the leasing organization that is attributable to services performed for the recipient Employer.

A Leased Employee shall not be considered an employee of the recipient Employer if: (a) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Code §415(c)(3), (2) immediate participation, and (3) full and immediate vesting; and (b) leased employees do not constitute more than twenty percent (20%) of the recipient Employer's nonhighly compensated workforce.

**1.30 "Limitation Year"** means the "determination period" used to determine Compensation. However, the Employer may elect a different Limitation Year in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the period specified in the Adoption Agreement. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new "Limitation Year" must begin on a date within the "Limitation Year" in which the amendment is made. The Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year.

**1.31 "Military Differential Pay"** means any differential wage payments made to an individual that represents an amount which, when added to the individual's military pay, approximates the amount of Compensation that was paid to the individual while working for the Employer. An individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an Employee of the Employer making the payment.

**1.32 "Nonelective Contribution"** means the Employer's contributions to the Plan.

**1.33 "Normal Retirement Age"** means the age elected in the Adoption Agreement at which time a Participant's Account shall be nonforfeitable (if elected in the Adoption Agreement and if the Participant is employed by the Employer on or after that date). For money purchase pension plans, if the employer enforces a mandatory retirement age, then the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement. Upon attaining Normal Retirement Age or the stated age and completion of the required years of service and any other reasonable requirements set forth in the Plan, the Plan will provide for full vesting of an Employee's interest.

**1.34 "Normal Retirement Date"** means the date elected in the Adoption Agreement.

**1.35 "1-Year Break in Service"** means, if the Hour of Service method is used, the applicable computation period that is used to determine a Year of Service during which an Employee or Former Employee has not completed more than 500 Hours of Service. However, if the Employer selected, in the Service Crediting Method Section of the Adoption Agreement, to define a Year of Service as less than 1,000 Hours of Service, then the 500 Hours of Service in this definition of 1-Year Break in Service shall be proportionately reduced. Further, solely for the purpose of determining whether an Employee has incurred a 1-Year Break in Service, Hours of Service shall be

recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence." For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement.

If the elapsed time method is elected in the Service Crediting Method Section of the Adoption Agreement, then a "1-Year Break in Service" means a twelve (12) consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the Employee or Former Employee does not perform an Hour of Service for the Employer during such twelve (12) consecutive month period.

**1.36 "Participant"** means any Employee or Former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term "Participant" also includes any individual who was a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the individual has an Account balance in the Plan).

**1.37 "Participant Directed Account"** means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedures.

**1.38 "Participant Direction Procedures"** means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.10 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

**1.39 "Participating Employer"** means an Employer which, with the consent of the "lead Employer" adopts the Plan pursuant to Section 10.1 or Article XI. In addition, unless the context means otherwise, the term "Employer" shall include any Participating Employer which shall adopt this Plan.

**1.40 "Period of Service"** means the aggregate of all periods of service commencing with an Employee's first day of employment or reemployment with the Employer or an Affiliated Employer and ending on the first day of a Period of Severance, or for benefit accrual purposes, ending on the severance from service date. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee who incurs a Period of Severance of twelve (12) months or less will also receive service-spanning credit by treating any such period as a Period of Service for purposes of eligibility and vesting (but not benefit accrual). For purposes of benefit accrual, a Participant's whole year Periods of Service is equal to the sum of all full and partial periods of service, whether or not such service is continuous or contiguous, expressed in the number of whole years represented by such sum. For this purpose, fractional periods of a year will be expressed in terms of days.

Periods of Service with any Affiliated Employer shall be recognized. Furthermore, Periods of Service with any predecessor employer that maintained this Plan shall be recognized. Periods of Service with any other predecessor employer shall be recognized as elected in the Adoption Agreement.

In determining Periods of Service for purposes of vesting under the Plan, Periods of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

In the event the method of crediting service is amended from the Hour of Service method to the elapsed time method, an Employee will receive credit for a Period of Service consisting of:

- (a) A number of years equal to the number of Years of Service credited to the Employee before the computation period during which the amendment occurs; and
- (b) The greater of (1) the Periods of Service that would be credited to the Employee under the elapsed time method for service during the entire computation period in which the transfer occurs or (2) the service taken into account under the Hour of Service method as of the date of the amendment.

In addition, the Employee will receive credit for service subsequent to the amendment commencing on the day after the last day of the computation period in which the transfer occurs.

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**1.41 "Period of Severance"** means a continuous period of time during which an Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for "maternity or paternity" reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a one year Period of Severance. For purposes of this paragraph, an absence from work for "maternity or paternity" reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

**1.42 "Plan"** means this instrument (hereinafter referred to as FIS Business Systems LLC Non-Standardized Governmental 401(a) Pre-Approved Plan (Basic Plan Document #03 and the Adoption Agreement) as adopted by the Employer, including all amendments thereto and any appendix which is specifically permitted pursuant to the terms of the Plan.

**1.43 "Plan Year"** means the Plan's accounting year as specified in the Adoption Agreement. Unless there is a Short Plan Year, the Plan Year will be a twelve-consecutive month period.

**1.44 "Pre-Retirement Survivor Annuity"** means an immediate annuity for the life of a Participant's Spouse, the payments under which must be equal to the benefit which can be provided with the percentage, as specified in the Adoption Agreement, of the Participant's Vested interest in the Plan as of the date of death. If no election is made in the Adoption Agreement, the percentage shall be equal to fifty percent (50%). Furthermore, if less than one hundred percent (100%) of the Participant's Vested interest in the Plan is used to provide the Pre-Retirement Survivor Annuity, a proportionate share of each of the Participant's Accounts subject to the Pre-Retirement Survivor Annuity shall be used to provide the Pre-Retirement Survivor Annuity.

**1.45 "Regulation"** means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

**1.46 "Retirement Date"** means the date as of which a Participant retires for reasons other than Total and Permanent Disability, regardless of whether such retirement occurs on a Participant's Normal Retirement Date, Early Retirement Date or Late Retirement Date (see Section 6.1).

**1.47 "Short Plan Year"** means, if specified in the Adoption Agreement or as the result of an amendment, a Plan Year of less than a twelve (12) month period. If there is a Short Plan Year, the following rules shall apply in the administration of this Plan. In determining whether an Employee has completed a Year of Service (or Period of Service if the elapsed time method is used) for benefit accrual purposes in the Short Plan Year, the number of the Hours of Service (or months of service if the elapsed time method is used) required shall be proportionately reduced based on the number of days (or months) in the Short Plan Year.

**1.48 "Spouse"** means, a spouse as determined under federal tax law. In addition, with respect to benefits or rights not mandated by law, Spouse also includes a spouse as elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

**1.49 "Terminated Participant"** means a person who has been a Participant, but whose employment has been terminated with the Employer (including an Affiliated Employer) or applicable Participating Employer, other than by death, Total and Permanent Disability or retirement.

**1.50 "Total and Permanent Disability"** means, unless otherwise specified in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The disability of a Participant shall be determined by a licensed physician. However, if the condition constitutes total disability under the federal Social Security Acts, the Administrator may rely upon such determination that the Participant is Totally and Permanently Disabled for the purposes of this Plan. The determination shall be applied uniformly to all Participants.

**1.51 "Trustee"** means any person or entity that has agreed to serve as Trustee pursuant to the terms of the Trust agreement, or any successors thereto. The Employer may designate Trustees by business position or title. In addition, unless the context means, or the Plan provides, otherwise, the term "Trustee" shall mean the Insurer if the Plan is fully insured. The Employer has no reliance on the IRS opinion letter with respect to the separate Trust agreement.

**1.52 "Trust Fund"** means, if the Plan is funded with a trust, the assets of the Plan and Trust as the same shall exist from time to time.

**1.53 "Valuation Date"** means the date or dates specified in the Adoption Agreement. Regardless of any election to the contrary, for purposes of the determination and allocation of earnings and losses, the Valuation Date shall include the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of Participants' Accounts during the Plan

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Year, which may include any day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, or any stock exchange used by such agent, are open for business.

**1.54 "Vested"** means the nonforfeitable portion of any Account maintained on behalf of a Participant.

**1.55 "Year of Service"** means the computation period of twelve (12) consecutive months, herein set forth, and during which an Employee has completed at least 1,000 Hours of Service (unless a different number of Hours of Service is specified in the Adoption Agreement).

For purposes of eligibility for participation, the initial computation period shall begin with the date on which the Employee first performs an Hour of Service (employment commencement date). Unless otherwise elected in the Service Crediting Method Section of the Adoption Agreement, the succeeding computation periods shall begin on the anniversary of the Employee's employment commencement date. However, unless otherwise elected in the Adoption Agreement, if one (1) Year of Service or less is required as a condition of eligibility, then the computation period after the initial computation period shall shift to the current Plan Year which includes the anniversary of the date on which the Employee first performed an Hour of Service, and subsequent computation periods shall be the Plan Year. If there is a shift to the Plan Year, an Employee who is credited with the number of Hours of Service to be credited with a Year of Service in both the initial eligibility computation period and the first Plan Year which commences prior to the first anniversary of the Employee's initial eligibility computation period will be credited with two (2) Years of Service for purposes of eligibility to participate.

If two (2) (or more) Years of Service are required as a condition of eligibility, a Participant will only have completed two (2) (or more) Years of Service for eligibility purposes upon completing two (2) or more consecutive Years of Service without an intervening 1-Year Break in Service.

For vesting purposes, and all other purposes not specifically addressed in this Section, the computation period shall be the period elected in the Service Crediting Method Section of the Adoption Agreement. If no election is made in the Service Crediting Method Section of the Adoption Agreement, then the computation period shall be the Plan Year.

In determining Years of Service for purposes of vesting under the Plan, Years of Service will be excluded as elected in the Adoption Agreement and as specified in Section 3.5.

Years of Service and 1-Year Breaks in Service for eligibility purposes will be measured on the same eligibility computation period. Years of Service and 1-Year Breaks in Service for vesting purposes will be measured on the same vesting computation period.

Years of Service with any Affiliated Employer shall be recognized. Furthermore, Years of Service with any predecessor employer that maintained this Plan shall be recognized. Years of Service with any other employer shall be recognized as elected in the Adoption Agreement.

In the event the method of crediting service is amended from the elapsed time method to the Hour of Service method, an Employee will receive credit for Years of Service equal to:

- (a) The number of Years of Service equal to the number of 1-year Periods of Service credited to the Employee as of the date of the amendment; and
- (b) In the computation period which includes the date of the amendment, a number of Hours of Service (using the Hours of Service equivalency method, if any, elected in the Adoption Agreement) to any fractional part of a year credited to the Employee under this Section as of the date of the amendment.

## ARTICLE II ADMINISTRATION

### 2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) **Appointment of Trustee (or Insurer) and Administrator.** In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove one or more Trustees (or Insurers) and Administrators from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) **Appointment of Investment Manager.** Unless prohibited by the terms of the Trust agreement, the Employer may appoint, at its option, one or more Investment Managers, investment advisers, or other agents to provide investment direction to the Trustee (or Insurer) with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form

acceptable to the Trustee (or Insurer) and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have the authority to direct the investment.

(c) **Indemnity.** To the extent permitted by the Code, and unless otherwise specified in a separate agreement, the Employer will indemnify and hold harmless the Administrator, officers, directors, shareholders, employees, and agents of the Employer; the Plan; the Trustees, Fiduciaries, Participants and Beneficiaries of the Plan, as well as their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as IRS plan disqualifications, and other sanctions or compliance fees) arising out of or relating to the Employer's noncompliance with any of the Plan's terms or requirements; any intentional or negligent act or omission the Employer commits with regard to the Plan; and any omission or provision of incorrect information with regard to the Plan which causes the Plan to fail to satisfy the requirements of a tax-qualified plan. This indemnity provision shall continue to apply to the Employer with respect to the period the entity was maintaining this Plan, even if the Employer ceases to maintain the Plan.

## **2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY**

The Employer may appoint one or more Administrators. If the Employer does not appoint an Administrator, the Employer will be the Administrator. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written or electronic acceptance with the Employer. An Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. Upon the resignation or removal of an Administrator, the Employer may designate in writing a successor to this position.

## **2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES**

If more than one person is appointed as Administrator, then the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. If no such delegation is made by the Employer, then the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee (or Insurer) in writing of such action and specify the responsibilities of each Administrator. The Trustee (or Insurer) thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee (or Insurer) a written revocation of such designation.

## **2.4 POWERS AND DUTIES OF THE ADMINISTRATOR**

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done based upon uniform principles consistently applied and shall be consistent with the intent that the Plan continue to be deemed a qualified plan under the terms of Code §401(a). The Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrator shall be charged with the duties of the general administration of the Plan and the powers necessary to carry out such duties as set forth under the terms of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of an Employee to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (c) to compute, certify, and direct agents of the Plan respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;
- (d) to authorize and direct the Trustee (or Insurer) with respect to all discretionary or otherwise directed disbursements from the Trust Fund;
- (e) to maintain all necessary records for the administration of the Plan;
- (f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan that are consistent with the terms hereof;



- (g) to determine the size and type of any Contract to be purchased from any Insurer, and to designate the Insurer from which such Contract shall be purchased;
- (h) to compute and certify to the Employer and to the Trustee (or Insurer) from time to time the sums of money necessary or desirable to be contributed to the Plan;
- (i) to consult with the Employer and agents of the Plan regarding the short and long-term liquidity needs of the Plan;
- (j) to assist Participants regarding their rights, benefits, or elections available under the Plan; and
- (k) to determine the validity of, and take appropriate action with respect to, any "qualified domestic relations order" received by it.

## **2.5 RECORDS AND REPORTS**

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by applicable law.

## **2.6 APPOINTMENT OF ADVISERS**

The Administrator may appoint counsel, specialists, advisers, agents (including nonfiduciary agents such as third party administrative services providers and recordkeepers) and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and, if applicable, to Plan Participants.

## **2.7 INFORMATION FROM EMPLOYER**

The Employer shall supply full and timely information to the Administrator on all pertinent facts as the Administrator may require in order to perform its functions hereunder and the Administrator shall advise appropriate agents of the Plan of such of the foregoing facts as may be pertinent to the agent's duties with respect to the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

## **2.8 PAYMENT OF EXPENSES**

All reasonable expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including nonfiduciary agents such as third party administrative services providers and recordkeepers) appointed for the purpose of assisting the Administrator or Trustee (or Insurer) in carrying out the instructions of Participants as to the directed investment of their Accounts (if permitted) and other specialists and their agents and other costs of administering the Plan. If liquid assets of the Plan are insufficient to cover the fees of the Trustee (or Insurer) or the Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

**Expenses may be charged to Account.** Unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account of an individual Participant a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or Alternate Payee.

## **2.9 MAJORITY ACTIONS**

Except where there has been an allocation and delegation of administrative authority pursuant to Section 2.3, if there is more than one Administrator, then they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf.

## **2.10 CLAIMS PROCEDURES**

(a) Non-ERISA provisions. Sections 2.10(a) and (b) apply unless (1) the Administrator has adopted other Plan provisions or other claims procedures that override all or a portion of the provisions set forth in this Plan Section 2.10, or (2) the Employer has elected in the Adoption Agreement to apply all or some of Subsections (c) – (g) below (which are based on provisions of the Employee Retirement Security Act even though ERISA does not apply to this Plan).

Any person who believes that he or she is entitled to a benefit under the Plan shall file with the Administrator a written notice of claim for such benefit within 45 days of such right accruing or shall forever waive entitlement to such benefit. Within 120 days after its receipt of such written notice of claim, the Administrator shall either grant or deny such claim provided, however, any delay on the part of the

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Administrator is arriving at a decision shall not adversely affect benefits payable under a granted claim. The Administrator may, however, implement claims procedures in addition to those provided in this Plan. The implementation of such procedures shall not be considered a Plan amendment that affects an Employer's reliance on this pre-approved plan.

The Administrator and all persons determining or reviewing claims have full discretion to determine benefit claims under the Plan. Any interpretation, determination or other action of such persons shall be subject to review only if it is arbitrary or capricious or otherwise an abuse of discretion. Any review of a final decision or action of the persons reviewing a claim shall be based only on such evidence presented to or considered by such persons at the time they made the decision that is the subject of review.

(b) Plan Administrator discretion; court review. The Administrator and all persons determining or reviewing claims have full discretion to determine benefit claims under the Plan. Any interpretation, determination or other action of such persons shall be subject to review only if it is arbitrary or capricious or otherwise an abuse of discretion. Any review of a final decision or action of the persons reviewing a claim shall be based only on such evidence presented to or considered by such persons at the time they made the decision that is the subject of review.

(c) Initial Claim. Claims for benefits under the Plan may be filed in writing with the Administrator. Written or electronic notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) after the application is filed, or such period as is required by applicable law or Department of Labor regulation. Any electronic notification shall comply with the standards imposed by Department of Labor Regulation §2520.104b 1(c)(1)(i), (iii) and (iv) or any subsequent guidance. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

(d) Claims review. Any Employee, Former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.10 shall be entitled to request the Administrator to give further consideration to the claim by filing with the Administrator a written request. Such request, together with a written statement of the reasons why the claimant believes such claim should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the written notification provided for in this Section 2.10(c). A final decision as to the allowance of the claim shall be made by the Administrator within sixty (60) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) of receipt of the appeal (unless there has been an extension of sixty (60) days (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts) due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period (45 days if the claim involves disability benefits and disability is not based on the Social Security Acts)). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based. The communication may be written or electronic (provided the electronic communication complies with the standards imposed by Department of Labor Regulation §2520.104b 1(c)(1)(i), (iii) and (iv) or any subsequent guidance). Notwithstanding the preceding, to the extent any of the time periods specified in this Section are amended by law or Department of Labor regulation, then the time frames specified herein shall automatically be changed in accordance with such law or regulation.

(e) Deadline to file claim. To be considered timely under the Plan's claims procedures, a claim must be filed under Sections 2.10(c) or (d) above within one year after the claimant knew or reasonably should have known of the principal facts upon which the claim is based. Knowledge of all facts that the Participant knew or reasonably should have known shall be imputed to the claimant for the purpose of applying this deadline.

(f) Exhaustion of administrative remedies. The exhaustion of the claims procedures is mandatory for resolving every claim and dispute arising under this Plan. As to such claims and disputes: (1) no claimant shall be permitted to commence any legal action to recover Plan benefits or to enforce or clarify rights under the Plan or under any other provision of law, whether or not statutory, until the claims procedures set forth in Subsections (a) and (b) above have been exhausted in their entirety; and (2) in any such legal action all explicit and all implicit determinations by the Administrator (including, but not limited to, determinations as to whether the claim, or a request for a review of a denied claim, was timely filed) shall be afforded the maximum deference permitted by law.

(g) Deadline to file action. No legal action to recover Plan benefits or to enforce or clarify rights under the Plan or under any other provision of law, whether or not statutory, may be brought by any claimant on any matter pertaining to this Plan unless the legal action is commenced in the proper forum before the earlier of: (1) thirty (30) months after the claimant knew or reasonably should have known of the principal facts on which the claim is based, or (2) six (6) months after the claimant has exhausted the claims procedure under this Plan. Knowledge of all facts that the Participant knew or reasonably should have known shall be imputed to every claimant who is or claims to be a Beneficiary of the Participant or otherwise claims to derive an entitlement by reference to the Participant for purposes of applying the previously specified periods.

**ARTICLE III  
ELIGIBILITY**

**3.1 CONDITIONS OF ELIGIBILITY**

An Eligible Employee shall be eligible to participate hereunder on the date such Employee has satisfied the conditions of eligibility, if any, elected in the Adoption Agreement.

**3.2 EFFECTIVE DATE OF PARTICIPATION**

(a) **General rule.** An Eligible Employee who has satisfied the conditions of eligibility pursuant to Section 3.1 shall become a Participant effective as of the date elected in the Adoption Agreement.

(b) **Rehired Employee.** This Subsection only applies to the extent the Employer elects to apply the Break-in-Service rules in Appendix A to the Adoption Agreement. If the Break-in-Service rules do not apply, then a rehired Employee is treated as a new hire. If the Break-in-Service rules do apply, then if an Eligible Employee is not employed on the date determined pursuant to (a) above, but is reemployed before a 1-Year Break in Service has occurred, then such Eligible Employee shall become a Participant on the date of reemployment or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated employment. If such Employee incurs a 1-Year Break in Service, then eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5.

(c) **Recognition of predecessor service.** Unless specifically provided otherwise in the Adoption Agreement, an Eligible Employee who satisfies the Plan's eligibility requirement conditions by reason of recognition of service with a predecessor employer will become a Participant as of the day the Plan credits service with a predecessor employer or, if later, the date the Employee would have otherwise entered the Plan had the service with the predecessor employer been service with the Employer.

(d) **Noneligible to eligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant, shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

(e) **Eligible to noneligible class.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant, shall go from a classification of an Eligible Employee to a noneligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee. However, if such Employee incurs a 1-Year Break in Service, eligibility will be determined under the 1-Year Break in Service rules set forth in Section 3.5 (if applicable to the Plan).

**3.3 DETERMINATION OF ELIGIBILITY**

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan.

**3.4 TERMINATION OF ELIGIBILITY**

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such Participant shall continue to vest in the Plan for each Year of Service (or Period of Service, if the elapsed time method is used) completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund in the same manner as Participants.

**3.5 REHIRED EMPLOYEES AND 1-YEAR BREAKS IN SERVICE**

(a) **Application of Break-in Service rules.** The Break-in-Service rules set forth in this Section only apply if the Employer elects to apply the Break-in-Service rules in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections). If the Employer does not elect to apply the Break-in-Service rules, then rehired Employees are treated as new hires.

(b) **Rehired Participant/immediate re-entry.** If any Former Employee who had been a Participant is reemployed by the Employer, then the Employee shall become a Participant as of the reemployment date, unless the Employee is not an Eligible Employee or unless the Employee does not satisfy the eligibility conditions taking into account prior service to the extent such prior service is not disregarded pursuant to Section 3.5(e) below. If such prior service is disregarded, then the rehired Eligible Employee shall be treated as a new hire.

(c) **Rehired Eligible Employee who satisfied eligibility.** If any Eligible Employee had satisfied the Plan's eligibility requirements but, due to a severance of employment, did not become a Participant, then such Eligible Employee shall become a Participant as of the later of (1) the entry date on which he or she would have entered the Plan had there been no severance of

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employment, or (2) the date of his or her re-employment. Notwithstanding the preceding, if the rehired Eligible Employee's prior service is disregarded pursuant to Section 3.5(e) below, then the rehired Eligible Employee shall be treated as a new hire.

(d) **Rehired Eligible Employee who had not satisfied eligibility.** If any Eligible Employee who had not satisfied the Plan's eligibility requirements is rehired after severance from employment, then such Eligible Employee shall become a Participant in the Plan in accordance with the eligibility requirements set forth in the Adoption Agreement and the Plan. However, in applying any shift in an eligibility computation period, the Eligible Employee is not treated as a new hire unless prior service is disregarded in accordance with Section 3.5(e) below.

(e) **Reemployed after five (5) 1-Year Breaks in Service ("rule of parity" provisions).** If the Employer elects in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to apply the "rule of parity" provisions, then if any Employee is reemployed after five (5) 1-Year Breaks in Service has occurred, Years of Service (or Periods of Service if the elapsed time method is being used) shall include Years of Service (or Periods of Service if the elapsed time method is being used) prior to the 5-Year Break in Service subject to the rules set forth below. The Employer may elect in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to make the provisions of this paragraph applicable for purposes of eligibility and/or vesting.

(1) In the case of a Former Employee who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Years of Service (or Periods of Service) before a period of 1-Year Breaks in Service will not be taken into account if the number of consecutive 1-Year Breaks in Service equals or exceeds the greater of (i) five (5) or (ii) the aggregate number of pre-break Years of Service (or Periods of Service). Such aggregate number of Years of Service (or Periods of Service) will not include any Years of Service (or Periods of Service) disregarded under the preceding sentence by reason of prior 1-Year Breaks in Service;

(2) A Former Employee who has not had Years of Service (or Periods of Service) before a 1-Year Break in Service disregarded pursuant to (1) above, shall participate in the Plan as of the date of reemployment, or if later, as of the date the Former Employee would otherwise enter the Plan pursuant to Sections 3.1 and 3.2 taking into account all service not disregarded.

(f) **Vesting after five (5) 1-Year Breaks in Service.** If the Employer elects in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) to apply the Break-in-Service rules, then if f. a Participant incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of such Participant's Account attributable to pre-break service shall not be increased as a result of post-break service. In such case, separate accounts will be maintained as follows:

(1) one account for nonforfeitable benefits attributable to pre-break service; and

(2) one account representing the Participant's Employer-derived Account balance in the Plan attributable to post-break service.

(g) **Waiver of allocation or contribution conditions.** If the Employer elects in the Adoption Agreement to waive allocations or contributions due to retirement (early or normal retirement), then a Participant shall only be entitled to one such waiver. Accordingly, if a Participant retires and allocation or contribution conditions are waived, then the Plan will not waive the allocation or contribution conditions if the Participant is rehired and then retires again.

### 3.6 ELECTION NOT TO PARTICIPATE

An Employee may, subject to the approval of the Employer, elect voluntarily not to participate in any component of the Plan before the Employee first becomes eligible to participate in any qualified plan (subject to Code §401(a)), or any other plan or arrangement of the employer that is described in Code section 219(g)(5)(A) (whether or not terminated) maintained by the Employer. Such election must be made upon inception of the Plan or such other plan or arrangement or at any time prior to the time the Employee first becomes eligible to participate under any such plan maintained by the Employer. The election not to participate must be irrevocable and communicated to the Employer, in writing, within a reasonable period of time before the date the Employee would have otherwise entered the Plan. Notwithstanding anything in this Section to the contrary, if any prior Plan document of this Plan contained a provision permitting an Employee to make a revocable election not to participate and an Employee made such revocable election not to participate while that prior Plan document was in effect, then such Employee's waiver shall continue to be in effect.

### 3.7 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, or any person who should not have been included as a Participant in the Plan is erroneously included, then the Employer may take corrective actions consistent with the IRS Employee Plans Compliance Resolution System (i.e., Rev. Proc. 2018-52, Rev. Proc. 2019-19, or any subsequent guidance).

ARTICLE IV  
CONTRIBUTION AND ALLOCATION

4.1 FORMULA FOR DETERMINING EMPLOYER'S CONTRIBUTION

(a) **For a Money Purchase Plan.** All contributions made by the Employer will be made in cash. For each Plan Year, the Employer will contribute to the Plan the following:

- (1) The amount of any mandatory Employee contributions and after-tax voluntary Employee contributions made by Participants; plus
- (2) On behalf of each Participant eligible to share in allocations, for each year of such Participant's participation in this Plan, the Employer will contribute the amount specified in the Adoption Agreement; plus
- (3) If elected in the Adoption Agreement, a matching contribution equal to the amount specified in the Adoption Agreement of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer matching contribution.

(b) **For a 401(a) Plan.** For each Plan Year, the Employer will (or may with respect to any discretionary contributions) contribute to the Plan:

- (1) The amount of any mandatory Employee contributions and after-tax voluntary Employee contributions; plus
- (2) If elected in the Adoption Agreement, a matching contribution equal to the amount specified in the Adoption Agreement of each Participant eligible to share in the allocations of the matching contribution, which amount shall be deemed an Employer matching contribution; plus
- (3) If elected in the Adoption Agreement, an Employer contribution equal to a specified contribution or a discretionary amount determined each year by the Employer.

(c) **Frozen Plans.** The Employer may designate that the Plan is a frozen Plan at the Contribution Types Section of the Adoption Agreement. As a frozen Plan, the Employer will not make any Employer contributions with respect to Compensation earned after the date the Plan is frozen. In addition, once a Plan is frozen, no additional Employees shall become Participants.

(d) **Union Employees.** Regardless of any provision in this Plan to the contrary, Employees whose employment is governed by a collective bargaining agreement between the Employer and "employee representatives" under which retirement benefits were the subject of good faith bargaining shall be eligible to participate in this Plan to the extent of employment covered by such agreement provided the agreement provides for coverage in the Plan. The benefits, including but not limited to, contributions, allocations and vesting, under this Plan shall be those set forth in the Adoption Agreement. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer. If a Participant performs services both as a collectively bargained Employee and as a non-collectively bargained Employee, then the Participant's Hours of Service and Compensation in each respective category are treated separately for purposes of the Plan.

(e) **Social Security Replacement Plan.** The Employer may elect under the Adoption Agreement to indicate its intention to qualify this Plan as a Social Security Replacement Plan under Code §3121(b)(7)(F). If the Employer makes the election to qualify the Plan as a Social Security Replacement Plan, the Plan will allocate a minimum contribution amount (Employer and Employee Contributions) of seven and one-half percent (7.5%) of Compensation. The Plan will consider each Participant a member of a retirement system that provides benefits comparable to the benefits he or she would have received under Social Security. In the case of part-time, seasonal and temporary Employees, the benefit will be nonforfeitable.

4.2 TIME OF PAYMENT OF EMPLOYER'S CONTRIBUTION

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

4.3 ALLOCATION OF CONTRIBUTION, FORFEITURES AND EARNINGS

(a) **Separate accounting.** The Administrator shall establish and maintain an Account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

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(b) **Allocation of contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution, if any, for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate any contributions as follows:

(1) **Money Purchase Pension Plan.** For a Money Purchase Plan:

- (i) The Employer's contribution shall be allocated to each Participant's Account in the manner set forth in Section 4.1 herein and as specified in the Adoption Agreement.
- (ii) Notwithstanding the preceding provisions, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement are satisfied.

(2) **401(a) Plan.** For a 401(a) Plan (which is a profit sharing plan within the meaning of Code §401(a)):

- (i) The Employer's contribution shall be allocated to each Participant's Account in accordance with the allocation method that corresponds with the elections in the Adoption Agreement. The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer's contribution for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the allocation shall be made in accordance with the elections in the Adoption Agreement.
- (ii) Notwithstanding the preceding provision, a Participant shall only be eligible to share in the allocations of the Employer's contribution for the year if the Participant is an Eligible Employee at any time during the year and the conditions set forth in the Adoption Agreement are satisfied.

(c) **Gains or losses.** Except as otherwise provided in Section 4.10 with respect to Participant Directed Accounts, as of each Valuation Date, before allocation of any Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) of the Trust Fund (exclusive of assets segregated for distribution) shall be allocated in accordance with such rules and procedures that are established by the Administrator and that are applied in a uniform and nondiscriminatory manner based upon the investments of the Trust Fund and the Participants' accounts to which the net income is allocated. For purposes of this Section, the term "net income" means the net of any interest, dividends, unrealized appreciation and depreciation, capital gains and losses, and investment expenses of the Trust Fund determined on each Valuation Date. However, Participants' accounts which have been segregated for investment purposes (including any Participant Directed Accounts) will only have the net income earned thereon allocated thereto. Policy dividends or credits will be allocated to the Participant's Account for whose benefit the Policy is held.

**Recapture account.** The Administrator in its discretion may use a "Recapture Account" to pay non settlor Plan expenses and may allocate funds in the "Recapture Account" (or excess funds therein after payment of Plan expenses) as earnings or as otherwise permitted by applicable law. The Administrator will exercise its discretion in a reasonable, uniform and nondiscriminatory manner. A "Recapture Account" is an account designated to receive amounts which a Plan service provider receives in the form of 12b 1 fees, sub transfer agency fees, shareholder servicing fees or similar amounts (also known as "revenue sharing"), which are received by the service provider from a source other than the Plan and which the service provider may remit to the Plan.

**Late trading and market timing settlement.** In the event the Plan becomes entitled to a settlement from a mutual fund or other investment relating to late trading, market timing or other activities, the Administrator will allocate the settlement proceeds to Participants and Beneficiaries in accordance with Department of Labor Field Assistance Bulletin 2006-01 or other applicable law.

(d) **Contracts.** Participants' Accounts shall be debited for any insurance or annuity premiums paid, if any, and credited with any dividends or interest received on Contracts.

(e) **Forfeitures.** Forfeitures must be disposed of no later than the last day of the Plan Year following the Plan Year in which the Forfeiture occurs. The Employer may direct the Administrator to use Forfeitures to satisfy any contribution that may be required pursuant to Section 6.10 or to pay any Plan expenses. With respect to a Money Purchase Plan, any remaining Forfeitures will be disposed of in accordance with the elections in the Adoption Agreement. With respect to all other plans, the Employer must direct the Administrator to use any remaining Forfeitures in accordance with any combination of the following methods, including a different method based on the source of such Forfeitures. Forfeitures may be:

- (1) Added to any Employer discretionary contribution and allocated in the same manner
- (2) Used to reduce any Employer contribution
- (3) Added to any Employer matching contribution and allocated as an additional matching contribution
- (4) Allocated to all Participants in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year

If Forfeitures are allocated to Participants (rather than used to reduce Employer contributions) then the Employer must also direct the Administrator as to which Participants are eligible to share in such allocation.

(f) **Delay in processing transactions.** Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

#### **4.4 MAXIMUM ANNUAL ADDITIONS**

##### **(a) Calculation of "annual additions."**

(1) If a Participant does not participate in, and has never participated in another qualified plan maintained by the "employer," or a welfare benefit fund (as defined in Code §419(e)) maintained by the "employer," or an individual medical benefit account (as defined in Code §415(l)(2)) maintained by the "employer," or a simplified employee pension (as defined in Code §408(k)) maintained by the "employer" which provides "annual additions," the amount of "annual additions" which may be credited to the Participant's Accounts for any Limitation Year shall not exceed the lesser of the "maximum permissible amount" or any other limitation contained in this Plan. If the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount," the amount contributed or allocated will be reduced so that the "annual additions" for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year, the Administrator shall determine the "maximum permissible amount" for each Participant for such Limitation Year on the basis of the Participant's actual 415 Compensation for such Limitation Year.

##### **(b) "Annual additions" if a Participant is in more than one plan.**

(1) Except as provided in Subsection (c) below, this Subsection applies if, in addition to this Plan, a Participant is covered under another "employer" maintained qualified defined contribution plan, welfare benefit fund (as defined in Code §419(e)), individual medical benefit account (as defined in Code §415(l)(2)), or simplified employee pension (as defined in Code §408(k)), which provides "annual additions," during any Limitation Year. The "annual additions" which may be credited to a Participant's Accounts under this Plan for any such Limitation Year shall not exceed the "maximum permissible amount" reduced by the "annual additions" credited to a Participant's Accounts under the other plans and welfare benefit funds, individual medical benefit accounts, and simplified employee pensions for the same Limitation Year. If the "annual additions" with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the "employer" are less than the "maximum permissible amount" and the "employer" contribution that would otherwise be contributed or allocated to the Participant's Accounts under this Plan would cause the "annual additions" for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the "annual additions" under all such plans and welfare benefit funds for the Limitation Year will equal the "maximum permissible amount," and any amount in excess of the "maximum permissible amount" which would have been allocated to such Participant may be allocated to other Participants. If the "annual additions" with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical benefit accounts and simplified employee pensions in the aggregate are equal to or greater than the "maximum permissible amount," no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.

(2) Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the "employer" may determine the "maximum permissible amount" for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(3) As soon as is administratively feasible after the end of the Limitation Year, the Administrator shall determine the "maximum permissible amount" for each Participant for such Limitation Year on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(4) If, pursuant to Section 4.4(b)(2), a Participant's "annual additions" under this Plan and such other plans would result in an "excess amount" for a Limitation Year, the "excess amount" will be deemed to consist of the "annual additions" last allocated, except that "annual additions" attributable to a simplified employee pension will be deemed to have been allocated first,

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followed by "annual additions" to a welfare benefit fund or individual medical benefit account, and then by "annual additions" to a plan subject to Code §412, regardless of the actual allocation date.

(5) If an "excess amount" was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the "excess amount" attributed to this Plan will be the product of:

- (i) the total "excess amount" allocated as of such date, times
- (ii) the ratio of (A) the "annual additions" allocated to the Participant for the Limitation Year as of such date under this Plan to (B) the total "annual additions" allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans.

(c) **Coverage under another plan.** If the Participant is covered under another qualified defined contribution plan maintained by the "employer," "annual additions" which may be credited to the Participant's Accounts under this Plan for any Limitation Year will be limited in accordance with Section 4.4(b), unless the "employer" provides other limitations in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections).

(d) **Time when "annual additions" credited.** An "annual addition" is credited to the Account of a Participant for a particular Limitation Year if it is allocated to the Participant's Account under the Plan as of any date within that Limitation Year. However, an amount is not deemed allocated as of any date within a Limitation Year if such allocation is dependent upon participation in the Plan as of any date subsequent to such date.

For purposes of this subparagraph, "employer" contributions are treated as credited to a Participant's Account for a particular Limitation Year only if the contributions are actually made to the Plan no later than the 15th day of the tenth calendar month following the end of the calendar year or Fiscal Year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(e) **Definitions.** For purposes of this Section, the following terms shall be defined as follows:

(1) **"Annual additions"** means the sum credited to a Participant's Accounts for any Limitation Year of (a) "employer" contributions, (b) Employee contributions (except as provided below), (c) Forfeitures, (d) amounts allocated to an individual medical benefit account, as defined in Code §415(l)(2), which is part of a pension or annuity plan maintained by the "employer," (e) amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(e)) maintained by the "employer" and (f) allocations under a simplified employee pension. Except, however, the Compensation percentage limitation referred to in paragraph (e)(5)(ii) below shall not apply to: (1) any contribution for medical benefits (within the meaning of Code §419A(f)(2)) after separation from service which is otherwise treated as an "annual addition," or (2) any amount otherwise treated as an "annual addition" under Code §415(l)(1).

(i) **Restorative payments.** "Annual additions" for purposes of Code §415 and this Section shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the Plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that are considered "annual additions."

(ii) **Other amounts.** "Annual additions" for purposes of Code §415 and this Section shall not include: (A) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (B) Rollover contributions (as described in Code §§401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (C) Repayments of loans made to a Participant from the Plan; and (D) Repayments of amounts described in Code §411(a)(7)(B) (in accordance with Code §411(a)(7)(C)) and Code §411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code §414(d)) as described in Code §415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

(2) **"Defined contribution dollar limitation"** means \$56,000 (or the amount as adjusted under Code §415(d)).

(3) **"Employer"** means, for purposes of this Section, the Employer that adopts this Plan and all Affiliated Employers.

(4) **"Excess amount"** means the excess of the Participant's "annual additions" for the Limitation Year over the "maximum permissible amount."



(5) "**Maximum permissible amount**" means, except to the extent permitted under this Plan and Code §414(v), the maximum "annual addition" that may be contributed or allocated to a Participant's Accounts under the Plan for any Limitation Year, which shall not exceed the lesser of:

- (i) the "defined contribution dollar limitation," or
- (ii) one hundred percent (100%) of the Participant's 415 Compensation for the Limitation Year.

The 415 Compensation Limitation referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code §§401(h) or 419A(f)(2)) which is otherwise treated as an "annual addition."

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the "maximum permissible amount" will not exceed the "defined contribution dollar limitation" multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year and the denominator of which is twelve (12).

(f) **Special rules.**

(1) **Aggregation of plans.** For purposes of applying the limitations of Code §415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the "employer" (or a "predecessor employer") under which the Participant receives "annual additions" (including voluntary employee contribution accounts in a defined benefit plan, mandatory contributions to a defined benefit plan, individual medical benefit accounts under §401(h), key employee accounts under a welfare benefit plan described in §419, and simplified employee pensions under §408(k)) of the employer or a predecessor employer, whether or not terminated, will be treated as one defined contribution plan for purposes of the limitations under § 415(c). Where the employer is a member of a controlled group of corporations or commonly controlled trades or businesses, or a member of an affiliated service group, within the meaning of §§414(b), (c) or (m) and §415(g) and (h), the plan must provide that all such employers are treated as a single employer for purposes of the Plan's application of the §415 limitations. Notwithstanding the preceding, multiemployer plans are not aggregated with other multiemployer plans for purposes of §415. For purposes of this Section:

- (i) A former "employer" is a "predecessor employer" with respect to a participant in a plan maintained by an "employer" if the "employer" maintains a plan under which the participant had accrued a benefit while performing services for the former "employer", but only if that benefit is provided under the plan maintained by the "employer". For this purpose, the "formerly affiliated plan" rules in Regulation §1.415(f)-1(b)(2) apply as if the "employer" and "predecessor employer" constituted a single employer under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately prior to the "cessation of affiliation" (and as if they constituted two, unrelated employers under the rules described in Regulation §1.415(a)-1(f)(1) and (2) immediately after the "cessation of affiliation") and "cessation of affiliation" was the event that gives rise to the "predecessor employer" relationship, such as a transfer of benefits or plan sponsorship.
- (ii) With respect to an "employer" of a Participant, a former entity that antedates the "employer" is a "predecessor employer" with respect to the Participant if, under the facts and circumstances, the "employer" constitutes a continuation of all or a portion of the trade or business of the former entity.

(2) **Break-up of an affiliated employer or an affiliated service group.** For purposes of aggregating plans for Code §415, a "formerly affiliated plan" of an "employer" is taken into account for purposes of applying the Code §415 limitations to the "employer," but the "formerly affiliated plan" is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an "employer" is a plan that, immediately prior to the "cessation of affiliation," was actually maintained by one or more of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)), and immediately after the "cessation of affiliation," is not actually maintained by any of the entities that constitute the "employer" (as determined under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single "employer" under the employer affiliation rules described in Regulation §1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the "employer" under the employer affiliation rules of Regulation §1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(3) **Mid-year aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code §415(f) and the Regulations thereunder as of the first day of a Limitation Year do not fail to satisfy the requirements of Code §415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no "annual additions" are credited to the Participant's Account after the date on which the plans are required to be aggregated.

**4.5 ADJUSTMENT FOR EXCESS ANNUAL ADDITIONS**

Notwithstanding any provision of the Plan to the contrary, if the "annual additions" (as defined in Section 4.4) are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Rev. Proc. 2018-52, Rev. Proc. 2019-19, or any superseding guidance.

**4.6 ROLLOVERS**

(a) **Acceptance of "rollovers" into the Plan.** If elected in the Adoption Agreement and with the consent of the Administrator, the Plan may accept a "rollover," provided the "rollover" will not jeopardize the tax-exempt status of the Plan or create adverse tax consequences for the Employer. The amounts rolled over shall be separately accounted for in a "Participant's Rollover Account." A Participant's Rollover Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees. In addition, for purposes of this Section the term Participant shall also include Former Employees elected in the Adoption Agreement. Regardless of whether new loans are permitted, if the Plan permits rollovers, the Administrator may, in a uniform and nondiscriminatory manner, accept rollovers of loans into this Plan if the terms of such loans meet the requirements of being definite, have a reasonable rate of interest, and/or have a definite repayment period (e.g., an asset purchase acquisition whereby the Employer may choose to accept the rollover of Participant loans from a prior employer in a uniform and nondiscriminatory manner).

(b) **Treatment of "rollovers" under the Plan.** Amounts in a Participant's Rollover Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (c) below. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan.

(c) **Distribution of "rollovers."** At such time as the conditions set forth in the Adoption Agreement have been satisfied, the Administrator, at the election of the Participant, shall direct the distribution of up to the entire amount credited to the Rollover Account maintained on behalf of such Participant. Any distribution of amounts held in a Participant's Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6. Furthermore, unless otherwise elected in the Adoption Agreement, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(d) **"Rollovers" maintained in a separate account.** The Administrator may direct that "rollovers" made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.

(e) **Limits on accepting "rollovers."** Prior to accepting any "rollovers" to which this Section applies, the Administrator may require the Employee to establish (by providing opinion of counsel or otherwise) that the amounts to be rolled over to this Plan meet the requirements of this Section. The Employer may instruct the Administrator, operationally, to limit the source of "rollover" contributions that may be accepted by the Plan.

(f) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) A "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;" (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax-free rollover to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code or any other federally enacted legislation.

(2) An "eligible retirement plan" means an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b) (other than an endowment contract), a qualified trust (an employees' trust described in Code §401(a) which is exempt from tax under Code §501(a)), an annuity plan described in Code §403(a), an eligible deferred compensation plan described in Code §457(b) which is maintained by an eligible employer described in Code §457(e)(1)(A), and an annuity contract described in Code §403(b).

(g) **Pre-Participation Rollovers.** If an Eligible Employee makes a Rollover Contribution to the Plan prior to satisfying the Plan's eligibility conditions or prior to reaching his or her Entry Date, then the Administrator will treat the Employee as a limited Participant (as described in Rev. Rul. 96 48). A limited Participant does not share in the Plan's allocation of Employer Contributions nor Forfeitures until the Employee actually becomes a Participant in the Plan.

#### 4.7 PLAN-TO-PLAN TRANSFERS FROM QUALIFIED PLANS

- (a) **Transfers into this Plan.** With the consent of the Administrator, amounts may be transferred (within the meaning of Code §414(l)) to this Plan from other tax qualified plans under Code §401(a), provided the plan from which such funds are transferred permits the transfer to be made and the transfer will not jeopardize the tax-exempt status of the Plan or Trust or create adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require an opinion of counsel that the amounts to be transferred meet the requirements of this Section. The amounts transferred shall be set up in a separate account herein referred to as a "Participant's Transfer Account." Furthermore, for vesting purposes, the Participant's Transfer Account may be treated as a separate "Participant's Account."
- (b) **Accounting of transfers.** Amounts in a Participant's Transfer Account shall be held by the Trustee (or Insurer) pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as elected in the Adoption Agreement and Subsection (d) below, provided the restrictions of Subsection (c) below and Section 6.16 are satisfied. The Trustee (or Insurer) shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee (or Insurer) under the terms of this Plan. Notwithstanding anything in this Section to the contrary, transferred amounts are not required to be separately accounted for and may be combined with the corresponding Account maintained in this Plan provided all rights, benefits and features and other attributes are identical with respect to each account, or are identical after the combination.
- (c) **Distribution of plan-to-plan transfer amounts.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Participant's Transfer Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Any distribution of amounts held in a Participant's Transfer Account shall be made in a manner which is consistent with and satisfies the provisions of Sections 6.5 and 6.6. Furthermore, such amounts shall be considered to be part of a Participant's benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.
- (d) **Segregation.** The Administrator may direct that Employee transfers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated, invested as part of the general Trust Fund or, if elected in the Adoption Agreement, directed by the Participant.
- (e) **Pre-Participation Transfers.** The Administrator has the discretion to accept a Transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility conditions or prior to reaching the Entry Date in a uniform and nondiscretionary manner. If the Plan accepts such a direct transfer of plan assets, then the Administrator will treat the Employee as a limited Participant pursuant to Section 4.6(g).

#### 4.8 MANDATORY EMPLOYEE CONTRIBUTIONS

- (a) **Mandatory Employee contributions.** An Employer may elect in the Adoption Agreement to provide for mandatory Employee contributions. If the Employer elects to provide for such contributions, each Participant, will make a mandatory Employee contribution in the amount elected in the Adoption Agreement. Alternatively, the Employer may elect to provide a range of mandatory Employee contribution percentages from which the Participant may choose to contribute. Under this option, the Employee, if required as a condition of employment, must make an irrevocable election to contribute a percentage of his or her Compensation no later than his or her effective date of participation. If not required as a condition of employment, such mandatory Employee contribution election shall be made prior to participation in the Plan. During the period of the Participant's participation in the Plan, the Participant may not revoke the election and receive cash in lieu of the contribution, nor may the Participant change the amount of the mandatory Employee contribution. Amounts attributable to mandatory Employee contributions shall be fully Vested.
- (b) **Employer pick-up contribution.** Unless otherwise elected in the Adoption Agreement, the Employer will "pick-up" the mandatory Employee contributions and will pay the mandatory Employee contributions to the Plan as an Employer contribution. This provision is effective only after the Employer provides for the treatment of the mandatory Employee contributions as described in this paragraph, through a person authorized to take such action, and evidenced in writing by minutes of a meeting, resolution, ordinance, or other formal action by the Employer, which will effectuate the "pick-up" provision. Furthermore, as of the date of the "pick-up," Participants are not permitted to opt-out of the "pick-up" or to receive the mandatory Employee contributions directly instead of having them paid to the Plan. Mandatory Employee contributions that are "picked-up" by the Employer are excludible from the Employee's gross income.

#### 4.9 AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS

- (a) **After-tax voluntary Employee contributions.** If elected in the Adoption Agreement, each Participant may, in accordance with procedures established by the Administrator, elect to make after-tax voluntary Employee contributions to this Plan. Such contributions must generally be paid to the Trustee (or Insurer) within a reasonable period of time after being received by the Employer. An after-tax voluntary Employee contribution is any contribution made to the Plan by or on behalf of a Participant that is included in the Participant's gross income in the year in which made and that is separately accounted for under the Plan.

(b) **Full vesting.** The balance in each Participant's Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(c) **Distribution at any time.** A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant's Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 6.5. If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for the withdrawal. Forfeitures of Employer contributions shall not occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

(d) **Used to provide benefits.** At Normal Retirement Date, or such other date when the Participant or the Participant's Beneficiary is entitled to receive benefits, the Participant's Voluntary Contribution Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

#### 4.10 PARTICIPANT DIRECTED INVESTMENTS

(a) **Directed investment options allowed.** If permitted by the Administrator and the terms of the Trust, Participants may direct the Trustee (or Insurer) as to the investment of all or a portion of their individual Account balances in accordance with the Plan's procedures. Participants may direct the Trustee (or Insurer), in writing (or in such other form which is acceptable to the Trustee (or Insurer)), to invest their accounts in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the Account of any Participant that is subject to investment direction of such Participant will be considered a Participant Directed Account.

(b) **Establishment of Participant Direction Procedures.** The Administrator will establish Participant Direction Procedures, to be applied in a uniform manner, setting forth the permissible investment options under this Section, how often changes between investments may be made, and any other limitations and provisions that the Administrator may impose on a Participant's right to direct investments.

(c) **Administrative discretion.** The Administrator may, in its discretion, include or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

(d) **Allocation of gains or losses.** As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent the assets in a Participant Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

(2) to the extent the assets in a Participant Directed Account are accounted for as segregated assets, the allocation of earnings, gains on and losses from such assets shall be made on a separate and distinct basis.

(e) **Plan will follow investment directions.** Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee (or Insurer) that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Discretionary Trustee (or Insurer) reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Discretionary Trustee (or Insurer). Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider) or force majeure. The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

(f) **Other documents required by directed investments.** Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to Participants in one or more documents (or in any other form, including, but not limited to, electronic media) which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

#### 4.11 QUALIFIED MILITARY SERVICE

(a) **USERRA.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code §414(u). Furthermore, loan repayments may be suspended under this Plan as permitted under Code §414(u)(4).

(b) **Benefit accrual.** If the Employer elects in the Adoption Agreement to apply this Subsection, then effective as of the date specified in the Adoption Agreement, for benefit accrual purposes, the Plan treats an individual who becomes Totally and Permanently disabled while performing "qualified military service" (as defined in Code §414(u)) with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA), on the day preceding Total and Permanent Disability and terminated employment on the actual date of death or Total and Permanent Disability.

The Plan will determine the amount of after-tax voluntary Employee contributions of an individual treated as reemployed under this Section for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual after-tax voluntary Employee contributions for the lesser of: (1) the 12-month period of service with the Employer immediately prior to "qualified military service" (as defined in Code §414(u)); or (2) the actual length of continuous service with the Employer.

(c) **Death benefits.** If a Participant dies while performing "qualified military service" (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of "qualified military service" but including vesting credit for such period and any other ancillary life insurance or other survivor benefits) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's "qualified military service" as service for vesting purposes, as though the Participant had resumed employment under Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (USERRA) immediately prior to the Participant's death.

(d) **Military Differential Pay.** The following applies with respect to Military Differential Pay: (1) an individual receiving Military Differential Pay is treated as an Employee of the Employer making the payment; (2) the Military Differential Pay is treated as 415 Compensation (and Compensation unless otherwise elected in the Adoption Agreement); and (3) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding Plan provisions) by reason of any contribution or benefit which is based on the Military Differential Pay. The Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any matching contributions, attributable to Military Differential Pay.

(e) **Deemed Severance.** Notwithstanding Subsection (b)(1) above, if elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), a Participant who performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than thirty (30) days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not attributable to Employer contributions to a money purchase pension plan. However, the Plan will not distribute such a Participant's Account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an after-tax voluntary Employee contribution during the six (6) month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision, then the other Plan provision will control and the six (6) month suspension will not apply.

#### 4.12 INSTRUCTIONS TO ADMINISTRATOR AND NOTIFICATION TO PARTICIPANTS

For Plan Years beginning after the end of the Plan Year in which this document is first adopted, if a "Flexible Discretionary Match" contribution formula applies (i.e., a formula that provides an Employer with discretion regarding how to *allocate* a matching contribution to Participants) and the Employer makes a "Flexible Discretionary Match" to the Plan, the Employer must provide the Plan Administrator or Trustee written instructions describing (1) how the "Flexible Discretionary Match" formula will be allocated to Participants (e.g., a uniform percentage of Elective Deferrals or a flat dollar amount), (2) the computation period(s) to which the "Flexible Discretionary Match" formula applies, and (3) if applicable, a description of each business location or business classification subject to separate "Flexible Discretionary Match" allocation formulas. Such instructions must be provided no later than the date on which the "Flexible Discretionary Match" is made to the Plan. A summary of these instructions must be communicated to Participants who receive an allocation of the "Flexible Discretionary Match" no later than 60 days following the date on which the last "Flexible Discretionary Match" contribution is made to the Plan for the Plan Year.

Solely for purposes of this Section, a matching contribution is to be considered as being a "Flexible Discretionary Match" contribution unless the Employer has provided a definitely determinable allocation formula for the matching contribution on the Adoption Agreement. In order to be definitely determinable, then the components of the allocation formula described in the preceding sentence must be specified on the Adoption Agreement and cannot themselves be discretionary. Thus, regardless of whether the contribution formula for the matching contribution is fixed or discretionary, the provisions of the preceding paragraph apply unless the amount to be allocated to the Participant for the Plan Year can be determined without any discretion on the part of the Employer.

**ARTICLE V  
VALUATIONS**

**5.1 VALUATION OF THE TRUST FUND**

The Administrator shall direct the Trustee (or Insurer), as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee (or Insurer) shall value the assets comprising the Trust Fund at their fair market value as of the Valuation Date and may deduct all expenses for which the Trustee (or Insurer) has not yet been paid by the Employer or the Trust Fund. The Trustee (or Insurer), when determining the net worth of the assets, may update the value of any shares held in a Participant Directed Account by reference to the number of shares held on behalf of the Participant, priced at the market value as of the Valuation Date.

**5.2 METHOD OF VALUATION**

Except as otherwise provided in the Trust agreement, in determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee (or Insurer) to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee, the Administrator (if the Trustee is a directed Trustee), or Insurer may appraise such assets itself (assuming it has the appropriate expertise), or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

**ARTICLE VI  
DETERMINATION AND DISTRIBUTION OF BENEFITS**

**6.1 DETERMINATION OF BENEFITS UPON RETIREMENT**

Every Participant may terminate employment with the Employer and retire for purposes hereof on the Participant's Normal Retirement Date or Early Retirement Date. However, a Participant may postpone the severance of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.3, shall continue until such Participant's Retirement Date. Upon a Participant's Retirement Date, or if elected in the Adoption Agreement, the attainment of Normal Retirement Date without severance of employment with the Employer (subject to Section 6.11), or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant (unless a distribution is mandatory under the other terms of the Plan), of the Participant's entire Vested interest in the Plan in accordance with Section 6.5.

**6.2 DETERMINATION OF BENEFITS UPON DEATH**

- (a) **100% vesting on death.** Upon the death of a Participant before the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. The Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of the deceased Participant's Vested accounts to the Participant's Beneficiary.
- (b) **Distribution upon death.** Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of any remaining Vested amounts credited to the accounts of such deceased Participant to such Participant's Beneficiary.
- (c) **Determination of death benefit by Administrator.** The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.
- (d) **Beneficiary designation.** Each Participant must designate a Beneficiary on a form and in such manner as provided by the Administrator.
- (e) **Spousal consent to alternative Beneficiary.** This Subsection applies if the Employer has elected in the Adoption Agreement either to apply the Joint and Survivor Annuity rules or to provide that a Participant's Spouse is the Beneficiary unless the Spouse consents to an alternative Beneficiary. Unless otherwise elected in the manner prescribed in Section 6.6, the Beneficiary of the Pre-Retirement Survivor Annuity (or if applicable, the entire death benefit) shall be the Participant's surviving Spouse. Except, however, the Participant may designate a Beneficiary other than the Spouse if:
  - (1) the Participant and the Participant's Spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Section 6.6, and the Spouse has waived the right to be the Participant's Beneficiary,

- (2) the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect (and there is no "qualified domestic relations order" as defined in Code §414(p) which provides otherwise),
- (3) the Participant has no Spouse, or
- (4) the Spouse cannot be located.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written (or in such other form as permitted by the IRS) notice of such revocation or change with the Administrator. However, the Participant's Spouse must again consent in writing (or in such other form as permitted by the IRS) to any change in Beneficiary unless the original consent acknowledged that the Spouse had the right to limit consent only to a specific Beneficiary and that the Spouse voluntarily elected to relinquish such right.

(f) **Beneficiary if no Beneficiary elected by Participant.** In the event no valid designation of Beneficiary exists, or if the Beneficiary with respect to a portion of a Participant's death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such portion of the death benefit will be paid in the following order of priority, unless the Employer specifies a different order of priority in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), to:

- (1) The Participant's surviving Spouse;
- (2) The Participant's issue, per stirpes;
- (3) The Participant's surviving parents, in equal shares; or
- (4) The Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's "designated Beneficiary" (or if there is no "designated Beneficiary," to the Beneficiary's estate). For purposes of these provisions, and with respect to any Beneficiary designations, adopted children shall be treated as children.

(g) **Divorce revokes spousal Beneficiary designation.** Notwithstanding anything in this Section to the contrary, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) or prohibited by applicable State law, if a Participant has designated the Spouse as a Beneficiary, then a divorce decree that relates to such Spouse shall revoke the Participant's designation of the Spouse as a Beneficiary unless the decree or a "qualified domestic relations order" (within the meaning of Code §414(p)) provides otherwise or a subsequent Beneficiary designation is made.

(h) **Insured death benefit.** If the Plan provides an insured death benefit and a Participant dies before any insurance coverage to which the Participant is entitled under the Plan is effected, the death benefit from such insurance coverage shall be limited to the premium which was or otherwise would have been used for such purpose.

(i) **Plan terms control.** In the event of any conflict between the terms of this Plan and the terms of any Contract issued hereunder, the Plan provisions shall control.

### 6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other severance of employment, all amounts credited to such Participant's Combined Account shall, if elected in the Adoption Agreement, become fully Vested. In the event of a Participant's Total and Permanent Disability, the Participant's entire Vested interest in the Plan will be distributable and may be distributed in accordance with the provisions of Sections 6.5 and 6.7.

### 6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) **Payment on severance of employment.** If a Participant's employment with the Employer and any Affiliated Employer is severed for any reason other than death, Total and Permanent Disability, or attainment of the Participant's Retirement Date, then such Participant shall be entitled to such benefits as are provided herein.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability, Early or Normal Retirement). However, at the election of the Participant, the Administrator shall direct that the entire Vested portion of the Terminated Participant's Combined Account be payable to such Terminated Participant provided the

conditions, if any, set forth in the Adoption Agreement have been satisfied. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.

Regardless of whether distributions in kind are permitted, in the event the amount of the Vested portion of the Terminated Participant's Combined Account equals or exceeds the fair market value of any insurance Contracts, the Administrator may direct the Trustee (or Insurer), when agreed to by the Terminated Participant, to assign, transfer, and set over to such Terminated Participant all Contracts on such Terminated Participant's life in such form or with such endorsements, so that the settlement options and forms of payment are consistent with the provisions of Section 6.5. In the event that the Terminated Participant's Vested portion does not at least equal the fair market value of the Contracts, if any, the Terminated Participant may pay over to the Trustee (or Insurer) the sum needed to make the distribution equal to the value of the Contracts being assigned or transferred, or the Trustee (or Insurer), pursuant to the Participant's election, may borrow the cash value of the Contracts from the Insurer so that the value of the Contracts is equal to the Vested portion of the Terminated Participant's Combined Account and then assign the Contracts to the Terminated Participant.

Notwithstanding the above, unless otherwise elected in the Adoption Agreement, if the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000 (or such lower amount as elected in the Adoption Agreement), the Administrator shall direct that the entire Vested benefit be paid to such Participant in a single lump-sum as soon as practical without regard to the consent of the Participant, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. A Participant's Vested benefit shall not include (1) qualified voluntary employee contributions within the meaning of Code §72(o)(5)(B) and (2) if selected in the Conditions for Distributions Upon Severance of Employment Section of the Adoption Agreement, the Participant's Rollover Account. If a mandatory distribution is made pursuant to this paragraph and such distribution is greater than \$1,000 and the Participant does not elect to have such distribution paid directly to an "eligible retirement plan" specified by the Participant in a "direct rollover" in accordance with Section 6.14 or to receive the distribution directly, then the Administrator shall transfer such amount to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) designated by the Administrator. However, if the Participant elects to receive or make a "direct rollover" of such amount, then the Administrator shall direct the Trustee (or Insurer) to cause the entire Vested benefit to be paid to such Participant in a single lump sum, or make a "direct rollover" pursuant to Section 6.14, provided the conditions, if any, set forth in the Adoption Agreement have been satisfied. The Administrator may establish a procedure as to whether a Participant who fails to make an affirmative election with respect to a mandatory distribution of \$1,000 or less is treated as having made or not made a "direct rollover" election. For purposes of determining whether the \$1,000 threshold set forth in this paragraph is met, the mandatory distribution includes amounts in a Participant's Rollover Account. For purposes of determining whether the \$5,000 threshold in this paragraph is met, a Participant's Rollover Account is taken into account unless otherwise elected in the Adoption Agreement.

(b) **Vesting schedule.** The Vested portion of any Participant's Account shall be a percentage of such Participant's Account determined on the basis of the Participant's number of Years of Service (or Periods of Service if the elapsed time method is elected) according to the vesting schedule specified in the Adoption Agreement. However, a Participant's entire interest in the Plan shall be non-forfeitable upon the Participant's Normal Retirement Age (if the Participant is employed by the Employer on or after such date). In addition, Employee contributions (voluntary and mandatory) and contributions for sick leave/vacation leave conversions shall be fully Vested.

## 6.5 DISTRIBUTION OF BENEFITS

(a) **Forms of distributions.** Subject to the Joint and Survivor Annuity requirements in Subsection (c) below (if the Employer elects to apply such provisions), the Administrator, pursuant to the election of the Participant, shall direct the distribution to a Participant or Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods which are permitted pursuant to the Adoption Agreement.

- (1) One lump-sum payment in cash or in property, provided that if a distribution of property is permitted, it shall be limited to property that is specifically allocated and identifiable with respect to such Participant.
- (2) Partial withdrawals.
- (3) Payments over a period certain in monthly, quarterly, semi-annual, or annual cash installments. The period over which such payment is to be made shall not extend beyond the earlier of the Participant's life expectancy (or the joint life expectancy of the Participant and the Participant's designated Beneficiary). Once payments have begun, a Participant may elect to accelerate the payments (reduce the term and increase payments).
- (4) Purchase of or providing an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(b) **Consent to distributions.** Benefits may not be paid without a Participant's consent if the value of the Participant's Accounts exceed the dollar threshold specified in the Adoption Agreement. If the value of the Participant's Accounts does not exceed such



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threshold, then the Administrator may only distribute such benefit in a lump-sum. For purposes of this Subsection, the Participant's Accounts shall not include, if selected in the Conditions for Distributions Upon Severance of Employment Section of the Adoption Agreement, the Participant's Rollover Account.

(c) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits, whether under the Plan or through the purchase of an annuity Contract, shall be made in accordance with the requirements of Section 6.8.

(d) **Annuity Contracts.** All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or Spouse shall comply with all of the requirements of this Plan.

(e) **Qualified Joint and Survivor Annuity.**

(1) The provisions of this Subsection (e) apply if the Employer elects to apply the Joint and Survivor Annuity rules in the Adoption Agreement. A Participant who is married on the Annuity Starting Date and who does not die before the Annuity Starting Date shall receive the value of all Plan benefits in the form of a Joint and Survivor Annuity. The Joint and Survivor Annuity is an annuity that commences immediately and shall be equal in value to a single life annuity. Such joint and survivor benefits following the Participant's death shall continue to the Spouse during the Spouse's lifetime at a rate equal to either fifty percent (50%), seventy-five percent (75%) (or, sixty-six and two-thirds percent (66 2/3%) if the Insurer used to provide the annuity does not offer a joint and seventy-five percent (75%) survivor annuity), or one hundred percent (100%) of the rate at which such benefits were payable to the Participant. Unless otherwise elected in the Adoption Agreement, a joint and fifty percent (50%) survivor annuity shall be considered the designated qualified Joint and Survivor Annuity and the normal form of payment for the purposes of this Plan. However, the Participant may, without spousal consent, elect an alternative Joint and Survivor Annuity, which alternative shall be equal in value to the designated qualified Joint and Survivor Annuity. An unmarried Participant shall receive the value of such Participant's benefit in the form of a life annuity. Such unmarried Participant, however, may elect to waive the life annuity. The election must comply with the provisions of this Section as if it were an election to waive the Joint and Survivor Annuity by a married Participant, but without fulfilling the spousal consent requirement. The Participant may elect to have any annuity provided for in this Section distributed upon the attainment of the "earliest retirement age" under the Plan. The "earliest retirement age" is the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(2) Any election to waive the Joint and Survivor Annuity must be made by the Participant in writing (or in such other form as permitted by the IRS) during the election period and be consented to in writing (or in such other form as permitted by the IRS) by the Participant's Spouse. If the Spouse is legally incompetent to give consent, the Spouse's legal guardian, even if such guardian is the Participant, may give consent. Such election shall designate a Beneficiary (or a form of benefits) that may not be changed without spousal consent (unless the consent of the Spouse expressly permits designations by the Participant without the requirement of further consent by the Spouse). Such Spouse's consent shall be irrevocable and must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no Spouse, the Spouse cannot be located, or other circumstances that may be prescribed by Regulations. The election made by the Participant and consented to by such Participant's Spouse may be revoked by the Participant in writing (or in such other form as permitted by the IRS) without the consent of the Spouse at any time during the election period. A revocation of a prior election shall cause the Participant's benefits to be distributed as a Joint and Survivor Annuity. The number of revocations shall not be limited. Any new election must comply with the requirements of this paragraph. A former Spouse's waiver shall not be binding on a new Spouse.

(3) The election period to waive the Joint and Survivor Annuity shall be the one-hundred eighty (180) day period ending on the Annuity Starting Date.

(4) For purposes of this Section and Section 6.6, Spouse or surviving Spouse means the Spouse or surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or surviving Spouse and a current Spouse will not be treated as the Spouse or surviving Spouse to the extent provided under a "qualified domestic relations order" as described in Code §414(p).

(5) With regard to the election, except as otherwise provided herein, the Administrator shall, in accordance with Regulation §1.417(a)(3)-1, provide to the Participant no less than thirty (30) days and no more than one-hundred eighty (180) days before the Annuity Starting Date a written (or such other form as permitted by the IRS) explanation of:

- (i) the terms and conditions of the qualified Joint and Survivor Annuity and the "qualified optional survivor annuity" that is payable in lieu of the qualified Joint and Survivor Annuity,
- (ii) the Participant's right to make and the effect of an election to waive the Joint and Survivor Annuity,

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- (iii) the right of the Participant's Spouse to consent to any election to waive the Joint and Survivor Annuity, and
  - (iv) the right of the Participant to revoke such election, and the effect of such revocation.
- (6) Any distribution provided for in this Section may commence less than thirty (30) days after the notice required by Code §417(a)(3) is given provided the following requirements are satisfied:
- (i) the Administrator clearly informs the Participant that the Participant has a right to a period of thirty (30) days after receiving the notice to consider whether to waive the Joint and Survivor Annuity and to elect (with spousal consent) a form of distribution other than a Joint and Survivor Annuity;
  - (ii) the Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the Joint and Survivor Annuity is provided to the Participant;
  - (iii) the Annuity Starting Date is after the time that the explanation of the Joint and Survivor Annuity is provided to the Participant. However, the Annuity Starting Date may be before the date that any affirmative distribution election is made by the Participant and before the date that the distribution is permitted to commence under (iv) below; and
  - (iv) distribution in accordance with the affirmative distribution election does not commence before the expiration of the seven (7) day period that begins the day after the explanation of the Joint and Survivor Annuity is provided to the Participant.
- (f) **Qualified Joint and Survivor Annuity but not the normal form.** The provisions of this Section apply if the Employer has elected in the Adoption Agreement to apply the Joint and Survivor Annuity requirement to a Participant, but the Qualified Joint and Survivor Annuity is not the normal form of distribution.
- (1) The Joint and Survivor Annuity provisions of Section 6.5(e) shall not apply if a Participant does not elect an annuity form of distribution. Furthermore, Subsection (3) below shall not apply if a Participant elects an annuity form of distribution.
  - (2) Notwithstanding anything in Sections 6.2 and 6.6 to the contrary, upon the death of a Participant, the automatic form of distribution will be a lump-sum rather than a Qualified Pre-Retirement Survivor Annuity. Furthermore, the Participant's Spouse will be the Beneficiary of the Participant's entire Vested interest in the Plan unless an election is made to waive the Spouse as Beneficiary. The other provisions in Section 6.2 shall be applied by treating the death benefit in this Subsection as though it is a Qualified Pre-Retirement Survivor Annuity.
  - (3) Except to the extent otherwise provided in this Section, the provisions of Sections 6.2 and 6.5 regarding spousal consent shall be inoperative with respect to this Plan.
  - (4) The distribution may commence less than thirty (30) days after the notice required under Regulation §1.411(a)-11(c) is given, provided:
    - (1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and
    - (2) the Participant, after receiving the notice, affirmatively elects a distribution.

### 6.6 DISTRIBUTION OF BENEFITS UPON DEATH

- (a) **Consent.** If the value of the death benefit derived from Employer and Employee contributions does not exceed \$5,000, the Administrator shall direct the distribution of such amount to the Participant's Beneficiary in a single lump-sum as soon as practicable. If the value exceeds \$5,000, an immediate distribution of the entire amount may be made to the Beneficiary, provided such Beneficiary consents to the distribution.
- (b) **Forms of distribution.** Death benefits may be paid to a Participant's Beneficiary in one of the following optional forms of benefits subject to the rules specified in Section 6.8 and the elections made in the Adoption Agreement. Such optional forms of distributions may be elected by the Participant. However, if no optional form of distribution was elected by the Participant prior to death, then the Participant's Beneficiary may elect the form of distribution.
- (1) One lump-sum payment in cash or in property that is allocated to the Accounts of the Participant at the time of the distribution.

- (2) Partial withdrawals.
- (3) Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or the Participant's Beneficiary. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity Contract for a term certain (with no life contingencies) providing for such payment. After periodic installments commence, the Beneficiary shall have the right to reduce the period over which such periodic installments shall be made, and the cash amount of such periodic installments shall be adjusted accordingly.
- (4) In the form of an annuity over the life expectancy of the Beneficiary.
- (c) **Required minimum distributions (Code §401(a)(9)).** Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall comply with the requirements of Section 6.8.
- (d) **Payment to a child.** For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving Spouse if the amount becomes payable to the surviving Spouse when the child reaches the age of majority.
- (e) **Voluntary Contribution Account.** In the event that less than one hundred percent (100%) of a Participant's interest in the Plan is distributed to such Participant's Spouse, the portion of the distribution attributable to the Participant's Voluntary Contribution Account shall be in the same proportion that the Participant's Voluntary Contribution Account bears to the Participant's total interest in the Plan.
- (f) **TEFRA 242(b)(2) election.** The provisions of this Section shall not apply to distributions made in accordance with Section 6.8(a)(4).

## 6.7 TIME OF DISTRIBUTION

Except as limited by Section 6.8, whenever a distribution is to be made, or a series of payments are to commence, the distribution or series of payments may be made or begun as soon as practicable. Notwithstanding anything in the Plan to the contrary, unless a Participant otherwise elects, payments of benefits under the Plan will be begin not later than the later of the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer. The failure of a Participant to request a distribution shall be deemed to be an election to defer the commencement of payment of any benefit until the time otherwise permitted under the Plan.

## 6.8 REQUIRED MINIMUM DISTRIBUTIONS

### (a) General rules

- (1) **Effective Date.** Subject to the good faith interpretation standard, the requirements of this Section shall apply to any distribution of a Participant's interest in the Plan and will take precedence over any inconsistent provisions of this Plan.
- (2) **Requirements of Treasury Regulations incorporated.** All distributions required under this Section will be determined and made in accordance with the Regulations under Code §401(a)(9) and the minimum distribution incidental benefit requirement of Code §401(a)(9)(G).
- (3) **Limits on distribution periods.** As of the first "distribution calendar year," distributions to a Participant may only be made in accordance with the selections made in the Form of Distributions Section of the Adoption Agreement. If such distributions are not made in a single-sum, then they may only be made over one of the following periods: (i) the life of the Participant, (ii) the joint lives of the Participant and a "designated Beneficiary," (iii) a period certain not extending beyond the "life expectancy" of the Participant, or (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a "designated Beneficiary."
- (4) **TEFRA Section 242(b)(2) elections.**
  - (i) Notwithstanding the other provisions of this Section, other than the Spouse's right of consent afforded under the Plan, distributions may be made on behalf of any Participant, including a five percent (5%) owner, who has made a designation in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and in accordance with all of the following requirements (regardless of when such distribution commences):

- (A) The distribution by the Plan is one which would not have disqualified such Plan under Code §401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

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(B) The distribution is in accordance with a method of distribution designated by the Participant whose interest in the Plan is being distributed or, if the Participant is deceased, by a Beneficiary of such Participant.

(C) Such designation was in writing, was signed by the Participant or the Beneficiary, and was made before January 1, 1984.

(D) The Participant had accrued a benefit under the Plan as of December 31, 1983.

(E) The method of distribution designated by the Participant or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Participant's death, the Beneficiaries of the Participant listed in order of priority.

(ii) A distribution upon death will not be covered by the transitional rule of this Subsection unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Participant.

(iii) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Participant, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in (i)(A) and (i)(E) of this Subsection.

(iv) If a designation is revoked, any subsequent distribution must satisfy the requirements of Code §401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code §401(a)(9) and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(v) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation §1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

(5) **Good faith interpretation standard.** In applying any provision of this section, the Plan will apply a reasonable good faith interpretation of Code §401(a)(9).

### (b) Time and manner of distribution

(1) **Required beginning date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "required beginning date."

(2) **Death of Participant before distributions begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows as elected in the Distributions Upon Death Section of the Adoption Agreement (or if no election is made, then the Beneficiary may elect either the lifetime method or the five-year method and if the Beneficiary makes no election, the five-year method shall apply):

(i) **Lifetime method (Spouse).** If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," then, except as otherwise provided herein, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(ii) **Lifetime method (non-Spouse).** If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," then, except as provided in Section 6.8(b)(3) below, distributions to the "designated Beneficiary" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) **Five-year method.** If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death or if otherwise elected pursuant to the Adoption Agreement with respect to a "designated Beneficiary," the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) **Death of Spouse.** If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary" and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 6.8(b)(2), other than Section 6.8(b)(2)(i), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 6.8(b)(2) and Section 6.8(b)(3), unless Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the Participant's "required beginning date." If Section 6.8(b)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's "required beginning date" (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the "required beginning date," as of the first "distribution calendar year" distributions will be made in accordance with Sections 6.8(c) and 6.8(d) and only in a form of distribution provided in Section 6.5 or 6.6, as applicable. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Regulations thereunder.

(c) **Required minimum distributions during Participant's lifetime**

(1) **Amount of required minimum distribution for each "distribution calendar year."** During the Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of the following:

- (i) the quotient obtained by dividing the "Participant's account balance" by the distribution period in the Uniform Lifetime Table set forth in Regulation §1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or
- (ii) if the Participant's sole "designated Beneficiary" for the "distribution calendar year" is the Participant's Spouse, the quotient obtained by dividing the "Participant's account balance" by the number in the Joint and Last Survivor Table set forth in Regulation §1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the "distribution calendar year."

(2) **Lifetime required minimum distributions continue through year of Participant's death.** Required minimum distributions will be determined under this Section 6.8(c) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.

(d) **Required minimum distributions after Participant's death**

(1) **Death on or after date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as follows:

(A) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," the remaining "life expectancy" of the surviving Spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For "distribution calendar years" after the year of the surviving Spouse's death, the remaining "life expectancy" of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving Spouse is not the Participant's sole "designated Beneficiary," the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) **No "designated Beneficiary."** If the Participant dies on or after the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) **Death before date distributions begin.**

(i) **Participant survived by "designated Beneficiary."** Except as provided in Section 6.8(b)(3), if the Participant dies before the date distributions begin and there is a "designated Beneficiary," the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the remaining "life expectancy" of the Participant's "designated Beneficiary," determined as provided in Section 6.8(d)(1).

(ii) **No "designated Beneficiary."** If the Participant dies before the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) **Death of surviving Spouse before distributions to surviving Spouse are required to begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole "designated Beneficiary," and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 6.8(b)(2)(i), this Section 6.8(d)(2) will apply as if the surviving Spouse were the Participant.

(e) **Definitions.** For purposes of this Section, the following definitions apply:

(1) "Designated Beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the "designated Beneficiary" under Code §401(a)(9) and Regulation §1.401(a)(9)-4.

(2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year which contains the Participant's "required beginning date." For distributions beginning after the Participant's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under Section 6.8(b). The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's "required beginning date." The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year."

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation §1.401(a)(9)-9.

(4) "Participant's account balance" means the Participant's account balance as of the last Valuation Date in the calendar year immediately preceding the "distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of the dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. For this purpose, the Administrator may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

(a) **Reduction for QLACs.** A Participant's account balance is reduced by any QLACs (as defined below). This paragraph applies only to QLACs purchased on or after July 2, 2014.

(b) **Definition of QLAC.** A QLAC is qualifying longevity annuity contract as defined in A-17 of Regulation §1.401(a)(9)-6. Pursuant to such Regulation, a QLAC is an annuity contract that is purchased from an insurance company for a Participant and that, in accordance with the rules of application of paragraph (c) below, satisfies each of the following requirements:

(1) The premiums paid with respect to the contract on a date do not exceed the lesser of the following amounts, determined in accordance with the provisions of paragraph (b) of A-17 of Regulation §1.401(a)(9)-6.

(a) An amount equal to the excess of \$125,000 (as adjusted under paragraph (d)(2) of A-17 of Regulation §1.401(a)(9)-6), over the sum of the premiums paid before that date with respect to the contract, and the premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is purchased for the Participant under the Plan, or any other plan, annuity, or account described in Code §401(a), 403(a), 403(b), or 408 or eligible governmental plan under §457(b).

(b) An amount equal to the excess of 25% of the Participant's account balance under the Plan (including the value of any QLAC held under the Plan for the Participant) as of that date, over the sum of the premiums paid before that date with respect to the contract, and the premiums paid on

or before that date with respect to any other contract that is intended to be a QLAC and that is held or was purchased for the Participant under the Plan.

- (2) The contract provides that distributions under the contract must commence not later than a specified annuity starting date that is no later than the first day of the month next following the eighty-fifth (85<sup>th</sup>) anniversary of the Employee's birth;
- (3) The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of paragraph (c) of A-17 of Regulation §1.401(a)(9)-6 (other than the requirement that annuity payments commence on or before the required beginning date (RBD));
- (4) The contract does not make available any commutation benefit, cash surrender right, or other similar feature except as otherwise permitted under A-17 of Regulation §1.401(a)(9)-6;
- (5) No benefits are provided under the contract after the death of the employee other than the benefits described in paragraph (c) of A-17 of Regulation §1.401(a)(9)-6;
- (6) Except as otherwise permitted under A-17 of Regulation §1.401(a)(9)-6, when the contract is issued, the contract (or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and
- (7) The contract is not a variable contract under Code §817, an indexed contract, or a similar contract, except to the extent provided by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.

**(c) Rules of application relating to premiums.**

**(1) Reliance on representations.** For purposes of the limitation on premiums described in paragraphs (b)(1) and (2) above, unless the Administrator has actual knowledge to the contrary, the Administrator may rely on an Employee's representation (made in writing or such other form as may be prescribed by the Commissioner) of the amount of the premiums described in such paragraphs, but only with respect to premiums that are not paid under a plan, annuity, or contract that is maintained by the Employer or an entity that is treated as a single employer with the Employer under Code §414(b), (c), (m), or (o).

**(2) Consequences of excess premiums.** If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (b)(1)(a) above, then the contract is not a QLAC beginning on the date that premium payment is made unless the excess premium is returned to the non-QLAC portion of the Participant's account in accordance with paragraph (d)(1)(ii)(B) of A-17 of Regulation §1.401(a)(9)-6. If the contract fails to be a QLAC, then the value of the contract may not be disregarded under paragraph (a) above as of the date on which the contract ceases to be a QLAC.

If the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the Participant's account by the end of the calendar year following the calendar year in which the excess premium was originally paid, then the contract will not be treated as exceeding the limits under paragraph (b)(1)(a) above at any time, and the value of the contract will not be included in the employee's account balance under paragraph (a) above. If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the Participant's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the Participant's account balance for that calendar year must be increased to reflect that excess premium in the same manner as a Participant's account balance is increased under Regulation §1.401(a)(9)-7, A-2 to reflect a rollover received after the last valuation date.

**(3) Application of 25-percent limit.** For purposes of the 25% limit under paragraph (b)(1)(b) above, a Participant's account balance on the date on which premiums for a contract are paid is the account balance as of the last valuation date preceding the date of the premium payment, adjusted as follows. The account balance is increased for contributions allocated to the account during the period that begins after the valuation date and ends before the date the premium is paid and decreased for distributions made from the account during that period.

**(d) Dollar and age limitations subject to adjustments.** In the case of calendar years beginning on or after January 1, 2015, the \$125,000 amount under paragraph (b)(1)(a) will be adjusted at the same time and in the same manner as the limits are adjusted under Code §415(d), except that the base period shall be the calendar quarter beginning July 1, 2013, and any increase under this paragraph that is not a multiple of \$10,000 will be rounded to the next lowest multiple of \$10,000. The maximum age set forth in paragraph (b)(2) may be adjusted to reflect changes in mortality, with any such adjusted age to be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin and made available by the Superintendent of Documents.

If a contract fails to be a QLAC because it does not satisfy the dollar limitation in paragraph (b)(1)(a) or the age limitation in paragraph (b)(2), any subsequent adjustment that is made pursuant to this paragraph (d) will not cause the contract to become a QLAC.

(5) "Required beginning date" means, except as otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), with respect to any Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires.

#### **6.9 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL**

If, in the opinion of the Administrator, a Participant or Beneficiary entitled to a distribution is not able to care for his her affairs because of a mental condition, a physical condition, or by reason of age in the case of a minor, Administrator shall direct the distribution to the Participant's or Beneficiary's valid power of attorney, court appointed guardian, or any other person authorized under state law to receive the benefit (including a custodian under a Uniform Transfers or Gifts to Minors Act), upon furnishing evidence of such status satisfactory to the Administrator. The Administrator and the Trustee (or Insurer) do not have any liability with respect to payments so made and neither the Administrator nor the Trustee (or Insurer) has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

#### **6.10 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN**

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture or be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). Before treating any Participant as being missing, the Administrator must conduct a reasonable and diligent search for the Participant, using one or more of search methods the Plan Administrator determines are appropriate under the circumstances, such as the methods suggested by DOL Field Assistance Bulletin 2014-01. Such search methods include:

- (1) provide a distribution notice to the lost Participant at the Participant's last known address by certified or registered mail;
- (2) check with the administrator of other employee benefit plans of the Employer that may have more up-to-date information regarding the Participant's whereabouts;
- (3) identify and contact the Participant's Designated Beneficiary;
- (4) use one or more free internet search tools;
- (5) attempt contact via email or telephone, or
- (6) use proprietary internet search tools, commercial locator services, credit reporting agencies, information brokers, or other search methods. Regarding search methods (2) and (3) above, if the Plan Administrator encounters privacy concerns, the Plan Administrator may request that the Employer or other plan fiduciary (under (2)), or the Designated Beneficiary (under (3)), contact the Participant or forward a letter requesting that the Participant contact the Plan Administrator.

In addition, if the Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed \$1,000, then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b) or use the PBGC Missing Participant Program, or any successor program, at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture and prior to the time the Plan has been terminated, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. Upon Plan termination, the portion of the distributable amount that is an "eligible rollover distribution" as defined in Section 6.14(b)(1) may be paid directly to an individual retirement account described in Code §408(a) or an individual retirement annuity described in Code §408(b). However, regardless of the preceding, a benefit that is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

#### **6.11 IN-SERVICE DISTRIBUTION**

If elected in the Adoption Agreement, at such time as the conditions set forth in the Adoption Agreement have been satisfied, then the Administrator, at the election of a Participant who has not severed employment with the Employer, shall direct the distribution of up to the entire Vested amount then credited to the Accounts as elected in the Adoption Agreement maintained on behalf of such Participant. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. In the event that the Administrator makes such a distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 6.5. Furthermore, if an in-service distribution is permitted from more than one account type, the Administrator may determine any ordering of a Participant's in-service distribution from such accounts. The Administrator may adopt a policy imposing frequency limitations or other reasonable administrative conditions on in-service distributions made pursuant to this Section.



**6.12 DISTRIBUTION FOR HARDSHIP**

(a) **Hardship events.** If elected in the Adoption Agreement, the Administrator, at the election of the Participant, shall direct the distribution to any Participant in any one Plan Year to an amount necessary to satisfy the Participant's immediate and heavy financial need, determined in accordance with the remaining provisions of this Section. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need. Such distributions may also be made from those Accounts from which such distribution are authorized by the remaining provisions of this Section. For purposes of this Section, a Participant shall include an Employee who has an Account balance in the Plan. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Account from which the distribution is made shall be reduced accordingly. Withdrawal under this Section shall be authorized only if the distribution is for an immediate and heavy financial need. The Administrator will determine whether there is an immediate and heavy financial need based on the facts and circumstances. An immediate and heavy financial need includes, but is not limited to, a distribution for one of the following:

- (1) Expenses for (or necessary to obtain) medical care (as defined in Code §213(d));
- (2) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) Payments for burial or funeral expenses for the Participant's deceased parent, Spouse, children or dependents (as defined in Code §152, and without regard to Code §152(d)(1)(B));
- (4) Payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant's Spouse, children, or dependents (as defined in Code §152, and without regard to Code §§152(b)(1), (b)(2), and (d)(1)(B));
- (5) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or
- (6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) **Beneficiary-based distribution.** If elected in the Adoption Agreement, then effective as of the date specified in the Adoption Agreement, a Participant's hardship event includes an immediate and heavy financial need of the Participant's "primary Beneficiary under the Plan," that would constitute a hardship event if it occurred with respect to the Participant's Spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Section, a Participant's "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan (by the Participant or pursuant to Section 6.2(d)) and has an unconditional right to all or a portion of the Participant's Account balance under the Plan upon the Participant's death.

(c) **Other limits and conditions.** If elected in the Adoption Agreement, no distribution shall be made pursuant to this Section from the Participant's Account until such Account has become fully Vested. Furthermore, if a hardship distribution is permitted from more than one Account, the Administrator may determine any ordering of a Participant's hardship distribution from such Accounts.

(d) **Distribution rules apply.** Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.

**6.13 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION**

All benefits provided to a Participant in this Plan shall be subject to the rights afforded to any Alternate Payee under a "qualified domestic relations order." Furthermore, unless otherwise elected in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections) a distribution to an Alternate Payee shall be permitted if such distribution is authorized by a "qualified domestic relations order," even if the affected Participant has not reached the "earliest retirement age." For the purposes of this Section, "qualified domestic relations order" and "earliest retirement age" shall have the meanings set forth under Code §414(p). For purposes of this Section, however, a distribution that is made pursuant to a domestic relations order which meets the requirements of Code §414(p)(1)(A)(i) will be treated as being made pursuant to a "qualified domestic relations order."

A domestic relations order that otherwise satisfies the requirements for a "qualified domestic relations order" will not fail to be a "qualified domestic relations order": (i) solely because the order is issued after, or revises, another domestic relations order or "qualified domestic relations order"; or (ii) solely because of the time at which the order is issued, including issuance after the Annuity Starting Date or after the Participant's death.

## 6.14 DIRECT ROLLOVERS

(a) **Right to direct rollover.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a "distributee's" election under this Section, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover." However, if less than the entire amount of the "eligible rollover distribution" is being paid directly to an "eligible retirement plan," then the Administrator may require that the amount paid directly to such plan be at least \$500.

(b) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) **Eligible rollover distribution.** An "eligible rollover distribution" means any distribution described in Code §402(c)(4) and generally includes any distribution of all or any portion of the balance to the credit of the "distributee," except that an "eligible rollover distribution" does not include: (a) any distribution that is 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" "designated Beneficiary," or for a specified period of ten (10) years or more; (b) any distribution to the extent such distribution is required under Code §401(a)(9); (c) any hardship distribution; (d) the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); (e) any loans that are treated as deemed distributions under Code §72(p) which are not also an offset distribution; (f) the costs of life insurance coverage (P.S. 58 costs); (g) any other distributions described in Regulation §1.402(c)-2; and any other distribution reasonably expected to total less than \$200 during a year.

Notwithstanding the above, a portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax voluntary Employee contributions which are not includible in gross income. However, such portion may be transferred only to:

- (i) a traditional individual retirement account or annuity described in Code §408(a) or (b) (a "traditional IRA")
- (ii) for taxable years beginning after December 31, 2006, a Roth individual account or annuity described in Code §408A (a "Roth IRA"), or
- (iii) a qualified defined contribution plan or an annuity contract described in Code §401(a) or Code §403(b), respectively, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) **Eligible retirement plan.** An "eligible retirement plan" is a "traditional IRA," a "Roth IRA," a qualified trust (an employees' trust) described in Code §401(a) which is exempt from tax under Code §501(a), an annuity plan described in Code §403(a), an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision and which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code §403(b), and for distributions made after December 18, 2015, a SIMPLE IRA to the extent permitted under Code §408(p)(1)(B), that accepts the "distributee's" "eligible rollover distribution." The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is an Alternate Payee. If any portion of an "eligible rollover distribution" is attributable to payments or distributions from a designated Roth account, an "eligible retirement plan" with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual. In the case of a "distributee" who is a non-Spouse designated Beneficiary, (i) the "direct rollover" may be made only to a traditional or Roth individual retirement account or an annuity described in Code §408(b) ("IRA") that is established on behalf of the designated non-Spouse Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11), and (ii) the determination of any required minimum distribution required under Code §401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18.

(3) **Distributee.** A "distributee" includes an Employee or Former Employee. In addition, the Employee's or Former Employee's surviving Spouse and the Employee's or Former Employee's Spouse or former Spouse who is the Alternate Payee, are "distributees" with regard to the interest of the Spouse or former Spouse.

(4) **Direct rollover.** A "direct rollover" is a payment by the Plan to the "eligible retirement plan" specified by the "distributee."

(c) **Participant notice.** A Participant entitled to an "eligible rollover distribution" must receive a written explanation of the right to a "direct rollover," the tax consequences of not making a "direct rollover," and, if applicable, any available special income tax elections. The notice must be provided no less than thirty (30) days and no more than one-hundred eighty (180) days before the Annuity Starting Date. The "direct rollover" notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

(d) **Non-Spouse Beneficiary rollover right.** A non-Spouse Beneficiary who is a "designated Beneficiary" under Code §401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion an "eligible rollover distribution" to an IRA the Beneficiary establishes for purposes of receiving the distribution. If the Participant's named Beneficiary is a trust, the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a "designated Beneficiary."

#### **6.15 RESTRICTIONS ON DISTRIBUTION OF ASSETS TRANSFERRED FROM A MONEY PURCHASE PLAN**

Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the Employee's retirement, death, Total and Permanent Disability, or severance from employment, and prior to Plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code §414(l), to this Plan from a money purchase pension plan qualified under Code §401(a) (other than any portion of those assets and liabilities attributable to after-tax voluntary Employee contributions or to a direct or indirect rollover contribution). A Participant may not obtain an in-service distribution with respect to such transferred amounts prior to the earlier of the Participant's Normal Retirement Age or attainment of age 62.

#### **6.16 CORRECTIVE DISTRIBUTIONS**

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant, to the extent such distribution is made to correct a qualification defect in accordance with the corrective procedures under the IRS' Employee Plans Compliance Resolution System or any other voluntary compliance programs established by the IRS.

#### **6.17 SERVICE CREDIT PURCHASES**

The Administrator, upon Participant request, may direct the transfer of all or a portion of the Participant's Account to a governmental defined benefit plan (as defined in Code §414(d)) in which he or she participates for the purchase of permissive service credit (as defined in Code §415(n)(3)(A)).

#### **6.18 UNCASHED CHECKS**

Subject to the provisions of Section 6.10, the Plan Administrator operationally may dispose of an uncashed distribution from the Plan to a lost Participant at the time and in the manner described in this Section). Prior to doing so, the Plan Administrator must make reasonable and diligent efforts to contact the lost Participant, including using such search methods the Plan Administrator determines are appropriate under the circumstances. At the discretion of the Administrator, Plan distributions that remain uncashed, and which the Administrator chooses not to reinvest in the Plan may be: (1) voluntarily remitted to a State unclaimed property department, but no sooner than the appropriate state dormancy period has expired; or (2) deposited for the benefit of the lost Participant either to a: (a) bank account, or (b) individual retirement account if the original distribution was an eligible rollover distribution.

For purposes of this Section 6.18, a distribution is "uncashed" if it remains uncashed by the "cash-by" date on the check or in an accompanying notice, e.g., a date prescribed by the bank or the Plan. This "cash-by" date must be at least forty-five (45) days after the check is issued. If there is no prescribed "cash-by" date, then the amount is considered uncashed if it is not cashed by the check's stale date.

#### **6.19 HEALTH INSURANCE PAYMENTS FOR PUBLIC SAFETY OFFICERS**

An "eligible retired public safety officer" may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the "eligible retired public safety officer" otherwise would receive and include in income. The Plan will pay such deducted amounts directly to pay "qualified health insurance premiums" as defined in Code §402(l). Any election made under this Plan must conform to the requirements of Code §402(l). A "qualified retired public safety officer" is a public safety officer (as defined in §1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C 3796b(9)(A)) who, by reason of disability or attainment of Normal Retirement Age, is separated from service as a public safety officer with the Employer. "Qualified health insurance premiums" means the premiums for coverage for the "eligible retired public safety officer," his or her Spouse, and dependents (as defined in Code §152), by an accident or health plan or qualified long-term care insurance contract (as defined in Code §7702B(b)).

### **ARTICLE VII TRUSTEE AND CUSTODIAN**

#### **7.1 CONFLICT WITH PLAN**

In the event of any conflicts between the provisions of this Plan and the Trust agreement, the provisions of this Plan control.

## 7.2 POWERS AND DUTIES OF CUSTODIAN

Subject to the terms of the Trust agreement, the Employer may appoint a Custodian of the Plan assets. The duties of the Custodian are those set forth in the agreement with the Custodian. Any reference in the Plan to a Trustee also is a reference to a Custodian unless the Employer has appointed a Custodian separate from the Trustee or the context of the Plan indicates otherwise.

## 7.3 LIFE INSURANCE

(a) **Permitted insurance.** To the extent not prohibited under the terms of the Trust agreement, the Trustee (or Insurer), in accordance with operational procedures of the Administrator, shall ratably apply for, own, and pay all premiums on Contracts on the lives of the Participants or, in the case of a 401(a) Plan, on the life of a member of the Participant's family or on the joint lives of a Participant and a member of the Participant's family. Furthermore, if a Contract is purchased on the joint lives of the Participant and another person and such other person predeceases the Participant, then the Contract may not be maintained under this Plan. Any initial or additional Contract purchased on behalf of a Participant shall have a face amount of not less than \$1,000, an amount set forth in the Administrator's procedures, or the limitation of the Insurer, whichever is greater. If a life insurance Contract is to be purchased for a Participant, then the aggregate premium for ordinary life insurance for each Participant must be less than 50% of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. For purposes of this limitation, ordinary life insurance Contracts are Contracts with both non-decreasing death benefits and non-increasing premiums. If term insurance or universal life insurance is purchased, then the aggregate premium must be 25% or less of the aggregate contributions and Forfeitures allocated to the Participant's Combined Account. If both term insurance and ordinary life insurance are purchased, then the premium for term insurance plus one-half of the premium for ordinary life insurance may not in the aggregate exceed 25% of the aggregate Employer contributions and Forfeitures allocated to the Participant's Combined Account. Notwithstanding the preceding, the limitations imposed herein with respect to the purchase of life insurance shall not apply, in the case of a 401(a) Plan, to the portion of the Participant's Account that has accumulated for at least two (2) Plan Years or to the entire Participant's Account if the Participant has been a Participant in the Plan for at least five (5) years. In addition, amounts transferred to this Plan in accordance with Section 4.6(f)(1)(ii) or (iii) and a Participant's Voluntary Contribution Account may be used to purchase Contracts without limitation. Thus, amounts that are not subject to the limitations contained herein may be used to purchase life insurance on any person in whom a Participant has an insurable interest or on the joint lives of a Participant and any person in whom the Participant has an insurable interest, and without regard to the amount of premiums paid to purchase any life insurance hereunder.

(b) **Contract conversion at retirement.** The Administrator must direct the Trustee (or Insurer) to distribute any Contracts to the Participant or convert the entire value of the Contracts at or before retirement into cash or provide for a periodic income so that no portion of such value may be used to continue life insurance protection beyond the Participant's actual retirement date.

(c) **Limitations on purchase.** No life insurance Contracts shall be required to be obtained on an individual's life if, for any reason (other than the nonpayment of premiums) the Insurer will not issue a Contract on such individual's life.

(d) **Proceeds payable to plan.** The Trustee (or Insurer) must be the owner of any life insurance Contract purchased under the terms of this Plan. The Contract must provide that the proceeds will be payable to the Trustee (or Insurer); however, the Trustee (or Insurer) shall be required to pay over all proceeds of the Contract to the Participant's "designated Beneficiary" in accordance with the distribution provisions of Article VI as directed by the Administrator. A Participant's Spouse will be the "designated Beneficiary" pursuant to Section 6.2, unless a qualified election has been made in accordance with Sections 6.5 and 6.6 of the Plan, if applicable. Under no circumstances shall the Trust retain any part of the proceeds that are in excess of the cash surrender value immediately prior to death. However, the Trustee (or Insurer) shall not pay the proceeds in a method that would violate the requirements of the Retirement Equity Act of 1984, as stated in Article VI of the Plan, or Code §401(a)(9) and the Regulations thereunder. In the event of any conflict between the terms of this Plan and the terms of any insurance Contract purchased hereunder, the Plan provisions shall control.

(e) **No responsibility for act of Insurer.** The Employer, the Administrator and the Trustee shall not be responsible for the validity of the provisions under a Contract issued hereunder or for the failure or refusal by the Insurer to provide benefits under such Contract. The Employer, Administrator and the Trustee are also not responsible for any action or failure to act by the Insurer or any other person which results in the delay of a payment under the Contract or which renders the Contract invalid or unenforceable in whole or in part.

## 7.4 LOANS TO PARTICIPANTS

(a) **Permitted Loans.** To the extent not prohibited under the terms of the Trust agreement, the Administrator may, in the Administrator's sole discretion, make loans to Participants. If loans are permitted, then the following shall apply: (1) loans shall be made available to all Participants on a reasonably equivalent basis; (2) loans shall bear a reasonable rate of interest; (3) loans shall be adequately secured; and (4) loans shall provide for periodic repayment over a reasonable period of time. Furthermore, no Participant loan shall exceed the Participant's Vested interest in the Plan. For purposes of this Section, the term Participant shall include any Eligible Employee who is not yet a Participant, if, pursuant to the Adoption Agreement, "rollovers" are permitted to be accepted from Eligible Employees.

(b) **Loan program.** The Administrator shall be authorized to establish a Participant loan program to provide for loans under the Plan. In order for the Administrator to implement such loan program, a separate written document forming a part of this Plan must be adopted, which document shall specifically include, but need not be limited to, the following:

- (1) the identity of the person or positions authorized to administer the Participant loan program;
- (2) a procedure for applying for loans;
- (3) the basis on which loans will be approved or denied;
- (4) limitations, if any, on the types and amounts of loans offered;
- (5) the procedure under the program for determining a reasonable rate of interest;
- (6) the types of collateral which may secure a Participant loan; and
- (7) the events constituting default and the steps that will be taken to preserve Plan assets in the event such default.

(c) **Loan default.** Notwithstanding anything in this Plan to the contrary, if a Participant or Beneficiary defaults on a loan made pursuant to this Section that is secured by the Participant's interest in the Plan, then a Participant's interest may be offset by the amount subject to the security to the extent there is a distributable event permitted by the Code or Regulations. Notwithstanding anything in the Plan's loan policy to the contrary, if a loan is accelerated due to a Participant's termination of employment, then the Plan may direct that the loan note be transferred or directly rolled over to another plan that will accept the transfer or rollover of the note.

(d) **Loans subject to Plan terms.** Notwithstanding anything in this Section to the contrary, if this is an amendment and restatement of an existing Plan, any loans made prior to the date this amendment and restatement is adopted shall be subject to the terms of the Plan in effect at the time such loan was made.

## 7.5 PLAN TO PLAN TRANSFERS

Notwithstanding any other provision contained in this Plan and to the extent not prohibited under the terms of the Trust agreement, the Administrator may direct the Trustee to transfer the interest, if any, of a Participant to another trust forming part of a pension, profit sharing, or stock bonus plan that meets the requirements of Code §401(a), provided that the trust to which such transfers are made permits the transfer to be made and further provided that the terms of the transferee plan properly allocates the funds in each account to a transferee account that preserves all the required features and restrictions applicable to such account under this Plan. However, the transfer of amounts from this Plan to a nonqualified foreign trust is treated as a distribution and the transfer of assets and liabilities from this Plan to a plan that satisfies Section 1165 of the Puerto Rico Code is also treated as distribution from the transferor plan.

## ARTICLE VIII AMENDMENT, TERMINATION AND MERGERS

### 8.1 AMENDMENT

(a) **General rule on Employer amendment.** The Employer shall have the right at any time to amend this Plan subject to the limitations of this Section. However, any amendment that affects the rights, duties or responsibilities of the Trustee (or Insurer) or Administrator may only be made with the Trustee's (or Insurer's) or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee (or Insurer) shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee (or Insurer) hereunder.

(b) **Permissible amendments.** The Employer amend the Plan to accomplish any of the following items without affecting reliance on the opinion letter: (1) change the choice of options in the Adoption Agreement or Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), (2) add certain sample or model amendments published by the Internal Revenue Service or other required good-faith amendments where the IRS has provided that their adoption will not cause the Plan to be treated as an individually designed plan, (3) add a list of any protected benefits" which must be preserved, (4) adjust the limitations under Code §§415, 402(g), 401(a)(17) and 414(q)(1)(B) to reflect annual cost-of-living increases, and (5) change the pre-approved plan Provider's name. "Provider" pursuant to this Section 8 means the entity that contracts with the mass submitter to provide the Basic Plan Document and Adoption Agreement for use by the Employer or, in the alternative, the mass submitter that provides such documents directly to its clients. An Employer that amends the Plan for any other reason, including a waiver of the minimum funding requirement under Code §412(c), will no longer participate in this pre-approved plan and this Plan will be considered to be an individually designed plan for purposes of reliance. A Plan amendment does not include an amendment or substitution of the Trust.

(c) **Provider amendments.** The Employer (and every Participating Employer) expressly delegates authority to the Provider, the right to amend the Plan by submitting a copy of the amendment to each Employer (and Participating Employer) who has adopted

this pre-approved plan, after first having received a ruling or favorable determination from the Internal Revenue Service that the pre-approved Plan as amended qualifies under Code §401(a) (unless a ruling or determination is not required by the IRS). The Provider will amend the Plan Documents from time to time in accordance with this Section 8.1(c). For purposes of this Section, the mass submitter shall be recognized as the agent of the Provider. If the Provider does not adopt any amendment made by the mass submitter, it will no longer be identical to, or a minor modifier of, the mass submitter plan.

(d) **Impermissible amendments.** No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

## **8.2 TERMINATION**

(a) **Termination of Plan.** The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee (or Insurer) and Administrator written notice of such termination. The Employer has no obligation or liability whatsoever to maintain the Plan for any specific length of time and may terminate the Plan or discontinue contributions under the Plan at any time without liability hereunder for any such discontinuance. Upon any full or partial termination or upon the complete discontinuance of the Employer's Contributions to the Plan (in the case of a Profit Sharing Plan), all amounts credited to the affected Participants' Combined Accounts shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets to Participants in a manner that is consistent with and satisfies the provisions of Section 6.5. Distributions to a Participant shall be made in cash (or in property if permitted in the Adoption Agreement) or through the purchase of irrevocable nontransferable deferred commitments from the Insurer.

## **8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS**

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan provided the benefits which would be received by a Participant of this Plan, in the event of a termination of the plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation.

## **ARTICLE IX MISCELLANEOUS**

### **9.1 EMPLOYER ADOPTIONS**

(a) **Method of adoption.** Any organization may become the Employer hereunder by executing the Adoption Agreement.

(b) **Separate affiliation.** Except as otherwise provided in this Plan, the affiliation of the Employer and the participation of its Participants shall be separate and apart from that of any other employer and its participants hereunder.

### **9.2 PARTICIPANT'S RIGHTS**

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

### **9.3 ALIENATION**

(a) **General rule.** Subject to the exceptions provided below and as otherwise permitted by the Code, no benefit which shall be payable to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

(b) **Exception for loans.** Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan by reason of a loan made pursuant to Section 7.4. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such portion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's interest in the Plan. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Participant's interest in the Plan, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Section 2.10.

(c) **Exception for QDRO.** Subsection (a) shall not apply to a "qualified domestic relations order" defined in Code §414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984.

#### 9.4 PLAN COMMUNICATIONS, INTERPRETATION AND CONSTRUCTION

(a) **Applicable law.** This Plan shall be construed and enforced according to the Code, and the laws of the state or commonwealth in which the Employer's principal office is located (unless otherwise designated in Appendix A to the Adoption Agreement (Special Effective Dates and Other Permitted Elections), other than its laws respecting choice of law, to the extent not pre-empted by federal law.

(b) **Administrator's discretion.** The Administrator has total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Administrator makes under the Plan is final and binding upon any affected person. The Administrator must exercise all of its Plan powers and discretion, and perform all of its duties, in a uniform manner.

(c) **Communications.** All Participant or Beneficiary notices, designations, elections, consents or waivers must be made in a form the Administrator (or, as applicable, the Trustee or Insurer) specifies or otherwise approves. Any person entitled to notice under the Plan may waive the notice or shorten the notice period unless such actions are contrary to applicable law.

(d) **Evidence.** Anyone, including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Administrator, Trustee and Insurer are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

(e) **Plan terms binding.** The Plan is binding upon all parties, including but not limited to, the Employer, Trustee, Insurer, Administrator, Participants and Beneficiaries.

(f) **Parties to litigation.** Except as otherwise provided by applicable law, a Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, the Trust or any fiduciary. Any final judgment (not subject to further appeal) entered in any such proceeding will be binding upon all parties, including the Employer, the Administrator, Trustee, Insurer, Participants and Beneficiaries.

(g) **Fiduciaries not insurers.** The Trustee, Administrator and the Employer in no way guarantee the Plan assets from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Plan. The liability of the Employer, the Administrator and the Trustee to make any distribution from the Trust at any time and all times is limited to the then available assets of the Trust.

(h) **Construction/severability.** The Plan, the Adoption Agreement, the Trust and all other documents to which they refer, will be interpreted consistent with and to preserve tax qualification of the Plan under Code §401(a) and tax exemption of the Trust under Code §501(a) and also consistent with other applicable law. To the extent permissible under applicable law, any provision which a court (or other entity with binding authority to interpret the Plan) determines to be inconsistent with such construction and interpretation, is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

(i) **Uniformity.** All provisions of this Plan shall be interpreted and applied in a uniform manner.

(j) **Headings.** The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

#### 9.5 GENDER, NUMBER AND TENSE

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply; whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply; and whenever any words are used herein in the past or present tense, they shall be construed as though they were also used in the other form in all cases where they would so apply.

#### 9.6 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee (or Insurer), the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee (or Insurer), the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

## 9.7 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) **General rule.** Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.

(b) **Mistake of fact.** In the event the Employer shall make a contribution under a mistake of fact, the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Trustee (or Insurer) shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

## 9.8 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the Insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

## 9.9 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the Insurer, an Insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The Insurer shall be protected and held harmless in acting in accordance with any written direction of the Administrator or Trustee and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Administrator or Trustee. Regardless of any provision of this Plan, the Insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the Insurer.

## 9.10 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, including those referenced in Section 6.9, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee (or Insurer) and the Employer.

## 9.11 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

## 9.12 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification is made by the time prescribed by law or such later date as the Secretary of Treasury may prescribe, the Commissioner of the Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code §§401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan, by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee (or Insurer) shall be discharged from all further obligations. If the disqualification relates to a Plan amendment, then the Plan shall operate as if it had not been amended. If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this pre-approved plan and will be considered an individually designed plan.

## 9.13 PAYMENT OF BENEFITS

Except as otherwise provided in the Plan, benefits under this Plan shall be paid, subject to Sections 6.11 and 6.12, only upon death, Total and Permanent Disability, normal or early retirement, severance of employment, or termination of the Plan.

## 9.14 ELECTRONIC MEDIA

The Administrator may use any electronic medium to give or receive any Plan notice, communicate any Plan policy, conduct any written Plan communication, satisfy any Plan filing or other compliance requirement and conduct any other Plan transaction to the extent permissible under applicable law. A Participant or a Participant's Spouse, to the extent authorized by the Administrator, may use any electronic medium to make or provide any Beneficiary designation, election, notice, consent or waiver under the Plan, to the extent permissible under applicable law. Any reference in this Plan to a "form," a "notice," an "election," a "consent," a "waiver," a "designation," a "policy" or to any other Plan-related communication includes an electronic version thereof as permitted under applicable law.



Notwithstanding the foregoing, any Participant or Beneficiary notices and consent that are required pursuant to the Code must satisfy Regulation §1.401(a)-21.

### **9.15 PLAN CORRECTION**

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §401(a) or to correct a fiduciary breach under state or local law. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and Employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. Furthermore, the Employer may make corrective contributions pursuant to this Section regardless of whether the Plan otherwise permits such contribution source. In addition, the Plan is authorized to recover benefits from Participants or Beneficiaries that have been improperly distributed.

### **9.16 NONTRUSTEED PLANS**

If the Plan is funded solely with Contracts, then notwithstanding Sections 9.7 and 9.12, no Contract will be purchased under the Plan unless such Contract or a separate definite written agreement between the Employer and the Insurer provides that no value under Contracts providing benefits under the Plan or credits determined by the Insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such Contracts may be paid or returned to the Employer or diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. However, any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

If this Plan is funded by individual Contracts that provide a Participant's benefit under the Plan, such individual Contracts shall constitute the Participant's Account balance. If this Plan is funded by group Contracts, under the group annuity or group insurance Contract, premiums or other consideration received by the Insurer must be allocated to Participants' Accounts under the Plan.

## **ARTICLE X PARTICIPATING EMPLOYERS**

### **10.1 ELECTION TO BECOME A PARTICIPATING EMPLOYER**

Notwithstanding anything herein to the contrary, with the consent of the Employer, any Employer may adopt the Employer's Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer (a participation agreement). In the event a Participating Employer is not an Affiliated Employer, then the provisions of Article XI shall apply rather than the provision of this Article XI.

### **10.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS**

- (a) **Permissible variations of participation agreement.** The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the Employer shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the Employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the Employer's Adoption Agreement. To the extent that the participation agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the Employer. If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer."
- (b) **Holding and investing assets.** The Trustee (or Insurer) may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof. However, the assets of the Plan shall, on an ongoing basis, be available to pay benefits to all Participants and Beneficiaries under the Plan without regard to the Employer or Participating Employer who contributed such assets.
- (c) **Payment of expenses.** Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

### **10.3 DESIGNATION OF AGENT**

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustee (or Insurer) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

#### 10.4 EMPLOYEE TRANSFERS

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a severance of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

#### 10.5 PARTICIPATING EMPLOYER'S CONTRIBUTION AND FORFEITURES

Any contribution and/or Forfeiture subject to allocation during each Plan Year shall be determined and allocated separately by each Participating Employer and shall be allocated only among the Participants eligible to share in the contribution and Forfeiture allocation of the Employer or Participating Employer making the contribution or by which the forfeiting Participant was employed.

On the basis of the information furnished by the Administrator, the Trustee (or Insurer) shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee (or Insurer) may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee (or Insurer) thereof.

#### 10.6 AMENDMENT

Any Participating Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. Any such amendment is effective and binding upon existing Participating Employers.

#### 10.7 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer that is an Affiliated Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee (or Insurer). The Trustee (or Insurer) shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new trustee (or insurer) or custodian as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees. If no successor is designated, the Trustee (or Insurer) shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be used for or diverted to purposes other than for the exclusive benefit of the Employees of such Participating Employer.

#### 10.8 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

### ARTICLE XI MULTIPLE EMPLOYER PROVISIONS

#### 11.1 ELECTION AND OVERRIDING EFFECT

If a Participating Employer that is not an Affiliated Employer adopts this Plan, then the provisions of this Article XI shall apply to each Participating Employer as of the Effective Date specified in its participation agreement and supersede any contrary provisions in the basic Plan document or the Adoption Agreement. If this Article XI applies, then the Plan shall be a multiple employer plan as described in Code §413(c). In this case, the Employer and each Participating Employer acknowledge that the Plan is a multiple employer plan subject to the rules of Code §413(c) and the Regulations thereunder, and specific annual reporting requirements.

#### 11.2 DEFINITIONS

The following definitions shall apply to this Article XI and shall supersede any conflicting definitions in the Plan:

- (a) **Employee.** "Employee" means any common law employee, Leased Employee or other person the Code treats as an employee of a Participating Employer for purposes of the Participating Employer's qualified plan. Either the Adoption Agreement or a participation agreement to the Adoption Agreement may designate any Employee, or class of Employees, as not eligible to participate in the Plan.
- (b) **Lead Employer.** "Lead Employer" means the signatory Employer to the Adoption Agreement execution page, and does not include any Affiliated Employer or Participating Employer. The "lead Employer" has the same meaning as the Employer for purposes of making Plan amendments and other purposes regardless of whether the "lead Employer" is also a Participating Employer under this Article XI. The "lead Employer" may execute a Participation Agreement setting forth elections which are specific to the "lead Employer".

### 11.3 PARTICIPATING EMPLOYER ELECTIONS

The participation agreement must identify the Participating Employer and the covered Employees and provide for the Participating Employer's signature. In addition, in the participation agreement, the "lead Employer" shall specify which elections, if any, the Participating Employer can modify, and any restrictions on the modifications. Any such modification shall apply only to the employees of that Participating Employer. The Participating Employer shall make any such modification by selecting the appropriate option on its participation agreement to the "lead Employer's" Adoption Agreement. To the extent that the Adoption Agreement does not permit modification of an election, any attempt by a Participating Employer to modify the election shall have no effect on the Plan and the Participating Employer is bound by the Plan terms as selected by the "lead Employer." If a Participating Employer does not make any permissible participation agreement election modifications, then with regard to any election, the Participating Employer is bound by the Adoption Agreement terms as completed by the "lead Employer."

### 11.4 TESTING

The Administrator shall apply the Code §415 limitation in Section 4.4 for the Plan as a whole.

### 11.5 COMPENSATION

(a) **Separate determination.** A Participant's Compensation shall be determined separately for each Participating Employer for purposes of allocations under Article IV.

(b) **Joint status.** For all Plan purposes, including but not limited to determining the Code §415 limits in Section 4.4, Compensation includes all Compensation paid by or for any Participating Employer.

### 11.6 SERVICE

An Employee's service includes all Hours of Service and Years of Service with any and all Participating Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not separated from service or had a severance from employment.

### 11.7 COOPERATION AND INDEMNIFICATION

(a) **Cooperation.** Each Participating Employer agrees to timely provide all information the Administrator deems necessary to insure the Plan is operated in accordance with the requirements of the Code and will cooperate fully with the "lead Employer," the Plan, the Plan fiduciaries and other proper representatives in maintaining the qualified status of the Plan. Such cooperation will include payment of such amounts into the Plan, to be allocated to employees of the Participating Employer, which are reasonably required to maintain the tax-qualified status of the Plan.

(b) **Indemnity.** Each Participating Employer will indemnify and hold harmless the Administrator, the "lead Employer" and its subsidiaries; officers, directors, shareholders, employees, and agents of the "lead Employer"; the Plan; the Trustees, Participants and Beneficiaries of the Plan, as well as their respective successors and assigns, against any cause of action, loss, liability, damage, cost, or expense of any nature whatsoever (including, but not limited to, attorney's fees and costs, whether or not suit is brought, as well as IRS plan disqualifications, other sanctions or compliance fees and penalties) arising out of or relating to the Participating Employer's noncompliance with any of the Plan's terms or requirements; any intentional or negligent act or omission the Participating Employer commits with regard to the Plan; and any omission or provision of incorrect information with regard to the Plan which causes the Plan to fail to satisfy the requirements of a tax-qualified plan. This indemnity provision shall continue to apply to a Participating Employer with respect to the period such entity was a Participating Employer, even if the Participating Employer withdraws or is removed pursuant to Sections 11.8 or 11.9.

### 11.8 INVOLUNTARY TERMINATION

Unless the "lead Employer" provides otherwise in an addendum hereto, the "lead Employer" shall have the power to terminate the participation of any Participating Employer (hereafter "Terminated Employer") in this Plan. If and when the "lead Employer" wishes to exercise this power, the following shall occur:

(a) **Notice.** The "lead Employer" shall give the "Terminated Employer" a notice of the "lead Employer's" intent to terminate the "Terminated Employer's" status as a Participating Employer of the Plan. The "lead Employer" will provide such notice not less than thirty (30) days prior to the date of termination unless the "lead Employer" determines that the interest of Plan Participants requires earlier termination.

(b) **Spin-off.** The "lead Employer" shall establish a new defined contribution plan, using the provisions of this Plan with any modifications contained in the "Terminated Employer's" participation agreement, as a guide to establish a new defined contribution plan (the "spin-off plan"). The "lead Employer" will direct the Trustee to transfer (in accordance with the rules of Code §414(l) and the provisions of Section 8.3) the Accounts of the Employees of the "Terminated Employer" to the "spin-off plan." The "Terminated

## Non-Standardized Governmental 401(a) Pre-Approved Plan

Employer" shall be the Employer, Administrator, and sponsor of the "spin-off plan." The Trustee of the "spin-off plan" shall be the person or entity designated by the "Terminated Employer." However, the "lead Employer" shall have the option to designate an appropriate financial institution as Trustee instead if necessary to protect the interest of the Participants. The "lead Employer" shall have the authority to charge the "Terminated Employer" or the Accounts of the Employees of the "Terminated Employer" a reasonable fee to pay the expenses of establishing the "spin-off plan."

(c) **Alternatives.** The "Terminated Employer," in lieu of creation of the "spin-off plan" under (b) above, has the option to elect a transfer alternative in accordance with this Subsection (c).

(1) **Election.** To exercise the option described in this Subsection, the "Terminated Employer" must inform the "lead Employer" of its choice and must supply any reasonably required documentation as soon as practical. If the "lead Employer" has not received notice of a "Terminated Employer's" exercise of this option within ten (10) days prior to the stated date of termination, the "lead Employer" can choose to disregard the exercise and proceed with the Spin-off.

(2) **Transfer.** If the "Terminated Employer" selects this option, the Administrator shall transfer (in accordance with the rules of Code §414(l) and the provisions of Section 8.3) the Accounts of the Employees of the "Terminated Employer" to a qualified plan the "Terminated Employer" maintains. To exercise this option, the "Terminated Employer" must deliver to the "lead Employer" or Administrator in writing the name and other relevant information of the transferee plan and must provide such assurances that the Administrator shall reasonably require to demonstrate that the transferee plan is a qualified plan.

(d) **Participants.** The Employees of the "Terminated Employer" shall cease to be eligible to accrue additional benefits under the Plan with respect to Compensation paid by the "Terminated Employer," effective as of the date of termination. To the extent that these Employees have accrued but unpaid contributions as of the date of termination, the "Terminated Employer" shall pay such amounts to the Plan or the "spin-off plan" no later than thirty (30) days after the date of termination, unless the "Terminated Employer" effectively selects the Transfer option under Subsection (c)(2) above.

(e) **Consent.** By its signature on the participation agreement, the "Terminated Employer" specifically consents to the provisions of this Article and agrees to perform its responsibilities with regard to the "spin-off plan," if necessary.

### 11.9 VOLUNTARY TERMINATION

A Participating Employer (hereafter "withdrawing employer") may voluntarily withdraw from participation in this Plan at any time. If and when a "withdrawing employer" wishes to withdraw, the following shall occur:

(a) **Notice.** The "withdrawing employer" shall inform the "lead Employer" and the Administrator of its intention to withdraw from the Plan. The "withdrawing employer" must give the notice not less than thirty (30) days prior to the effective date of its withdrawal.

(b) **Procedure.** The "withdrawing employer" and the "lead Employer" shall agree upon procedures for the orderly withdrawal of the "withdrawing employer" from the plan. Such procedures may include any of the optional spin-off or transfer options described in Section 11.8.

(c) **Costs.** The "withdrawing employer" shall bear all reasonable costs associated with withdrawal and transfer under this Section.

(d) **Participants.** The Employees of the "withdrawing employer" shall cease to be eligible to accrue additional benefits under the Plan as to Compensation paid by the "withdrawing employer," effective as of the effective date of withdrawal. To the extent that such Employees have accrued but unpaid contributions as of the effective date of withdrawal, the "withdrawing employer" shall contribute such amounts to the Plan or the "spin-off plan" promptly after the effective date of withdrawal, unless the accounts are transferred to a qualified plan the "withdrawing employer" maintains.

### 11.10 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all its relations with the Trustee (or Insurer) and Administrator for purposes of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates otherwise, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.



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

## **FICA Alternative Plan Document**

**(Attachment A)**

**Effective and amended 02/23/2023**

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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 22.1401(a)(9)-9, which are incorporated herein by reference. Such provisions shall override any distribution options in the Plan that may be inconsistent with Section 401(a)(9) of the Code. Any distributions made pursuant to this Section 8.7 in order to comply with Section 401(a)(9) of the Code shall be charged against the Account or Accounts of the Participant in such manner as designated by the Participant in accordance with procedures established by the Recordkeeper; provided, however, that if no such designation is made.
- b) 2009 Waiver. Notwithstanding anything to the contrary in Section 8.7, an Participant who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code (2009 RMDs), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Beneficiary, or for a period of at least 10 years, will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.
- c) Distributions During Participant's Life. The Account of a Participant shall be distributed (or commence to be distributed) to such Participant as soon as practicable after the Required Beginning Date. If the Participant has not made an election pursuant to Section 8.1(c) prior to such Required Beginning Date, then the Account shall be distributed in the form of installment payments commencing on the Required Beginning Date.

- d) Death of a Participant Before the Required Beginning Date.
- i If a Participant dies before his Required Beginning Date, his Beneficiary (or if the Participant has no Beneficiary, his or her Surviving Spouse or estate, as determined under Section 9.2) shall receive a distribution of the Account over the life of the Beneficiary or over a period not exceeding the life expectancy of the Beneficiary; provided that the distribution commences no later than December 31 of the calendar year immediately following the calendar year in which the Participant dies, except as set forth in Sections 8.7(d)(i)(A) or (B) as follows:
    - A. If a Participant dies before his Required Beginning Date, the Beneficiary may elect to receive the remaining portion (if any) of such Participant's Account no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death (determined without regard to 2009); or
    - B. If the sole Beneficiary is the Participant's Surviving Spouse, such Surviving Spouse may elect to receive a distribution of the Account over a period not exceeding the life expectancy of the Surviving Spouse (determined as of the date such payments commence); provided that the distribution commences on or before the later of December 31 of the calendar year immediately following the calendar year in which the Participant dies or December 31 of the calendar year in which the Participant would have attained age 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;

(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 Participants' Dues; 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, as provided by the Public Employees' Retirement System or 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)



# **Administrative Policy Manual**

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

**Updated February 2023**

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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 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



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



## **CYBERSECURITY POLICY STATEMENT**

**STATE OF NEVADA**

August 2023

# NEVADA PUBLIC EMPLOYEES’ DEFERRED COMPENSATION PROGRAM

## CYBERSECURITY POLICY STATEMENT

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# I. Introduction and Purpose

**Cybersecurity** is defined as “measures taken to protect a computer, device or computer system (as on the internet) against unauthorized access or attack.”<sup>1</sup>

For many individuals, their largest account is not their bank account but rather their retirement account. Accounts such as those within the State of Nevada Public Employees’ Deferred Compensation Program (“NDC”). That is why it is critically important to protect these retirement accounts and their assets from outside threats.

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The purpose of this Cybersecurity Policy is to define how NDC accounts are protected. It is important to note that Cybersecurity is a shared responsibility. Participating parties include:

- The Plans’ recordkeeper – currently Voya Financial® (“Voya”)
- The Plans’ consultant – currently Hyas Group, LLC
- The Plans’ audit firm – currently Casey Neilon
- The Plan Sponsor – State of Nevada
- Plan Fiduciaries – NDC Committee
- Key personnel – NDC executive director and staff
- Plan participants

This document provides an overview of the cybersecurity policies and procedures that currently apply to NDC.

It includes key cybersecurity definitions, an overview of recordkeeper cybersecurity requirements, an overview of the State of Nevada cybersecurity policy, and a review of what to do in the event of a cybersecurity incident.

The exhibits feature additional details regarding recordkeeper data security and a form to report a cybersecurity event.

The Committee and NDC Staff will review this document at least annually and update it as needed.

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/cybersecurity>

## II. Key Definitions

Please note the same Plan definitions apply in this Cybersecurity Policy 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. Key definitions as related to cybersecurity are as follows:

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**"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.

**"Affected Persons"** means Client's and its Affiliate's former and current employees whose Personal Identifiable Information ("PII") may have been disclosed or compromised as a result of an Information Security Incident.

**"Affiliates"** means any entities that, now or in the future, control, are controlled by, or are under common control with Client. An entity will be deemed to control another entity if it has the power to direct or cause the direction of the management or policies of such entity, whether through ownership, voting securities, contract, or otherwise.

**"Client"** means the State of Nevada as the Plans' Sponsor. Client may be the entity, or an individual contact as designated by the Executive Officer.

**"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.

**"Confidential Information"** means (a) non-public information concerning the Disclosing Party; its affiliates; and their respective businesses, products, processes, and services, including technical, marketing, agent, customer, financial, personnel, and planning information; (b) PII; (c) trade secrets; and (d) any other information that is marked confidential or which, under the circumstances surrounding disclosure, the Non-Disclosing Party should know is treated as confidential by the Disclosing Party. Except with respect to PII, which will be treated as Confidential Information under all circumstances, Confidential Information will not include (a) information lawfully obtained or developed by the Non-Disclosing Party independently of the Disclosing Party's Confidential Information and without breach of any obligation of confidentiality; or (b) information that enters the public domain without breach of any obligation of confidentiality. All Confidential Information will remain

the property of the Disclosing Party.

**“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.

**“Fraud”** is a confirmed compromise of a participant’s financial account by a fraudster using information within the fraudster’s possession or control that results in wrongful financial or personal gain or illegal access to a financial account.

**“Information Security Incident”** means any breach of security or cybersecurity incident impacting Voya that has a reasonable likelihood of (a) resulting in the loss or unauthorized access, use or disclosure of Client PII; (b) materially affecting the normal operation of Voya; or (c) preventing Voya from complying with all of the privacy and security requirements set forth in this Agreement.

**“Law”** means all U.S. and non-U.S. laws, ordinances, rules, regulations, declarations, decrees, directives, legislative enactments and governmental authority orders and subpoenas.

**“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).

**“Personal Identifiable Information (PII)”** Personal Identifiable Information (PII) is a type of data that identifies the unique identity of an individual.

**“Phishing”** is a type of internet fraud that seeks to acquire a user’s credentials by deception. It includes the theft of passwords, credit card numbers, bank account details, and other confidential information. Phishing messages usually take the form of fake notifications from banks, providers, e-pay systems, and other organizations. The phishing attempt will try to encourage a recipient, for one reason or another, to enter/update personal data. Common reasons given can include “suspicious login to the account,” or “expiration of the password.”

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

**“Recordkeeper”** means a contracted third-party administrator that the Plan may contract with and delegates certain administrative authority to establish and securely keep track of Participant Accounts, including contributions, withdrawals, balances, transactions (e.g. fund transfers), and other activities authorized by the Committee and Administrative Staff.

**“Security Breach”** is a confirmed compromise of an information system within the authority or responsibility of the recordkeeper that results in: (a) the unauthorized acquisition, disclosure, modification, or use of unencrypted personal data, or encrypted personal data where the encryption key has also been compromised; and (b) a likely risk of identity theft or fraud against the data subject. A good faith but unauthorized or unintentional acquisition, disclosure, modification, or use of personal data by an employee or contractor of the recordkeeper or a party who has signed a confidentiality agreement with the recordkeeper does not constitute a Security Breach if the personal data is not subject to further unauthorized acquisition, disclosure, loss, modification, or use.

**“Security Incident Response”** Incident response is a planned approach to addressing and managing the reaction after a cyberattack or network security breach. The goal is to have clear procedures defined before an attack occurs to minimize damage, reduce disaster recovery time, and mitigate breach-related expenses.

### **III. Tips for Keeping Accounts Safe and Secure**

The State of Nevada Public Employees' Deferred Compensation Program (NDC) and the Plans' contracted recordkeeper, Voya Financial®, recognize the importance of safeguarding participant accounts and personal information against the ongoing risk of fraud, cyber threats, and other unauthorized activity. Plan participants are their own first line of defense when it comes to protecting accounts and identity.

#### **General password security**

- Participants are strongly encouraged to use and regularly update a unique password for each website where they maintain an account.
- Participants should never use date of birth or Social Security numbers as their password.
- Participants should not allow social networking sites or web browsers to memorize passwords.
- Participants should not share their password or answers to security questions with anyone
- The strongest passwords are comprised of a chain of unrelated common words.

#### **Fraudulent emails or phishing**

- Participants should be suspicious of emails asking for confidential information and should never provide credentials.
- Participants should look out for red flags such as urgent requests, unknown email addresses, or discrepancies between actual and displayed hyperlinks.
- Participants should be aware that fraudulent emails can appear to come from a business that you are working with.
- Participants should always review the sender's name, email address, and URL to ensure they are from a legitimate source.
- Participants should know that any of NDC's contracted parties will never ask for personal information by email.

### **S.A.F.E. Guarantee**

The Plans' recordkeeper, Voya, is committed to safeguarding participants' financial accounts and personal information from the risk of fraud, cyber threats, and unauthorized activity. As part of this effort, Voya has established the Voya S.A.F.E.® (Secure Accounts for Everyone) Guarantee.

If any assets are taken from workplace retirement plan accounts or Voya-administered Individual Retirement Accounts due to unauthorized activity and through no fault of the participant, Voya will restore the value of the account subject to satisfying a few key steps.

Voya believes that keeping participant accounts secure is a mutual responsibility.

## **IV. Nevada Deferred Compensation Program Minimum Requirements**

NDC requires its recordkeeper to meet and maintain the following minimum requirements regarding cybersecurity:

- Multi-factor authentication
- Unique (non-SSN) login
- Minimum password length of eight characters
- End-to-end data encryption
- Off-site systems backups
- Annual data security audits (SOC-1)
- Annual penetration testing
- Commitment to 100% online account registration for NDC participants
- No personal information disclosure to unaffiliated third parties
- Provide complimentary third-party account monitoring services in the event of a breach



## V. Recordkeeper Cybersecurity Policies and Procedures

Voya Financial® (Voya) currently serves as the contracted third-party administrator and meets the above requirements.

As recordkeeper, Voya establishes and securely keeps track of participant accounts, including contributions, withdrawals, balances, transactions (e.g. fund transfers), and other activities authorized by the Committee and administrative staff. The following information was provided by Voya as related to the safekeeping of participant data and accounts.

### 1. Data security

#### 1.1. Security standards and controls

(a) Voya will establish and maintain:

- (i) administrative, technical, and physical safeguards against the destruction, loss, or alteration of confidential information; and
- (ii) appropriate security measures to protect confidential information, which measures meet or exceed the requirements of all applicable laws relating to personal information security.

(b) In addition, Voya will implement and maintain the following information security controls:

- (i) privileged access rights will be restricted and controlled;
- (ii) an inventory of assets relevant to the lifecycle of information will be maintained;
- (iii) network security controls will include, at a minimum, firewall and intrusion prevention services;
- (iv) detection, prevention, and recovery controls to protect against malware will be implemented;
- (v) information about technical vulnerabilities of Voya's information systems will be obtained and evaluated in a timely fashion and appropriate measures taken to address the risk;
- (vi) detailed event logs recording user activities, exceptions, faults, access attempts, operating system logs, and information security events will be produced, retained, and regularly reviewed as needed; and
- (vii) development, testing, and operational environments will be separated to reduce the risks of unauthorized access or changes to the operational environment.

1.2. Information Security policies. Voya will implement and maintain written policies, standards, or procedures that address the following areas:

- (a) information security;
- (b) data governance and classification;
- (c) access controls and identity management;
- (d) asset management;

- (e) business continuity and disaster recovery planning and resources;
- (f) capacity and performance planning;
- (g) systems operations and availability concerns;
- (h) systems and network security;
- (i) systems and application development, quality assurance, and change management;
- (j) physical security and environmental controls;
- (k) customer data privacy;
- (l) patch management;
- (m) maintenance, monitoring, and analysis of security audit logs;
- (n) vendor and third party service provider management; and
- (o) incident response, including clearly defined roles and decision making authority and a logging and monitoring framework to allow the isolation of an incident.

1.3. Subcontractors. Voya will implement and maintain policies and procedures to ensure the security of confidential information and related systems that are accessible to, or held by, third party service providers. Voya will not allow any third parties to access Voya's systems or store or process sensitive data, unless such third parties have entered into written contracts with Voya that require, at a minimum, the following:

- (a) the use of encryption to protect sensitive PII in transit, and the use of encryption or other mitigating controls to protect sensitive PII at rest;
- (b) prompt notice to be provided in the event of a cybersecurity incident;
- (c) the ability of Voya or its agents to perform information security assessments; and
- (d) representations and warranties concerning adequate information security.

1.4. Encryption standards, multifactor authentication, and protection of confidential information.

- (a) Voya will implement and maintain cryptographic controls for the protection of confidential information, including the following:
  - (i) use of an encryption standard equal to or better than the industry standards included in applicable National Institute for Standards and Technology Special Publications (or such higher encryption standard required by applicable Law) to protect confidential information at rest and in transit over untrusted networks;
  - (ii) use of cryptographic techniques to provide evidence of the occurrence or nonoccurrence of an event or action;
  - (iii) use of cryptographic techniques to authenticate users and other system entities requesting access to or transacting with system users, entities, and resources; and
  - (iv) development and implementation of policies on the use, protection, and lifetime of cryptographic keys through their entire lifecycle.
- (b) In addition to the controls described in clause (a) above, Voya will:
  - (i) implement multi-factor authentication for all remote access to Voya's

- networks;
  - (ii) ensure that no Client PII is (a) placed on unencrypted mobile media, CDs, DVDs, equipment, or laptops or (b) stored or transmitted outside the United States; and
  - (iii) ensure that media containing confidential information is protected against unauthorized access, misuse or corruption during transport.
- 1.5. Information Security roles and responsibilities. Voya will employ personnel adequate to manage Voya’s information security risks and perform the core cybersecurity functions of identify, protect, detect, respond, and recover. Voya will designate a qualified employee to serve as its Chief Information Security Officer (“CISO”) responsible for overseeing and implementing its information security program and enforcing its information security policies. Voya will define roles and responsibilities with respect to information security, including by identifying responsibilities for the protection of individual assets, for carrying out specific information security processes, and for information security risk management activities, including acceptance of residual risks. These responsibilities should be supplemented, where appropriate, with more detailed guidance for specific sites and information processing facilities.
- 1.6. Segregation of duties. Voya must segregate duties and areas of responsibility in order to reduce opportunities for unauthorized modification or misuse of Voya’s assets and ensure that no single person can access, modify, or use assets without authorization or detection. Controls should be designed to separate the initiation of an event from its authorization. If segregation is not reasonably possible, other controls such as monitoring of activities, audit trails, and management supervision should be utilized. Development, testing, and operational environments should be separated to reduce the risks of unauthorized access or changes to the operational environment.
- 1.7. Information Security awareness, education and training. Voya will provide regular information security education and training to all Voya personnel, as relevant for their job function. In addition, Voya will provide mandatory training to information security personnel and require key information security personnel to stay abreast of changing cybersecurity threats and countermeasures.
- 1.8. Vulnerability assessments. Voya will conduct monthly vulnerability assessments that meet the following criteria:
- (a) all production servers and network devices must be scanned at least monthly;
  - (b) all findings must be risk rated;
  - (c) all findings must be tracked based on risk; and
  - (d) tools used for scanning must have signatures updated at least monthly with the latest vulnerability. Voya will implement and maintain a formal process for tracking and resolving issues in a timely fashion.

- 1.9. Physical and environmental security. Voya will ensure that all sites are physically secure, including the following:
- (a) sound perimeters with no gaps where a break-in could easily occur;
  - (b) exterior roof, walls, and flooring of solid construction and all external doors suitable protected against unauthorized access with control mechanisms such as locks, bars, alarms, etc.;
  - (c) all doors and windows to operational areas locked when unattended;
  - (d) equipment protected from power failures and other disruptions caused by failures in supporting utilities;
  - (e) closed-circuit television cameras at site entry/exit points; badge readings at all site entry points, or other means to prevent unauthorized access; and
  - (f) visitor sign-in/mandatory escort at site.
- 1.10. Information Security Incident notification
- (a) In the event of any Information Security Incident, Voya will, at its sole expense: promptly (and in any event within 72 hours after Voya confirms an Information Security Incident) report such Information Security Incident to Client by sending an email to Client Contact Information, summarizing in reasonable detail the effect on Client, if known, and designating a single point of contact at Voya who will be
    - (i) available to Client for information and assistance related to the Information Security Incident; investigate such Information Security Incident, perform a root cause analysis, develop a corrective action plan, and take all necessary corrective actions;
    - (ii) mitigate, as expeditiously as possible, any harmful effect of such Information Security Incident and cooperate with Client in any reasonable and lawful efforts to prevent, mitigate, rectify, and remediate the effects of the Information Security Incident;
    - (iii) provide a written report to Client containing all information necessary for Client to determine compliance with all applicable laws, including the extent to which notification to affected persons or to government or regulatory authorities is required; and
    - (iv) cooperate with Client in providing any filings, communications, notices, press releases, or reports related to such Information Security Incident.
  - (b) In addition to the other indemnification obligations of Voya set forth in this Agreement, Voya will indemnify, defend and hold harmless Client from and against any and all claims, suits, causes of action, liability, loss, costs and damages, including reasonable attorneys' fees, arising out of or relating to any Information Security Incident, which may include, without limitation:
    - (i) expenses incurred to provide notice to Affected Persons and to law-enforcement agencies, regulatory bodies or other third parties as required to comply with law;
    - (ii) expenses related to any reasonably anticipated and commercially recognized consumer data breach mitigation efforts, including, but not limited to, costs associated with the offering of credit monitoring

- or a similar identify theft protection or mitigation product for a period of at least twelve (12) months or such longer time as is required by applicable laws or any other similar protective measures designed to mitigate any damages to the Affected Persons; and
- (iii) fines or penalties that Client pays to any governmental or regulatory authority under legal or regulatory order as a result of the Information Security Incident.

- 1.11. Risk assessments. Upon Client's request no more than once per year, Voya will complete an industry standard information security questionnaire and provide relevant Service Organization Control ("SOC") audit reports, when available. Voya's standard security requirements are set forth in Exhibit A. Voya represents and warrants that, as of the Effective Date, the statements in Exhibit A are true and correct in all material respects.
- 1.12. Penetration testing. If any Services to be provided by Voya include the hosting or support of one or more externally facing applications that can be used to access systems that store or process Client data, the terms of this Section will apply.
  - (a) At least once every 12 months during the Term and prior to any major changes being moved into production, Voya will conduct a Valid Penetration Test (as defined below) on each internet facing application described above. As used herein, a "Valid Penetration Test" means a series of tests performed by a team of certified professionals, which tests/mimic real-world attack scenarios on the information system under test and include, without limitation, the following:
    - (i) information-gathering steps and scanning for vulnerabilities;
    - (ii) manual testing of the system for logical flaws, configuration flaws, or programming flaws that impact the system's ability to ensure the confidentiality, integrity, or availability of Client's information assets;
    - (iii) system-compromise steps;
    - (iv) escalation-of-privilege steps; and
    - (v) assignment of a risk rating for each finding based on the level of potential risk exposure to Client's brand or information assets.
    - (vi) upon Client's request, Voya will provide to Client an executive summary of any material issues or vulnerabilities identified by the most recent Valid Penetration Test along with the scope of systems tested. The report may be redacted to ensure confidentiality.

## **2. Privacy and PII**

- 2.1. With respect to any PII, Voya will:
  - (a) comply with the Voya Privacy Notice at [www.voya.com/privacy-notice](http://www.voya.com/privacy-notice);
  - (b) retain, use, process, and disclose all PII accessed, obtained, or produced by Voya only to perform its obligations under this Agreement and as specifically permitted by this Agreement, or as otherwise instructed by Client, and not for any other purpose;

- (c) refrain from selling such PII or using such PII for any other purpose, including for its own commercial benefit;
- (d) treat all PII as Confidential Information;
- (e) comply with the provisions of this Agreement to return, store, or destroy the PII; and
- (f) comply with all applicable Laws with respect to processing of PII.

Voya hereby certifies to Client that it understands the restrictions and obligations set forth above and will ensure that Voya and all Voya Personnel comply with the same.

- 2.2. As needed to comply with applicable Laws concerning the processing of PII or personal information security, or to the extent required by any changes in such Laws or the enactment of new Laws, the Parties agree to work cooperatively and in good faith to amend this Agreement in a mutually agreeable and timely manner, or to enter into further mutually agreeable agreements in an effort to comply with any such Laws applicable to the Parties. If the Parties cannot so agree, or if Voya cannot comply with the new or additional requirements, Client may terminate this Agreement upon written notice to Voya.

### **3. Confidential Information**

- 3.1. Confidential Information. Either Party ("Disclosing Party") may disclose Confidential Information to the other Party (Non-Disclosing Party") in connection with this Agreement.
- 3.2. Use and disclosure of Confidential Information. The Non-Disclosing Party agrees that it will disclose the Disclosing Party's Confidential Information only to its employees, agents, consultants, and contractors who have a need to know and are bound by obligations of confidentiality no less restrictive than those contained in this Agreement. In addition, Voya agrees that it will use the Disclosing Party's Confidential Information only for the purposes of performing its obligations under this Agreement. The Non-Disclosing Party will use all reasonable care in handling and securing the Disclosing Party's Confidential Information and will employ all security measures used for its own proprietary information of similar nature. These confidentiality obligations will not restrict any disclosure of Confidential Information required by Law or by order of a court, regulatory authority, or governmental agency; provided, that the Non-Disclosing Party will limit any such disclosure to the information actually required to be disclosed. Notwithstanding anything to the contrary, Client may fully comply with requests for information from regulators of Client and the Client Affiliates.
- 3.3. Treatment of Confidential Information following termination. Promptly following the termination or expiration of this Agreement, or earlier if requested by the Disclosing Party, the Non-Disclosing Party will return to the Disclosing Party any and all physical and electronic materials in the Non-Disclosing Party's possession or control containing the Disclosing Party's Confidential Information. The

materials must be delivered via a secure method and upon such media as may be reasonably required by the Disclosing Party.

Alternatively, with the Disclosing Party's prior written consent, the Non-Disclosing Party may permanently destroy or delete the Disclosing Party's Confidential Information and, if requested, will promptly certify the destruction or deletion in writing to the Disclosing Party. Notwithstanding the foregoing, if the Non-Disclosing Party, due to requirements of applicable Law, must retain any of the Disclosing Party's Confidential Information, or is unable to permanently destroy or delete the Disclosing Party's Confidential Information as permitted above within 60 days after termination of this Agreement, the Non-Disclosing Party will so notify the Disclosing Party in writing, and the Parties will confirm any extended period needed for permanent destruction or deletion of the Disclosing Party's Confidential Information. All Confidential Information in the Non-Disclosing Party's possession or control will continue to be subject to the confidentiality provisions of this Agreement. The methods used to destroy and delete the Confidential Information must ensure that no Confidential Information remains readable and cannot be reconstructed so to be readable. Destruction and deletion must also comply with the following specific requirements:

<b>Medium</b>	<b>Destruction Method</b>
Hard copy	Shredding, pulverizing, burning, or other permanent destruction method
Electronic tangible media, such as disks and tapes	Destruction or erasure of the media
Hard drive or similar storage device	Storage frame metadata removal to hide the organizational structure that combines disks into usable volumes and physical destruction of the media with a Certificate of Destruction (COD)

- 3.4. Period of confidentiality. The restrictions on use, disclosure, and reproduction of Confidential Information set forth in this Section will, with respect to PII and Confidential Information that constitutes a "trade secret" (as that term is defined under applicable Law), be perpetual, and will, with respect to other Confidential Information, remain in full force and effect during the term of this Agreement and for three years following the termination or expiration of this Agreement.
- 3.5. Injunctive relief. The Parties agree that the breach, or threatened breach, of any of the confidentiality provisions of this Agreement may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, the Disclosing Party will be entitled to injunctive relief to prevent the Non-Disclosing Party from commencing or continuing any action constituting such breach, without having to post a bond or other security and without having to prove the inadequacy of other available remedies. Nothing in this Section will limit any other remedy available to either Party.

4. **Cyber liability insurance.** During the Term, Voya will, at its own cost and expense, obtain and maintain in full force and effect, with financially sound and reputable insurers, cyber liability insurance to cover Voya's obligations under this Addendum. Upon execution of the Agreement, Voya will provide Client with a certificate of insurance evidencing the following coverage and amount with such insurer:

Risk Covered: Network Security (a.k.a. Cyber/IT) Limits: \$50,000,000

5. **Disaster recovery and business continuity plan.** Voya maintains, and will continue to maintain throughout the Term, (a) a written disaster recovery plan ("Disaster Recovery Plan"), which Disaster Recovery Plan is designed to maintain Client's access to services and prevent the unintended loss or destruction of Client data; and (b) a written business continuity plan ("BCP") that permits Voya to recover from a disaster and continue providing services to customers, including Client, within the recovery time objectives set forth in the BCP. Upon Client's reasonable request, Voya will provide Client with evidence of disaster recovery test date and result outcome.



## VI. State of Nevada Cybersecurity Overview

In addition to recordkeeper cybersecurity policies noted, the State of Nevada has its own internal Information Security Policy. You may read the full Information Security Program Policy [here](#).

The Nevada Information Security Program Policy defines a set of minimum-security requirements to protect state data and information technology (IT) systems that all state agencies within the Executive Branch of Nevada State Government must meet. This includes NDC.

Any state agency, based on the business needs and/or specific legal requirements, may exceed the security requirements put forth in this policy, but must, at a minimum, achieve the security levels required by this policy. The primary objective of Nevada Information Security Program Policy is to:

- effectively manage the risk of security exposure or compromise within state agency IT systems;
- communicate the responsibilities for the protection of state agency information;
- establish a secure processing base and a stable processing environment within state agencies and throughout the state;
- reduce to the extent possible the opportunity for errors to be entered into an IT system supporting state agency business processes;
- preserve management's options in the event of state data, information, or technology misuse, loss, or unauthorized access; and
- promote and increase the awareness of information security in all state agencies and with all state employees.

The following state and federal statutes require states to protect their information resources and data by establishing information security programs and imposing special requirements for protecting personal information.

- The Clinger-Cohen Act of 1996
- Federal Information Security Management Act of 2002
- Nevada Revised Statute (NRS) 242.101
- Nevada Revised Statute (NRS) 603A

State of Nevada Enterprise IT Services (EITS) has the statutory responsibility for establishing regulations and providing guidance to state agencies within the Executive Branch of Nevada State Government, for the protection of state information technology (IT) systems, and the data that those systems process, store, and transmit electronically. To support those responsibilities, EITS established the Office of Information Security (OIS) to develop appropriate security regulations and guidance, along with staff as subject matter experts to guide and assist state agencies in establishing agency security policies, standards, processes, and plans. [NRS 242.101]

To ensure the security concerns and needs of state agencies are included in the development of the State Information Security Program, a State Information Security Committee was established. This committee consists of representatives from state agencies with information technology backgrounds who have a vested interest in the development of the security policies, standards, and guidance.

As the State Information Security Program and the State Information Security Policy evolve, the policy will be subject to review and update, which will occur biennially, or when changes occur that signal the need to revise the State Information Security Policy. These changes may include the following:

- Changes in roles and responsibilities;
- Release of new executive, legislative, technical, or State guidance;
- Identification of changes in governing policies;
- Changes in vulnerabilities, risks, or threats; or
- Legislative Audit findings that stem from security audit.

The National Institute of Standards and Technology (NIST) Special Publications 800 Series documents and the NIST Cybersecurity Framework (CSF) provide continuing guidance for the ongoing development and revision of the security program policy. These publications focus on security requirements and best practices for the Federal government, which requires state compliance due to the state receiving federal funds for information systems, and the state agencies accessing, processing, storing, or transmitting federal data.

In 2019, NRS 603A was amended to identify the Center for Internet Security (CIS) Controls as a baseline security framework for the Executive Branch of Nevada State Government. In situations where neither the state nor the agency has established a policy or standard on a specific security control, the requirements of NIST 800-53 Security and Privacy Controls and 800-100 Information Security Handbook will be the de facto state standard.

This policy has been developed, revised, and approved by the State Information Security Committee and the State Chief Information Security Officer, and has received final approval by the State Chief Information Officer. Revisions to this document are subject to the review and approval of the State Information Security Committee and the State Chief Information Security Officer, with final approval of the State Chief Information Officer. When revisions are approved, a new version of the State Information Security Policy will be issued, and all affected state agencies will be informed of the changes.

Additionally, compliance with this policy is mandatory. It is the State Chief Information Officer's direction that all state agencies within the Executive Branch of Nevada State Government comply with the direction of this policy.

In cases where a state agency cannot comply with any section of the State Information Security Policy, justifications for the noncompliance must be documented using the Exception Request process provided in Appendix A of this document. The Exception

Request must be submitted to EITS, Office of Information Security, Chief Information Security Officer (CISO) for approval. Resulting risks from a deviation to policy must be documented in the appropriate Information Security Plan.

## VII. State of Nevada Cybersecurity Incident Response Overview

The State of Nevada also maintains a policy for reporting and responding to information security incidents. The following section further explains the State of Nevada Incident Management Standards and provide details as to how the incident response is implemented. An incident response form is included in this Cybersecurity Policy as Exhibit B.

Document ID	Title	Revision	Effective Date	Page
S.4.08.02	Information Security Incident Management	D	12/31/2020	1 of

### 1.0 PURPOSE

This standard establishes minimum requirements to ensure all information security incidents will be reported and responded to systematically, taking appropriate steps to minimize loss or theft of information, or disruption of services.

### 2.0 SCOPE

This standard applies to all state agencies and authorized users meeting the criteria identified in the State Information Security Program Policy, Section 1.2, Scope and Applicability.

### 3.0 EFFECTIVE DATES

This standard becomes effective at the time of approval of the State Chief Information Officer (CIO).

### 4.0 RESPONSIBILITIES

The agency head and appointed Information Security Officer (ISO) have the responsibility to ensure the implementation of and compliance with this standard.

### 5.0 RELATED DOCUMENTS

- NRS 205.473 to 205.513, Unlawful Acts Regarding Computers and Information Systems
- NRS 242.181, Adherence by using agencies and elected officers of State to regulations; reporting of certain incidents
- NRS 281.195, Use of Computers State
- Information Security Program Policy, 100 Information Security Incident Report Form, S.4.08.02.1F

### 6.0 STANDARD

#### 6.1 Information Security Incident Reporting

Any and all security incidents that may have, or have, affected, degraded, or violated either production systems; or Federal, State, or agency security policy, standards, or procedures shall be documented.

- A. All information security incidents shall be documented by completing an Information Security Incident Report Form (S.4.08.02.1F) containing at a minimum:
  - 1. Description of incident
  - 2. Date and time
  - 3. Impact on the agency and/or IT resource
  - 4. Estimated financial impact
  - 5. Mitigation action taken
  - 6. Preventative Action Recommendations
  - 7. Name, title, and date of the person completing the report
- B. All documented Information Security Incident Reports shall be provided to the Office of Information Security (OIS) within three (3) working days. If the incident is critical, as determined by the unit manager or designee, immediate notification of OIS must occur.
- C. OIS shall review and maintain all Information Security Incident Reports and follow through with required actions or recommendations. Follow through actions must also be documented and attached to the original Information Security Incident Report.
- D. OIS shall provide statistics on incidents to the Chief Information Officer (CIO), Chief Information Security Officer (CISO), and State Information Security Committee at minimum quarterly.

## 6.2 Information Security Incident Response

- A. When a security incident occurs, the initial incident response must follow these minimum response steps. There are two types of information security incidents, characterized incidents and uncharacterized incidents.
  - 1. When a **characterized** security incident occurs, the functional unit responsible for the affected systems will follow the unit's existing desk procedures to correct or mitigate the impact. If the incident or related outage exceeds two hours of production (six hours non-production system) downtime, the functional unit will create a report describing the root cause of the issue and the steps taken to resolve the incident, with submission to OIS who will track incidents and consolidate into the CIO and CISO report.
  - 2. When an **uncharacterized** security incident occurs, the functional unit will inform OIS after two hours of production (six hours non-production system) downtime and work to mitigate, isolate, identify the issue, and otherwise protect the forensic integrity of the situation while working to resolve the incident. During this time the functional unit will take every care to preserve all available data for analysis and future investigation. Once the incident has been characterized the functional unit will submit a report to OIS.
- B. If an incident remains uncharacterized for six hours the functional unit will submit a status report to OIS.

## 6.3 Cybersecurity Incident Response Team

At any time during an information security incident, characterized or uncharacterized, the CIO or CISO may create a Cybersecurity Incident Response Team (CSIRT).

- A. The CISO shall coordinate the establishment of an incident response team, if necessary; identify the individuals who will participate in the incident response; and consult with the agency on whether technical resources available to the agency have the expertise required for the type of incident, or if external incident response resources are needed.
- B. The function of this team is to ensure a systematic response to an incident, minimizing loss of information, minimizing disruption of services, and maximizing preservation of data, log files, and configuration information pertinent to the incident.
- C. Post-incident actions include ensuring functional units update their desk procedures, configurations, and documentation as required to minimize future impacts of the same incident. The CSIRT Lead will follow-up with a finalized report to the CIO and CISO.

## 7.0 INCIDENT RESPONSE DEFINITIONS

**Characterized Incident:** An incident or event that is precisely defined and understood. Characterized incidents may have occurred previously. Documentation of characterized incidents should include corrective actions.

**Uncharacterized Incident:** An incident or event that is not understood. Uncharacterized incidents have not occurred previously.

**Information Security Incident:** Any abnormal occurrence that negatively impacts the operation of state IT systems or information, or the ability of users to utilize state IT resources; and may include a loss of data confidentiality; disruption of data or system integrity; disruption or denial of availability; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices.

**Physical Security Incident:** An occurrence which impacts or jeopardizes the controls in place to protect the physical structure or environment of a building, office, vehicle, and all resources within; such as secure doors being propped open, vandalism, theft, suspicious vehicles located near the department's sensitive buildings, inappropriate location of IT equipment (i.e., lack of environmental or physical protection for the device), etc.

**Administrative Security Incident:** An occurrence to where administrative security controls are violated such as badges not being worn, sign in/out logs not completed, etc.

**Desk Procedure:** A set of documented steps to perform a specific function. An example is the set of actions required to update virus signature files on a desktop.

## **8.0 EXCEPTIONS**

Requests for exception to the requirements of this Information Security Standard must be documented, provided to the Office of Information Security (OIS), and approved by the State Chief Information Security Officer (CISO).

## **VIII. Summary**

This Cybersecurity Policy Statement provided an overview of the policies and procedures that safeguard Nevada Deferred Compensation participant account data. With the increasing threats of cyberattacks, the Committee also receives training and information related to these policies on a regular basis.

This policy will be reviewed at least annually and updated as needed by the Committee and NDC staff.



## Exhibit A: Voya Security Requirements

FC: Foundation controls	
FC-1: Information asset management	
FC-1.1	Voya implements and maintains an inventory list and assigns ownership for all computing assets including, but not limited to, hardware and software used in the accessing, storage, processing, or transmission of Client PII.
FC-1.2	Voya reviews and updates the inventory list of assets for correctness and completeness at least once every 12 months and updates the inventory list as changes are made to the computing assets.
FC-2: Data privacy and confidentiality	
FC-2.1	Voya will maintain an Information and Risk Management policy that is reviewed and approved by management at least every 2 years.
FC-2.2	Voya protects the privacy and confidentiality of all Client PII received, disclosed, created, or otherwise in Voya's possession by complying with the following requirements:
FC-2.2A	Such information is encrypted at rest on mobile devices (including mobile storage devices), portable computers, and in transit over untrusted networks with an encryption standard equal to or better than Advanced Encryption Standard (AES) 256 bit encryption or such higher encryption standard required by applicable law.
FC-2.2B	All hardcopy documents and removable media are physically protected from unauthorized disclosure by locking them in a lockable cabinet or safe when not in use and ensuring that appropriate shipping methods (tamper-proof packaging sent by special courier with signatures) are employed whenever the need to physically transport such documents and removable media arises.
FC-2.2C	All media is labeled and securely stored in accordance with Voya policies.
FC-2.2D	All electronic media is securely sanitized or destroyed when no longer required in accordance with industry standards.
FC-3: Configuration management	
FC-3.1	Voya implements and maintains accurate and complete configuration details (e.g., Infrastructure Build Standards) for all computing assets used in accessing, storing, processing, or transmitting Client PII.
FC-3.2	Voya reviews configuration details of the computing assets at least once every 12 months to validate that no unauthorized changes have been made to the assets.
FC-3.3	Voya updates the configuration details of all computing assets used to access, process, store, or transmit Client PII as configuration changes take place.
FC-4: Operating procedures and responsibilities	
FC-4.1	Voya implements and maintains operational procedures for information processing facilities and designates specific roles or personnel responsible for managing and maintaining the quality and security of such facilities, including, but not limited to, formal handover of activity, status updates, operational problems, escalation procedures, and reports on current responsibilities. Voya IT policies and standards document the policies and procedures for job scheduling processes and tools.
FC-4.2	Voya updates the operational procedures as changes take place and performs a comprehensive review and update of the procedures at least once every 2

	years.
<b>FC-5:</b>	<b>Security awareness and training</b>
FC-5.1	Voya performs pre-employment background checks, including criminal history for 7 years, credit score and history (if applicable), credentials verification (if applicable), and educational background.
FC-5.2	Voya implements and maintains a documented security awareness program for all Voya Personnel which covers access to Client PII.
FC-5.3	Voya's security awareness program includes security requirements, acceptable use of computing assets, legal responsibilities, and business controls, as well as training in the correct use of information processing facilities and physical security controls.
FC-5.4	Voya ensures that all Voya Personnel complete security awareness training prior to being provided access to Client PII and at least annually thereafter. Voya provides mandatory annual training programs that include security awareness training to all Personnel.
<b>UA:</b>	<b>User access controls</b>
<b>UA-1:</b>	<b>User access controls</b>
UA-1.1	Voya implements and maintains identity management system(s) and authentication process(es) for all systems that access, process, store, or transmit Client PII.
UA-1.2	Voya ensures that the following user access controls are in place:
UA-1.2A	The "Least Privilege" concept is implemented ensuring no user has more privileges than they require in performing their assigned duties.
UA-1.2B	Users requiring elevated privileges as a normal part of their job responsibilities have a regular, non-privileged account to perform regular business functions.
UA-1.2C	All users have an individual account which cannot be shared.
UA-1.2D	Account Names/IDs are constructed not to reveal the privilege level of the account or position of the account holder.
UA-1.2E	System- or application-level service accounts are owned by a member of management or an IT system administration delegate and only have the privileges necessary to function as required by the application, system, or database the account has been created for.
UA-1.2F	Network access is disabled within 24 hours of termination. Automated processes disable access upon termination and initiate manager review on employee position changes, in accordance with Voya policies.
<b>UA-2:</b>	<b>Access Control Management</b>
UA-2.1	Voya maintains a comprehensive physical security program. Access to Voya facilities is restricted and logs are maintained for all access. Physical security and environmental controls are present in Voya buildings.
UA-2.2	Voya ensures that access to systems that access, process, store, or transmit Client PII is limited to only those personnel who have been specifically authorized to have access in accordance with the users' assigned job responsibilities.
UA-2.3	Voya ensures that accounts for systems that access, process, store, or transmit Client PII are controlled in the following manner:
UA-2.3A	Users must provide a unique ID and Password for access to systems. Access to applications/systems is limited to a need-to-know basis and is enforced through role-based access controls.

UA-2.3B	Accounts are protected on computing assets by screen-savers that are configured with an inactivity time-out of not more than 15 minutes.
UA-2.3C	Accounts are locked after no more than 10 consecutive failed logon attempts, depending upon the system and platform.
UA-2.3D	Accounts remain locked until unlocked by an Administrator or through an approved and secure end-user self-service process.
UA-2.3E	Accounts are reviewed on a periodic and regular basis (semi-annually for non-privileged and privileged accounts) to ensure that the account is still required, access is appropriate, and the account is assigned to the appropriate user.
UA2.4	Voya ensures that wireless mobile devices are secured against threats coming from these wireless networks and wireless connections are required to be encrypted.
<b>UA-3:</b>	<b>User access management</b>
UA-3.1	Voya ensures that passwords for all accounts on systems that access, process, store, or transmit Client PII are configured and managed in accordance with industry standards:
<b>UA-4:</b>	<b>Information access restriction</b>
UA-4.1	Voya implements information access restrictions on all systems used to access, process, store, or transmit Client Information.
UA-4.2	Voya ensures the following Information Access Restrictions are in place:
UA-4.2A	Access to underlying operating systems and application features that the user does not require access to in the performance of their assigned responsibilities are strictly controlled.
UA-4.2B	Access to source code and libraries are restricted to only those individuals who have been specifically approved to have access. A person who develops code changes cannot be the same person who migrates the code change into production.
UA-4.2C	Access between Development, Test, and Production environments are strictly controlled. The version management system provides segregation of code, data, and environments.
UA-4.2D	Temporary privileged access to production data is granted to authorized personnel based on job function for emergency support and only via access control and logging security tools.
<b>PS:</b>	<b>Platform security controls</b>
<b>PS-1:</b>	<b>Computer System Security (Servers and Multi-user Systems only)</b>
PS-1.1	Voya implements and manages a formal process for ensuring that all computer systems that access, process, store, or transmit Client PII are protected and configured as follows prior to and while remaining in a production status:
PS-1.1A	Systems are assigned to an asset owner within Voya's organization.
PS-1.1B	Systems are located in a data center or similarly controlled environment with appropriate physical security mechanisms and environmental controls to ensure systems are protected from theft, vandalism, unplanned outages, or other intentional or unintentional hazards.
PS-1.1C	All systems are configured to meet Voya standards, monitored to ensure a compliant state, and patched as required to maintain a high degree of security. Issues found to be out of compliance are required to be tracked to closure.

PS-1.1D	Systems are configured with commercially available and licensed anti-virus software which is set to perform active scans, perform scans of uploaded or downloaded data/files/web content, and is updated on at least on a daily basis.
PS-1.1E	System clocks are configured to synchronize with a reputable time source (e.g., NTP).
PS-1.1F	Systems display a warning banner to all individuals during the logon process that indicates only authorized users may access the system.
PS-1.1G	Systems that have been implemented into a production environment are routinely tested for vulnerabilities and risks using industry best practice tools and methods.
PS-1.1H	All high and medium vulnerability and risk issues identified are remediated utilizing a risk-based approach and in alignment with application team code release schedules.
PS-1.1I	Voya ensures that only authorized and trained personnel have access to configure, manage, or monitor systems.
<b>PS-2: Network security</b>	
PS-2.1	To ensure systems accessing, processing, storing, or transmitting Client PII are protected from network related threats, Voya implements the following network security controls prior to connecting any network component to a production network and for the duration that the component remains in a production status.
PS-2.1A	Networks are constructed using a defense-in-depth architecture, are terminated at a firewall where there are connections to external networks, and are routinely scanned for unapproved nodes and networks.
PS-2.1B	Business-to-Business (B2B) and Third-Party network connections (Trusted) to systems accessing, processing, storing, or transmitting Client PII are permitted only after a rigorous risk assessment and formal approval by Voya management. Network connections from un-trusted sources to internal resources are not permitted at any time.
PS-2.1C	Network components (switches, routers, load balancers, etc.) are located in a data center or a secure area or facility.
PS-2.1D	Voya systems are configured to provide only essential capabilities and restrict the use of any unneeded functions, ports, protocols, and services.
PS-2.1E	Intrusion detection/prevention technologies, firewalls, and proxy technologies are implemented, monitored, and managed to ensure only authorized and approved traffic is allowed within and between segments of the network.
PS-2.1F	Internal Voya wireless networks are configured with the most robust security standards available, including but not limited to, 802.11i/n, strong authentication, IP/MAC address filtering, firewall protection, and intrusion detection/prevention.
PS-2.1G	Wireless networks are not used to access Client Information unless the information is encrypted at either the file or transport level.
PS-2.1H	Network components that have been implemented into a production environment are routinely tested for vulnerabilities and risks using industry best practice tools and methods.
PS-2.1I	Voya ensures that only authorized and trained personnel have access to configure, manage, or monitor network components.
<b>PS-3: Generic application and database security</b>	

PS-3.1	Voya implements and maintains an application security certification and assurance process that ensures that all applications that access, process, store, or transmit Client PII provide the following:
PS-3.1A	Application and database design ensures security, accuracy, completeness, timeliness, and authentication/authorization of inputs, processing, and outputs.
PS-3.1B	All data inputs are validated for invalid characters, out of range values, invalid command sequences, exceeding data limits, etc. prior to being accepted for production. Voya implements static source code analysis tools to validate data inputs.
PS-3.1C	Application source code developed in house by Voya is protected through the use of a source code repository that ensures version and access control. The version management system provides segregation of code, data, and environments.
PS-3.1D	Applications and databases are tested for security robustness and corrective measures are applied prior to the application being placed into a production environment. All systems are configured to meet Voya standards, monitored to ensure compliance state, and patched as required to maintain a high degree of security.
PS-3.1E	Applications and databases are implemented into a production environment with minimal privileges and critical configuration files and storage subsystems are protected from unauthorized access.
PS-3.1F	Applications and databases that have been implemented into a production environment are routinely tested for vulnerabilities and risks using industry best practice tools and methods.
PS-3.1G	Voya ensures that Consumer/Internet facing applications have been designed and implemented using multi-factor authentication architecture. Web sessions require the use of an HTTPS (encrypted) connection, as well as authorization to approved data and services.
PS-3.1H	Voya ensures that only authorized and trained personnel have access to configure, manage, or monitor applications and databases.
<b>PS-4: Workstation and mobile devices security (end user devices)</b>	
PS-4.1	Voya ensures that the following security controls have been implemented and are maintained to protect Client PII accessed, processed, stored, or transmitted on workstations and mobile devices.
PS-4.1A	Workstations are located in a physically secure environment with mechanisms in place to prevent unauthorized personnel from accessing data stored on the device, reconfiguring the BIOS or system components, or from booting the device from unauthorized media. Portable devices are configured for boot-up encryption.
PS-4.1B	Laptops/portable computers and other mobile devices are assigned to an owner who is responsible for physically securing the device at all times, and the owner of the device must receive adequate awareness training on mobile device physical security.
PS-4.1C	Portable devices are configured for boot-up encryption. All laptop hard drives are encrypted using AES 256. Any device deemed "remote" requires hard drive encryption.

PS-4.1D	All workstations, laptops/portable computers and other mobile devices (where applicable) are configured with commercially available and licensed anti-virus software which is set to perform active scans, to perform scans of uploaded or downloaded data/files/web content, and is updated on at least a daily basis.
PS-4.1E	All workstations, laptops/portable computers and other mobile devices (where applicable) are configured with a commercially available and licensed operating system, patched according to manufacturer's recommendations, hardened according to best industry practices and standards and configured so that regular users do not have administrative privileges.
PS-4.1F	Laptops/portable computers and other mobile devices (where applicable) are configured with personal firewall technology.
PS-4.1G	Workstations, laptops/portable computers and other mobile devices (where applicable) display a warning banner to all individuals during the logon process that indicates that only authorized users may access the system or device.
PS-4.1H	Voya implements and maintains processes for recovering laptops/portable computers and mobile devices from terminated Voya Personnel.
<b>PS-5: Backup and restore</b>	
PS-5.1	Voya implements and maintains backup and restore procedures to ensure that all Client PII received, disclosed, created, or otherwise in the possession of Voya is appropriately protected against loss.
PS-5.2	Voya ensures that backups are securely stored and storage systems are physically and logically protected.
PS-5.3	Voya implements a backup and availability schedule to meet business and regulatory requirements.
<b>PS-6: Remote network access controls</b>	
PS-6.1	Voya implements and maintains a remote network access control strategy or process.
PS-6.2	Voya ensures the following remote network access controls are in place:
PS-6.2A	Users requiring remote access are appropriately authorized by Voya management.
PS-6.2B	Remote access connections are established through the use of Virtual Private Networking (VPN) or secure VDI mechanisms that provide transmission security, encryption, and connection timeout (e.g. split-tunneling disabled).
PS-6.2C	Only Voya approved and controlled (managed) computing devices are used when remotely accessing (where applicable) Voya's computing environments where Client PII is held. Any device deemed "remote" requires data encryption. Encrypted communications are required for all remote connections.
PS-6.2D	Users are thoroughly authenticated using multi-factor authentication prior to being provided remote access.
<b>ITR: IT resilience controls</b>	
<b>ITR-1: Architecture</b>	
ITR-1.1	Voya ensures that the architecture of computing environments where Client PII is accessed, processed, stored, or transmitted incorporates reasonable industry best practices for authentication/authorization, monitoring/management, network design, connectivity design, firewall and intrusion prevention technologies, and storage and backup capabilities.
<b>ITR-2: Hardware and software infrastructure resilience</b>	

ITR-2.1	Voya ensures all hardware and software components classified with an availability rating of "critical" used in the accessing, processing, storage, or transmission of Client PII is: <ul style="list-style-type: none"> <li>• Identified and cataloged</li> <li>• Supported by the manufacturer of the component (or if developed in-house, follows Voya's SDLC Policy which includes quality/security)</li> <li>• Applications and systems classified as A4 may be designed with high availability features and have no single point of failure</li> <li>• Reviewed on a regular basis for capacity implications (at minimum once every 12months)</li> </ul>
ITR-2.2	Voya maintains Business Continuity Plans to address business unit and departmental actions to be undertaken before, during and after an incident or disaster. Voya's Disaster Recovery Plan addresses the recovery and availability of systems and data.
<b>ITR-3: Capacity assurance</b>	
ITR-3.1	Voya ensures that computing environments used to access, process, store, or transmit Client PII are assessed for capacity and performance on a periodic basis (at minimum once every 12 months) and appropriate corrective actions are taken to make the environment sufficiently robust enough to perform its stated mission.
<b>CM: Change management controls</b>	
<b>CM-1: Change management process</b>	
CM-1.1	Voya implements and maintains a change control process to ensure that all changes to the environment where Client PII is accessed, processed, stored, or transmitted is strictly documented, assessed for impact, and approved by personnel authorized by Voya to provide approval for such changes, thoroughly tested, accepted by management, and tracked.
CM-1.2	Voya implements an emergency change control process to manage changes required in an emergency situation where a computing system is down or there are imminent threats/risks to critical systems involving Client PII.
<b>CM-2: Separation of environments</b>	
CM-2.1	Voya maintains physically and/or logically separate development, test, and production computing environments. Development, testing, and acceptance environments are separate from the production environment.
CM-2.2	Voya ensures that Client data used for development or testing purposes is completely depersonalized/desensitized of confidential values prior to entering a development or test environment. Data is depersonalized in non-production-controlled environments for testing purposes with required approvals. PII elements are required to be depersonalized in non-production environments.
<b>SM: Security monitoring controls</b>	
<b>SM-1: Security event monitoring and incident management</b>	
SM-1.1	Voya implements and maintains a security event monitoring process and associated mechanisms to ensure events on computing systems, networks, and applications that can impact the security level of that asset or the data residing therein are detected in as close to real-time as possible for those assets used to access, process, store, or transmit Client PII.
SM-1.2	Voya implements and maintains an incident management process to ensure that all events with a potential security impact are identified, investigated, contained, remediated, and reported to Client effectively and in a timely

	manner.
SM-1.3	Voya has implemented monitoring controls that provide real-time notifications of events related to loss of confidentiality, the integrity, or the availability of systems.
SM-1.4	Event logs (audit trails) are stored for analysis purposes for a minimum period of 3 years.
<b>SM-2: Technical state compliance</b>	
SM-2.1	Voya ensures computing environments that access, process, store, or transmit Client PII are continually in compliance with quality and security requirements including, but not limited to, authentication/authorization, monitoring/management, network design, connectivity design, firewall and intrusion prevention technologies, and storage and backup capabilities.
SM-2.2	Voya ensures IT Risk Management facilitates risk assessments of information technology processes and procedures in accordance with the annual IT Risk Assessment Plan approved by the IT/Privacy Risk Committee. Risk Assessment results are communicated to management for awareness and resolution or risk acceptance of findings based on management's risk appetite.
<b>SM-3: Security and penetration testing</b>	
SM-3.1	Voya implements and maintains vulnerability and penetration testing (Ethical Hacking) processes to ensure the computing environment where Client PII is accessed, processed, stored, or transmitted is continually protected from internal and external security threats.
SM-3.2	Voya implements and maintains a process for vulnerability scanning on at least a monthly basis and ensures issues are remediated, utilizing a risk based approach within a reasonable timeframe.
SM-3.3	Penetration testing (Ethical Hacking) of Internet facing systems or systems exposed to un-trusted networks is conducted prior to the system being deployed into a production status, after any significant changes, and then at least once every 12 months thereafter.

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**Exhibit B**  
**State of Nevada Security Incident Report Form**

**State of Nevada**  
**Information Security Committee**

**INFORMATION SECURITY INCIDENT REPORT**

<b>SECTION 1</b>	
<b>Type of Incident:</b>	
<b>Start Date/Time:</b>	<b>Ending Date/Time:</b>
<b>Description of Incident**:</b>	

<b>SECTION 2</b>	
<b>Impact/Damage Sustained**:</b>	
<b>Estimate of Financial Impact**:</b>	
<b>Mitigation Action Taken**:</b>	

<b>SECTION 3 (Office of Information Security Use Only)</b>	
<b>Corrective Action Taken**:</b>	
<b>Additional Preventative Action Recommended**:</b>	

<b>Reporter:</b>	<b>Title:</b>	<b>Date:</b>
<b>Previous Reports on this Incident Dated:</b>		

*\*\* Expand on additional paper as necessary*