

## RESOLUTION 11-018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO  
ADOPTING THE 2011 RESTATED DEFERRED COMPENSATION PLAN  
DOCUMENTS FOR CITY OF KETCHUM ENTITY NUMBER 0026904 AND FOR  
THE CITY OF KETCHUM FIRE DEPARTMENT ENTITY NUMBER 0035424

WHEREAS, the City of Ketchum has previously adopted Resolution No. 521  
establishing a Deferred Compensation Plan for city employees; and

WHEREAS, the City of Ketchum has previously adopted Resolution No. 06-037  
establishing a Deferred Compensation Plan to include paid on-call firefighters; and

WHEREAS, the establishment of a deferred compensation plan for employees  
serves the interest of the City of Ketchum by enabling it to provide reasonable retirement  
security for its employees, by providing increased flexibility in its personnel management  
system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, the City of Ketchum has determined that the establishment of a  
voluntary deferred compensation plan be made available to all eligible employees  
pursuant to Section 457 of the Internal Revenue Code permitting such plans, serves the  
above objectives; and

WHEREAS, the City of Ketchum desires that this deferred compensation plan be  
administered by Nationwide, and that all regulatory, operational, and administrative  
responsibilities are hereby assumed by Nationwide on behalf of the City of Ketchum and  
its employees; and

WHEREAS, Nationwide, as Administrative Services Provider, agrees to hold  
harmless and indemnify the City of Ketchum, its appointed and elected officers, and  
participating employees, from any loss resulting from failure to perform duties and  
services pursuant to the Nationwide Program; and

WHEREAS, certain changes are now required to incorporate recent legislative and  
regulatory changes into:

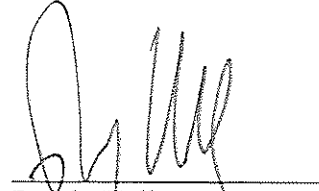
1. City of Ketchum Entity Number 0026904 plan documents effective for plan year  
beginning January 1, 2011.
2. City of Ketchum Fire Department Entity Number 0035424 plan documents effective  
for plan year beginning January 1, 2011.

WHEREAS, that attached hereto are true copies of:

- 457 Governmental Plan & Trust Explanation of Selected Substantive  
Changes
- 2011 Restated 457(b) Governmental Plan Document
- Group Flexible Purchase Payment Deferred Variable Annuity and Plan  
Program (Referred by Nationwide as the Certificate of Participation and  
Disclosure Document)


NOW THEREFORE BE IT RESOLVED, that the Ketchum City Council adopts the 2011 Restated 457(b) Deferred Compensation Plan Documents and authorizes the Mayor to sign the Plan Documents.

This Resolution will be in full force and effect upon its adoption and approval this eighteenth (18th) day of July 2011.



Randy Hall  
Mayor

ATTEST:



Sandra Cady, CMC  
City Treasurer/Clerk

## 2011 Restated Plan Document Initiative

### 457 Governmental Plan & Trust Explanation of Selected Substantive Changes

#### ARTICLE I

##### Definitions

**Compensation** (Section 1.07): Revised compensation definition to address final regulations issued under Section 415 of the Internal Revenue Code (the "I.R.C."). Additionally, incorporated differential wage payments under the definition, which is consistent with the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act").

**Distributions to Individuals in the Uniformed Services:** Made changes consistent with the HEART Act, which allow distributions to certain individuals during periods of uniformed service. (Section 1.28(c)(3)).

#### ARTICLE III

##### Deferral Contributions/Limitations

**Deferrals After Severance from Employment, Including Sick, Vacation, and Back Pay Under an Eligible Plan:** Revisions incorporated to extend the time period during which deferrals may occur after severance from employment under the final regulations issued under Section 415 of the I.R.C. (Section 3.02(c)).

#### ARTICLE IV

##### Time and Method of Payment Benefits

**Emergency Tax Relief Distributions:** New section added which is designed to serve as a catchall provision allowing distributions from the plan if legislation is enacted following emergency or catastrophic events (e.g., hurricanes, floods). Administrator can also establish procedures related to these distributions. (Section 4.01).

**Required Minimum Distributions:** A plan provision was added to reflect the 2009 waiver period of RMDs under the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"). (Section 4.03(f)(1)).

**Eligible Rollover Distributions by a Non-Spousal Beneficiary:** A provision was added to the plan reflecting Section 829 of the Pension Protection Act of 2006 ("PPA"), which requires plans to permit direct rollovers by non-spousal beneficiaries to inherited IRAs under certain conditions. (Section 4.07(c)).

**Eligible Rollover Distributions to a Roth IRA:** Language added to reflect the ability of participants to direct rollovers to a Roth IRA under PPA Section 824. (Section 4.07(d)(2)).

**Mandatory Distributions for Small Accounts.** A provision has been added to make mandatory distributions of inactive accounts with less than \$1,000. (Section 4.07(d)(4)).

**Distribution for Qualified Health Insurance Premiums:** New section added pursuant to PPA Section 845 and IRC 402(l), which allows a distribution of \$3,000 per year to “eligible retired public safety officers” to pay for “qualified health insurance premiums” if certain conditions are met. This provision reflects the regulatory requirement that the plan make distributions directly to the qualified health insurance premium coverage provider to qualify. (Section 4.08(a)).

## ARTICLE V

### **Administrative Services Provider Duties**

**Loans:** Loan provisions are incorporated into the plan document, and is no longer a stand alone amendment to the plan. Including this provision does not require plans to offer loans. Plan sponsors wanting to offer loans must complete an administrative procedures document before Nationwide will begin administering loans. This document is available upon request. Plan sponsors who have already completed this step are not required to take any additional action at this time. (Section 5.03).

**Procedure When Location of Participant or Beneficiary Unknown:** New language added to Plan Document providing distribution procedures when the location of a participant or beneficiary is unknown. (Section 5.12(a)(b)).

## ARTICLE VI

### **Participant Administrative Provisions**

**Automatic Revocation of Spousal Beneficiary Designation:** New section, which automatically revokes designations in favor of a former spouse as beneficiary upon a divorce or dissolution of marriage. Many states already have laws which takes this action with former spouses. (Section 6.01).

## ARTICLE VII

### **Miscellaneous**

**Use of Plan Assets that Are Not Attributable to an Account:** New section, which provides that Plan Sponsor shall direct the Administrator how to use money received by the Plan that is not related to an Account Balance. This would include any settlement money, fee reimbursements, and litigation awards received by the Plan. (Section 7.09)

Retirement Specialists are Registered Representatives of Nationwide Investment Services Corporation, member FINRA

NRG-0133AO

**FOR PLAN SPONSORS ONLY**

UPDATED: 02/22/2011

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Plan Document

# Plan Documents for Governmental Employers

457 Governmental Plan Document



**Nationwide<sup>®</sup>**  
Retirement Solutions

a Nationwide Financial<sup>®</sup> company

City of Ketchum Entity Number 0026904  
City of Ketchum Fire Department Entity Number 0035424  
*(Name of Employer)*

**DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES**

**457 GOVERNMENTAL PLAN AND TRUST**

Document provided as a courtesy of:



**Nationwide<sup>®</sup>**  
**Retirement Solutions**

*On Your Side<sup>™</sup>*

## 457 GOVERNMENTAL PLAN AND TRUST

The Employer adopts this 457 Governmental Plan and Trust. The Plan is intended to be an "eligible deferred compensation plan" as defined in Code §457(b) of the Internal Revenue Code of 1986 ("Eligible 457 Plan"). The Plan consists of the provisions set forth in this plan document and is applicable to the Employer and each Employee who elects to participate in the Plan. If the Employer adopts this Plan as a restated Plan in substitution for, and in amendment of, an existing plan, the provisions of this Plan, as a restated Plan, apply solely to an Employee on or after the execution of this Plan. The Plan is effective as to each Employee upon the date he/she becomes a Participant by entering into and filing with the Employer or the Administrative Services Provider a Participation Agreement or an Acknowledgement Form/Card.

#### ARTICLE I DEFINITIONS

1.01 **"Account"** means the separate Account(s) which the Administrative Services Provider or the Trustee maintains under the Plan for a Participant's Deferred Compensation. The Administrative Services Provider or Trustee may establish separate Accounts for multiple Beneficiaries of a Participant to facilitate required minimum distributions under Section 4.03 based on each Beneficiary's life expectancy.

1.02 **"Accounting Date"** means the last day of the Plan Year.

1.03 **"Acknowledgement Form/Card"** means the application to the Administrative Services Provider to participate in the Plan when the Plan is a Social Security replacement plan.

1.04 **"Administrative Services Provider"** means Nationwide Retirement Solutions, Inc. which acts as the third party administrative services provider appointed by the Employer to carry out nondiscretionary administrative functions for the Plan.

1.05 **"Beneficiary"** means a person who the Plan or a Participant designates and who is or may become entitled to a Participant's Account upon the Participant's death. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Beneficiary has received full distribution of his/her Plan benefit. A Beneficiary's right to (and the Administrative Services Provider's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.06 **"Code"** means the Internal Revenue Code of 1986, as amended.

1.07 **"Compensation"** for purposes of allocating Deferral Contributions means the employee's wages, salaries, 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, to the extent that the amounts are includible in gross income (or to the extent amount would have been received and includible in gross income but for an election under Code §§ 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), and 457(b), including an election to defer Compensation under Article III. See Section 1.16 as to Compensation for an Independent Contractor. Compensation also includes any amount that the Internal Revenue Service in published guidance declares to constitute compensation for purposes of an Eligible 457 Plan.

**(A) Elective Contributions.** Compensation under Section 1.07 includes Elective Contributions. "Elective Contributions" are amounts excludible from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code § 457 plan.

**(B) Differential wage payments.** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code § 3401(h)(2), shall be treated as an employee of the employer making the payment; (ii) the differential wage payment shall be treated as compensation; and (iii) the plan will not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

1.08 **"Deferral Contributions"** means Salary Reduction Contributions, Nonselective Contributions and Matching Contributions. The Employer or the Administrative Services Provider (if applicable) in applying the Code § 457(b) limit will take into account Deferral Contributions in the Taxable Year in which deferred. The Employer or Administrative Services Provider (if applicable) in determining the amount of a Participant's Deferral Contributions disregards the net income, gain and loss attributable to Deferral Contributions.

1.09 **"Deferred Compensation"** means as to a Participant the amount of Deferral Contributions,

## 457 Governmental Plan and Trust

Rollover Contributions and Transfers adjusted for allocable net income, gain or loss, in the Participant's Account.

1.10 **"Effective Date"** of this Plan is the date indicated on the execution line unless the Code, Treasury regulations, or other applicable guidance provides otherwise.

1.11 **"Employee"** means an individual who provides services for the Employer, as a common law employee of the Employer. See Section 1.16 regarding potential treatment of an Independent Contractor as an Employee.

1.12 **"Employer"** means an employer who adopts this Plan by executing the Plan.

1.13 **"Employer Contribution"** means Nonelective Contributions or Matching Contributions.

1.14 **"Excess Deferrals"** means Deferral Contributions to an Eligible 457 Plan for a Participant that exceed the Taxable Year maximum limitation of Code §§457(b) and (e)(18).

1.15 **"Includible Compensation"** means, for the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code § 415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation includes Deferral Contributions under the Plan, compensation deferred under any other plan described in Code §457, and any amount excludible from the Employee's gross income under Code §§401(k), 403(b), 125 or 132(f)(4) or any other amount excludible from the Employee's gross income for Federal income tax purposes. The Employer will determine Includible Compensation without regard to community property laws.

1.16 **"Independent Contractor"** means any individual who performs service for the Employer and who the Employer does not treat as an Employee or a Leased Employee. The Employer may permit Independent Contractors to participate in the Plan. To the extent that the Employer permits Independent Contractor participation, references to Employee in the Plan include Independent Contractors and Compensation means the amounts the Employer pays to the Independent Contractor for services.

1.17 **"Leased Employee"** means an Employee within the meaning of Code § 414(n).

1.18 **"Matching Contribution"** means an Employer fixed or discretionary contribution made or forfeiture allocated on account of Salary Reduction Contributions. The Employer may provide for matching contributions.

1.19 **"Nonelective Contribution"** means an Employer fixed or discretionary contribution not made as a result of a Participation Agreement and which is not a Matching Contribution. The Employer may provide for nonelective contributions.

1.20 **"Normal Retirement Age"** means the age designated by the Participant unless the Employer designates in writing a Normal Retirement Age. The Normal Retirement Age designated by the Participant or Employer shall be no earlier than age 65 or the age at which Participants have the right to retire and receive, under the basic defined benefit pension plan of the Employer (or a money purchase plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. The Normal Retirement Age also shall not exceed age 70½.

*Special Rule for Eligible Plans of Qualified Police or Firefighters.* A Participant who is a qualified police officer or firefighter as defined under Code §415(b)(2)(H)(ii)(1) may designate a Normal Retirement Age between age 40 and age 70½.

1.21 **"Participant"** is an Employee who elects to participate in the Plan in accordance with the provisions of Section 2.01 or an individual who has previously deferred Compensation under the Plan by a Participation Agreement and has not received a complete distribution of his/her Account.

1.22 **"Participation Agreement"** means the agreement to enroll and participate in the Plan that is completed by the Participant and provided to the Administrative Services Provider. The Participation Agreement is the agreement, by which the Employer reduces the Participant's Compensation for contribution to the Participant's Account.

1.23 **"Plan"** means the 457 plan established or continued by the Employer in the form of this Plan and (if applicable) Trust Agreement. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.24 **"Plan Entry Date"** means the date on which an Employee completes and files a Participation Agreement with the Administrative Services Provider.

1.25 **"Plan Year"** means the calendar year.

1.26 **"Rollover Contribution"** means the amount of cash or property which an eligible retirement plan described in Code §402(c)(8)(B) distributes to an eligible Employee or to a Participant in an eligible rollover distribution under Code §402(c)(4) and which the eligible Employee or Participant transfers directly or indirectly to an



Eligible 457 Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution excludes after-tax Employee contributions, as adjusted for net income, gain or loss.

1.27 **"Salary Reduction Contribution"** means a contribution the Employer makes to the Plan pursuant to a Participation Agreement.

1.28 **"Service"** means any period of time the Employee is in the employ of the Employer. In the case of an Independent Contractor, Service means any period of time the Independent Contractor performs services for the Employer on an independent contractor basis. An Employee or Independent Contractor terminates Service upon incurring a Severance from Employment.

**(A) Qualified Military Service.** Service includes any qualified military service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u). A Participant whose employment is interrupted by qualified military service under Code §414(u) or who is on a leave of absence for qualified military service under Code §414(u) may elect to make additional Salary Reduction Contributions upon resumption of employment with the Employer equal to the maximum Deferral Contributions that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption of leave, reduced by the Deferral Contributions, if any, actually made for the Participant 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). The Employer shall make appropriate make-up Nonelective Contributions and Matching Contributions for such a Participant as required under Code §414(u). The Plan shall apply limitations of Article III to all Deferral Contributions under this paragraph with respect to the year to which the Deferral Contribution relates.

**(B) "Continuous Service"** means Service with the Employer during which the Employee does not incur a Severance from Employment.

**(C) "Severance from Employment."**

(1) **Employee.** An Employee has a Severance from Employment when the Employee ceases to be an Employee of the Employer. A Participant does not incur a Severance from Employment if, in connection with a change in employment, the Participant's new employer continues or assumes sponsorship of the Plan or accepts a Transfer of Plan assets as to the Participant.

(2) **Independent Contractor.** An Independent Contractor has a Severance from Employment when the contract(s) under which the Independent Contractor performs services for the Employer expires (or otherwise terminates), unless the Employer anticipates a renewal of the contractual relationship or the Independent Contractor becoming an Employee. The Employer anticipates renewal if it intends to contract for the services provided under the expired contract and neither the Employer nor the Independent Contractor has eliminated the Independent Contractor as a potential provider of such services under the new contract. Further, the Employer intends to contract for services conditioned only upon the Employer's need for the services provided under the expired contract or the Employer's availability of funds. Notwithstanding the preceding provisions of this Section 1.28, the Administrative Services Provider will consider an Independent Contractor to have incurred a Severance from Employment: (a) if the Administrative Services Provider or Trustee will not pay any Deferred Compensation to an Independent Contractor who is a Participant before a date which is at least twelve months after the expiration of the Independent Contractor's contract (or the last to expire of such contracts) to render Services to the Employer; and (b) if before the applicable twelve-month payment date, the Independent Contractor performs Service as an Independent Contractor or as an Employee, the Administrative Services Provider or Trustee will not pay to the Independent Contractor his/her Deferred Compensation on the applicable date.

(3) **Uniformed Services.** for purposes of distributions to an individual in the uniformed services, such individual will be treated as incurring a Severance from Employment during any period the individual is performing service in the uniformed services described in Code § 3401(h)(2)(A). However, the plan will not distribute the benefit to such an individual without that individual's consent, so long as the individual is receiving differential wage payments.

If an individual elects to receive a distribution under this provision, the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

1.29 **"State"** means (a) one of the 50 states of the United States or the District of Columbia, or (b) a political subdivision of a State, or any agency or instrumentality of a State or its political subdivision. A State does not include the federal government or any agency or instrumentality thereof.

1.30 **"Taxable Year"** means the calendar year or other taxable year of a Participant.

## 457 Governmental Plan and Trust

1.31 **“Transfer”** means a transfer of Eligible 457 Plan assets to another Eligible 457 Plan which is not a Rollover Contribution and which is made in accordance with Section 9.03.

1.32 **“Trust”** means the Trust created under the adopting Employer’s Plan. The Trust created and established under the adopting Employer’s Plan is a separate Trust, independent of the trust of any other Employer adopting this Eligible 457 Plan and is subject to Article VIII.

1.33 **“Trustee”** means the person or persons designated by the Employer to serve in the position of Trustee.

### ARTICLE II PARTICIPATION IN PLAN

2.01 **ELIGIBILITY.** Each Employee becomes a Participant in the Plan as soon as he/she completes and files a Participation Agreement. If this Plan is a restated Plan, each Employee who was a Participant in the Plan on the day before the Effective Date continues as a Participant in the Plan.

2.02 **PARTICIPATION UPON RE-EMPLOYMENT.** A Participant who incurs a Severance from Employment will re-enter the Plan as a Participant on the date of his/her re-employment.

2.03 **SPECIAL ELIGIBILITY PROVISIONS FOR PARTICIPANTS IN A PLAN USED AS A SOCIAL SECURITY REPLACEMENT PLAN.** Notwithstanding any provision to the contrary, the provisions of this Section 2.03 will apply if the Employer elects in a written agreement with the Administrative Services Provider to use the Plan as a Social Security replacement plan. If the Plan is used as a Social Security replacement plan, the provisions of Sections 4.05(a) and 5.03 will not apply.

**(A) Eligibility to participate for new Employees.** A new Employee shall, as a condition of employment participate in the Plan sign and file with the Administrative Services Provider an Acknowledgement Form/Card and thereby consenting to a reduction of salary by the amount of the Deferral Contribution specified in the Acknowledgement Form/Card. Contributions to the Participant’s Account must equal at least 7.5% of the Participant’s Compensation, or such other minimum amount as shall be required for the Plan to be considered a retirement system under Code §3121(b)(7)(F) and Treas. Reg. 31.3121(b)(7)-2, and the reduction in the Participant’s salary shall begin immediately thereafter.

**(B) Eligibility to participate for current Employees.** An Employee who is newly eligible to participate in the Plan shall, prior to becoming eligible to participate in the Plan, sign and file with

the Administrative Services Provider an Acknowledgement Form/Card and thereby consent to a reduction of salary by the amount of the Deferral Contribution specified in the Acknowledgement Form/Card. Allocations to the Participant’s Account must equal at least 7.5% of the Participant’s Compensation or such other minimum amount as shall be required for the Plan to be considered a retirement system under Code §3121(b)(7)(F) and Treas. Reg. §31.3121(b)(7)-2, and the reduction in the Participant’s salary shall begin no earlier than the first pay period commencing during the first month after the date on which the Acknowledgement Form/Card is filed with the Administrative Services Provider.

**(C) Takeover Plans.** If the Plan is a restated Plan, an Employee who participated in the predecessor plan shall become a Participant in the Plan upon the Employer’s execution of the enabling documents for this Plan. Allocations to each such Participant’s Account must equal at least 7.5% of the Participant’s Compensation, or such other minimum amount as shall be required for the Plan to be considered a retirement system under Code §3121(b)(7)(F) and Treas. Reg. §31.3121(b)(7)-2, and the reduction in the Participant’s salary shall begin immediately thereafter.

### ARTICLE III DEFERRAL CONTRIBUTIONS/LIMITATIONS

#### 3.01 AMOUNT.

**(A) Contribution Formula.** For each Plan Year, the Employer will contribute to the Plan the amount of Deferral Contributions the Employee elects to defer under the Plan.

**(B) Return of Contributions.** The Employer contributes to this Plan on the condition its contribution is not due to a mistake of fact. If any Participant Salary Reduction Contribution is due to a mistake of fact, the Employer or the Trustee upon written request from the Employer will return the Participant’s contribution, within one year after payment of the contribution.

The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable.

**(C) Time of Payment of Contribution.** An Employer will deposit Salary Reduction Contributions to the Trust within a period that is not longer than is reasonable for the administration of Participant Accounts. Neither the Administrative Services Provider nor the Trustee is responsible for the delay of deposits of Salary Reduction Contributions caused by the Employer.

**3.02 SALARY REDUCTION CONTRIBUTIONS.** The Plan does not apply any limitations on Salary Reduction Contributions other than the limitations applicable under the Code.

**(A) Deferral from Sick, Vacation and Back Pay.** Participants may make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

**(B) Application to Leave of Absence and Disability.** The Participation Agreement will continue to apply during the Participant's leave of absence or the Participant's disability (as the Employer shall establish), if the Participant has Compensation other than imputed compensation or disability benefits.

**(C) Post-severance deferrals limited to Post-Severance Compensation.** Deferral Contributions are permitted from an amount received following Severance from Employment only if the amount is Post-Severance Compensation.

**Post-Severance Compensation defined.** Post-Severance Compensation includes the amounts described in (1) and (2) below, paid after a Participant's Severance from Employment with the Employer, but only to the extent such amounts are paid by the later of 2½ months after Severance from Employment or the end of the calendar year that includes the date of such Severance from Employment.

**(1) Regular pay.** Post-Severance Compensation includes regular pay after Severance of Employment 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 cashouts.** Post-Severance Compensation includes leave cashouts if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's Severance from Employment, and the amounts are payment 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) Salary continuation payments for military service Participants.** Post-Severance Compensation includes payments to an individual who does not currently perform services for the Employer by

reason of Qualified Military Service (as described 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.

**Limitation on Post-Severance Compensation.** Any payment of Compensation paid after Severance of Employment that is not described in Section 3.02(C)(1) or 3.02(C)(2) is not Post-Severance Compensation, even if payment is made by the later of 2½ months after Severance from Employment or by the end of the calendar year that includes the date of such Severance of Employment.

**3.03 NORMAL LIMITATION.** Except as provided in Sections 3.04 and 3.05, a Participant's maximum Deferral Contributions (excluding Rollover Contributions and Transfers) under this Plan for a Taxable Year may not exceed the lesser of:

(a) The applicable dollar amount as specified under Code §457(e)(15) (or, beginning January 1, 2006) such larger amount as the Commissioner of the Internal Revenue may prescribe), or

(b) 100% of the Participant's Includible Compensation for the Taxable Year.

**3.04 NORMAL RETIREMENT AGE CATCH-UP CONTRIBUTION.** For one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains Normal Retirement Age, the Participant's maximum Deferral Contributions may not exceed the lesser of:

(a) Twice the dollar amount under Section 3.03 normal limitation, or (b) the underutilized limitation.

**(A) Underutilized Limitation.** A Participant's underutilized limitation is equal to the sum of: (i) the normal limitation for the Taxable Year, and (ii) the normal limitation for each of the prior Taxable Years of the Participant commencing after 1978 during which the Participant was eligible to participate in the Plan and the Participant's Deferral Contributions were subject to the normal limitation or any other Code § 457(b) limit, less the amount of Deferral Contributions for each such prior Taxable Year, excluding age 50 catch-up contributions.

**(B) Multiple 457 Plans.** If the Employer maintains more than one Eligible 457 Plan, the Plans may not permit any Participant to have more than one Normal Retirement Age under the Plans.

**(C) Pre-2002 Coordination.** In determining a Participant's underutilized limitation, the

coordination rule in effect under now repealed Code §457(c)(2) applies. Additionally, the normal limitation for pre-2002 Taxable Years is applied in accordance with Code § 457(b)(2) as then in effect.

**3.05 AGE 50 CATCH-UP CONTRIBUTION.** All Employees who are eligible to make Salary Reduction Contributions under this Plan and who have attained age 50 before the close of the Taxable Year are eligible to make age 50 catch-up contributions for that Taxable Year in accordance with, and subject to the limitations of, Code § 414(v). Such catch-up contributions are not taken into account for purposes of the provisions of the plan implementing the required limitations of Code § 457. If, for a Taxable Year, an Employee makes a catch-up contribution under Section 3.04, the Employee is not eligible to make age 50 catch-up contributions under this Section 3.05. A catch-up eligible Participant in each Taxable Year is entitled to the greater of the amount determined under Section 3.04 or Section 3.05 catch-up amount plus the Section 3.03 normal limitation.

**3.06 CONTRIBUTION ALLOCATION.** The Administrative Services Provider will allocate to each Participant's Account his/her Deferral Contributions.

**3.07 ALLOCATION CONDITIONS.** The Plan does not impose any allocation conditions.

**3.08 ROLLOVER CONTRIBUTIONS.** The Plan permits Rollover Contributions.

**(A) Operational Administration.** The Employer, operationally and on a nondiscriminatory basis, may elect to permit or not to permit Rollover Contributions to this Plan or may elect to limit an eligible Employee's right or a Participant's right to make a Rollover Contribution. If the Employer permits Rollover Contributions, any Participant (or as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the Administrative Services Provider, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Trustee may require a Participant (or eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "Rollover Contribution" which the Code permits an employee to make to an eligible retirement plan. The Trustee, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

**(B) Pre-Participation Rollover.** If an eligible Employee makes a Rollover Contribution to the Trust prior to satisfying the Plan's eligibility conditions,

the Administrative Services Provider and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48 or in any successor ruling). If a limited Participant has a Severance from Employment prior to becoming a Participant in the Plan, the Trustee will distribute his/her Rollover Contributions Account to the limited Participant in accordance with Article IV.

**(C) Separate Accounting.** If an Employer permits Rollover Contributions, the Administrative Services Provider must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another Eligible 457 plan); and (2) amounts rolled into this Plan from another Eligible 457 Plan. The Administrative Services Provider for purposes of ordering any subsequent distribution from this Plan may designate a distribution from a Participant's Rollover Contributions as coming first from either of (1) or (2) above if the Participant has both types of Rollover Contribution Accounts.

**3.09 DISTRIBUTION OF EXCESS DEFERRALS.** In the event that a Participant has Excess Deferrals, the Plan will distribute to the Participant the Excess Deferrals and allocable net income, gain or loss, in accordance with this Section 3.09.

The Administrative Services Provider will distribute Excess Deferrals from an Eligible 457 Plan as soon as is reasonably practicable following the Administrative Services Provider's or Employer's determination of the amount of the Excess Deferral.

**(A) Plan Aggregation.** If the Employer maintains more than one Eligible 457 Plan, the Employer must aggregate all such Plans in determining whether any Participant has Excess Deferrals.

**(B) Individual Limitation.** If a Participant participates in another Eligible 457 Plan maintained by a different employer, and the Participant has Excess Deferrals, the Administrative Services Provider may, but is not required, to correct the Excess Deferrals by making a corrective distribution from this Plan.

**3.10 DOLLAR LIMITS.** The table below shows the applicable dollar amounts described in paragraph 3.03(a) and limitations on age 50 catch-up contributions described in Section 3.05. These amounts are adjusted after 2006 for changes in the cost-of-living to the extent permitted in Code § 415(d).

Year	Applicable Dollar Amount	Age 50+ Catch-up Contribution Limitation
2002	\$11,000	\$1,000
2003	\$12,000	\$2,000
2004	\$13,000	\$3,000
2005	\$14,000	\$4,000
2006	\$15,000	\$5,000

#### ARTICLE IV TIME AND METHOD OF PAYMENT OF BENEFITS

##### 4.01 DISTRIBUTION

**RESTRICTIONS.** Except as the Plan provides otherwise, the Administrative Services Provider or Trustee may not distribute to a Participant his/her Account prior to the Participant's Severance from Employment, or such other event for which federal legislation is enacted or regulatory relief granted permitting the Plan to make distributions to qualifying Participants.

**(A) Distribution of Rollover Contributions.** To the extent the Employer permits Rollover Contributions (but not Transfers) to this Plan, a Participant may receive a distribution of such Rollover Contributions without regard to the restrictions found in this Section 4.01.

**4.02 TIME AND METHOD OF PAYMENT OF ACCOUNT.** The Administrative Services Provider, or Trustee at the direction of the Administrative Services Provider, will distribute to a Participant who has incurred a Severance from Employment the Participant's Account under one or any combination of payment methods elected by the Participant. The Participant may elect one of the following methods of payment: (1) lump sum payment, (2) partial lump sum payment, (3) installment, or (4) an annuity. In no event will the Administrative Services Provider direct (or direct the Trustee to commence) distribution, nor will the Participant elect to have distribution commence, later than the Participant's required beginning date, or under a method that does not satisfy Section 4.03.

Subject to any restrictions imposed by the Participant's investment providers and the Administrative Services Provider, the Participant: (1) may elect to commence distribution no earlier than is administratively practical following Severance from Employment; (2) may elect to postpone distribution of his/her Account to any fixed or determinable date including, but not beyond, the Participant's required beginning date; and (3) may elect the method of payment. A Participant may elect the timing and method of payment of his/her Account no later than 30 days before the date the Participant first would be

eligible to commence payment of the Participant's Account. The Administrative Services Provider must furnish to the Participant a form for the Participant to elect the time and a method of payment.

**4.03 REQUIRED MINIMUM DISTRIBUTIONS.** The Administrative Services Provider may not distribute nor direct the Trustee to distribute the Participant's Account, nor may the Participant elect any distribution his/her Account, under a method of payment which, as of the required beginning date, does not satisfy the minimum distribution requirements of Code § 401(a)(9) or which is not consistent with applicable Treasury regulations.

##### **(A) General Rules.**

(1) **Precedence.** The requirements of this Section 4.03 will take precedence over any inconsistent provisions of the Plan.

(2) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section 4.03 will be determined and made in accordance with the Treasury regulations under 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 Distribution Begins.** 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:

(a) **Spouse Designated Beneficiary.** If the Participant's surviving spouse is the Participant's sole designated Beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(b) **Non-Spouse Designated Beneficiary.** If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) **No Designated Beneficiary.** If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) 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 4.03(B)(2) other than Section 4.03(B)(2)(a), will apply as if the surviving spouse were the Participant.

For purposes of this Section 4.03(B) and Section 4.03(D), unless Section 4.03(B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section 4.03(B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a). 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 4.03(B)(2)(a), 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 4.03(C) and 4.03(D). 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 Section 4.01(a)(9) of the Code and the Treasury regulations.

**(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:

(a) ULT. The quotient obtained by dividing the Participant's account balance by the number in the Uniform Life Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's attained age as of the Participant's birthday in the distribution calendar year; or

(b) Younger Spouse. 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 Treas. Reg. §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 4.03(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 Distributions Begin.

(a) 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 the distribution calendar year of the Participant's death is obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant. The Participant's remaining life expectancy is calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death. For each distribution calendar year after the year of the Participant's death, the minimum amount that will be distributed is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary.

(b) 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 calendar year after the calendar year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the calendar 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 attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

(2) Death before Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. 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 4.03(D)(1).

(b) 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.

(c) 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 4.03(B)(2)(a), this Section 4.03(D)(2) will apply as if the surviving spouse were the Participant.

#### (E) Definitions

(1) **Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-1, Q&A-4.

(2) **Distribution calendar year.** A 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 the distributions are required to begin under Section 4.03(B)(2). 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.** Life expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9.

(4) **Participant's account balance.** The 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 dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any Rollover Contributions or Transfers to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) **Required beginning date.** A Participant's required beginning date is the April 1 of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant retires or such other date under Code § 401(a)(9) by which required minimum distributions must commence.

(F) **General 2009 waiver.** The requirements of Code § 401(a)(9) and the provisions of the Plan relating thereto, will not apply for the distribution calendar year 2009.

(1) **Special rule regarding waiver period.** For purposes of Code § 401(a)(9) and the provisions of the Plan relating thereto: (a) the required beginning date with respect to any individual will be determined without regard to this Article IV for purposes of applying Code § 401(a)(9) for distribution calendar years other than 2009; and (b) if the 5-year rule of Code § 401(a)(9)(B)(ii) applies, the 5-year period described therein shall be determined without regard to calendar year 2009.

(2) **Eligible rollover distributions.** If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under Code § 401(a)(9) had applied during 2009, then the Plan will not treat such distribution as an eligible rollover distribution for purposes of the direct rollover rules of Code § 401(a)(31), the notice requirements of Code §402(f), or the 20% withholding requirement of Code §3405(c).

(3) **Participant may elect.** The Plan will permit an affected Participant to elect whether to receive his/her RMD distribution for 2009. If the Participant fails to notify the Administrative Services Provider of his/her waiver, the Plan will distribute the 2009 RMD to the Participant.

4.04 **DEATH BENEFITS.** Upon the death of the Participant, the Administrative Services Provider must pay or direct the Trustee to pay the Participant's Account in accordance with Section 4.03. Subject to Section 4.03, a Beneficiary may elect the timing and method of payment in the same manner as a Participant may elect under Section 4.02, if such elections apply.

In the case of a death occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the participant had resumed and then terminated employment on account of death.

**4.05 DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT.** Notwithstanding the Section 4.01 distribution restrictions, the Plan permits the following in-service distributions in accordance with this Section.

**(A) Unforeseeable Emergency.** In the event of a Participant's unforeseeable emergency, the Administrative Services Provider may make a distribution to a Participant who has not incurred a Severance from Employment.

An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from: (1) illness or accident of the Participant, the Participant's Beneficiary, or the Participant's spouse or dependent (as defined in Code § 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code § 152(b)(1), (b)(2), and (d)(1)(B)); (2) loss of the Participant's or Beneficiary's property due to casualty; (3) the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code § 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code § 152(b)(1), (b)(2), and (d)(1)(B)); or (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant's or Beneficiary's control. The Administrative Services Provider will not pay the Participant or the Beneficiary more than the amount reasonably necessary to satisfy the emergency need, which may include amounts necessary to pay taxes or penalties on the distribution. The Administrative Services Provider will not make payment to the extent the Participant or Beneficiary may relieve the financial hardship by cessation of deferrals under the Plan, through insurance or other reimbursement, or by liquidation of the individual's assets to the extent such liquidation would not cause severe financial hardship.

The Participant's Beneficiary is a person who a Participant designates as a "primary beneficiary" and who is or may become entitled to a Participant's Plan account upon the Participant's death.

A Participant's unforeseeable emergency event includes a severe financial hardship of the participant's primary Beneficiary under the Plan, that would constitute an emergency event if it occurred with respect to the participant's spouse or dependent as defined under Code § 152.

**(B) De minimis distribution.** A Participant may elect to receive a distribution of his/her Account where: (1) the Participant's Account (disregarding Rollover Contributions) does not exceed \$5,000 (or such other amount as does not exceed the Code § 411(a)(11)(A) dollar amount); (2) the Participant has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (3) the

Participant has not received a prior distribution under this Section 4.05(B).

**(C) Distribution of Rollover Contributions.** A Participant may request and receive distribution of his/her Account attributable to Rollover Contributions (but not to Transfers) before the Participant has a distributable event under Section 4.01.

**4.06 DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS (QDROs).** Notwithstanding any other provision of this Plan, the QDRO provisions will apply. The Administrative Services Provider (and any Trustee) must comply with the terms of a QDRO, as defined in Code § 414(p), which is issued with respect to the Plan.

**(A) Time and Method of Payment.** This Plan specifically permits distribution to an alternate payee under a QDRO at any time, notwithstanding any contrary Plan provision and irrespective of whether the Participant has attained his/her earliest retirement age (as defined under Code § 414(p)) under the Plan. Nothing in this Section 4.06 gives a Participant a right to receive distribution at a time the Plan otherwise does not permit nor authorizes the alternate payee to receive a form of payment the Plan does not permit.

**(B) QDRO Procedures.** Upon receiving a domestic relations order, the Administrative Services Provider promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Administrative Services Provider must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Administrative Services Provider's determination. The Administrative Services Provider must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

**(C) Accounting.** If any portion of the Participant's Account Balance is payable under the domestic relations order during the period the Administrative Services Provider is making its determination of the qualified status of the domestic relations order, the Administrative Services Provider may maintain a separate accounting of the amounts payable. If the Administrative Services Provider determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Administrative Services Provider will distribute or will direct the Trustee to distribute the payable amounts in accordance with the QDRO. If the Administrative Services Provider does not make its determination of the qualified status of the order within the 18-month determination period,



the Administrative Services Provider will distribute or will direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Administrative Services Provider later determines the order is a QDRO.

To the extent it is not inconsistent with the provisions of the QDRO, the Administrative Services Provider may segregate or may direct the Trustee to segregate the QDRO amount in a segregated investment account. The Administrative Services Provider or Trustee will make any payments or distributions required under this Section 4.06 by separate benefit checks or other separate distribution to the alternate payee(s).

**(D) Permissible QDROs.** A domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; 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.

#### 4.07 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS – GOVERNMENTAL PLAN.

**(A) Participant Election.** A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner the Administrative Services Provider prescribes, to have any portion of his/her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this election, a "Participant" includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO.

**(B) Rollover and Withholding Notice.** At least 30 days and not more than 180 days prior to the Trustee's distribution of an eligible rollover distribution, the Administrative Services Provider must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice").

**(C) 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 of his/her distribution to an individual retirement account the Beneficiary establishes for purposes of

receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

**(1) Certain requirements not applicable.** Although a non-spouse Beneficiary may roll over directly a distribution, commencing with distributions after December 31, 2009, the distribution will be subject to the direct rollover requirements of Code § 401(a)(31) (including the automatic rollover provisions of Code § 401(a)(31)(B)), the notice requirements of Code § 402(f) and the mandatory withholding requirements of Code § 3405(c). If a non-spouse Beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.

**(2) Trust Beneficiary.** If the participant's named Beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code § 401(a)(9)(E).

**(3) Required minimum distributions not eligible for rollover.** A non-spouse Beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the participant dies before his/her required beginning date and the non-spouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. § 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse Beneficiary's distribution.

**(D) Definitions.** The following definitions apply to this Section:

**(1) Eligible rollover distribution.** An eligible rollover distribution is any distribution of all or any portion of a Participant's Account, except an eligible rollover distribution does not include: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated Beneficiary, or for a specified period of ten years or more; (b) any Code § 401(a)(9) required minimum distribution; (c) any unforeseeable emergency distribution; and (d) any distribution which otherwise would be an eligible rollover distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than \$200.

**(2) Eligible retirement plan.** An eligible retirement plan is an individual retirement account

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described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), a qualified plan described in Code § 401(a), an annuity contract (or custodial agreement) described in Code § 403(b), or an eligible deferred compensation plan described in Code § 457(b) and maintained by an Employer described in Code § 457(e)(1)(A), which accepts the Participant's, the Participant's spouse or alternate payee's eligible rollover distribution. For distributions made after December 31, 2007, a Participant or Beneficiary may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code § 408A(b).

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

(4) **Mandatory distribution.** The Administrative Services Provider is directed to make a mandatory distribution, which is an eligible rollover distribution, without the Participant's consent provided that the Participant's Account is less than \$1,000. A distribution to a Beneficiary is not a mandatory distribution.

(5) **401(a)(31)(B) Effective Date.** The § 401(a)(31)(B) Effective Date is the date of the close of the first regular legislative session of the legislative body with the authority to amend the Plan that begins on or after January 1, 2006.

**4.08 ELECTION TO DEDUCT FROM DISTRIBUTION.** For distributions in taxable years beginning after December 31, 2006, 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 the provider as described in Section 4.08(A).

(A) **Direct payment.** The Plan will pay directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract the amounts the Eligible Retired Public Safety Officer has elected to have deducted from the distribution. Such amounts may not exceed the lesser of \$3,000 or the amount the Participant paid for such taxable year for qualified healthcare premiums, and which otherwise complies with Code § 402(l).

**(B) Definitions.**

(1) **Eligible retired public safety officer.** An "Eligible Retired Public Safety Officer" is an individual who, by reason of disability or attainment of normal retirement age, has experienced a Severance from Employment as a Public Safety Officer with the Employer.

(2) **Public safety officer.** A "Public Safety Officer" has the same meaning as in § 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3796b(9)(A)).

(3) **Qualified health insurance premiums.** The term "qualified health insurance premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his/her spouse, and dependents, by an accident or health plan or qualified long-term care insurance contract (as defined in Code § 7702B(b)).

**ARTICLE V  
ADMINISTRATIVE SERVICES PROVIDER -  
DUTIES**

5.01 **TERM / VACANCY.** The Administrative Services Provider will serve until his/her successor is appointed. In case the Employer has not appointed a successor Administrative Services Provider, the Employer will exercise any and all duties of the Administrative Services Provider pending the filling of the vacancy.

5.02 **DUTIES.** The Administrative Services Provider will have the following duties:

- (a) To create administrative forms necessary for the proper and efficient administration of the Plan provided the forms are not inconsistent with the terms of the Plan;
- (b) To enforce the terms of the Plan and its procedures, including this document and such other documents related to the Plan's operation;
- (c) To make, at the direction of the Participant or Beneficiary or pursuant to Section 4.07(D)(4), distributions of an Account;
- (d) To review in accordance with the Plan's procedures respecting a claim for (or denial of a claim for) a benefit under the Plan;
- (e) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (f) To make distributions on account of unforeseeable emergency in accordance with the Plan's procedures;
- (g) To accept Deferral Contributions, Employer Contributions, and Rollover Contributions;
- (h) To accept Transfers;

(i) To accept Participant or, in the case of a deceased Participant, Beneficiary direction of investment;

(j) To comply with any reporting and disclosure rules applicable to the Plan;

(k) To make loans to Participants if elected by the Employer;

(l) To appoint agents to act for and in performing its third party administrative services to the Plan; and

(m) To undertake any other action the Administrative Services Provider deems reasonable or necessary to provide third party administrative services to the Plan.

5.03 LOANS TO PARTICIPANTS. The Employer may elect to permit the Administrative Services Provider and/or Trustee to make Plan loans to Participants by executing a participant loan program document with the Administrative Services Provider. Any loan by the Plan to a Participant shall be made in compliance with Code § 72(p). If Plan loans are permitted, the Administrative Services Provider, with the approval and direction of the Employer, may establish, amend or terminate from time to time, nondiscriminatory administrative procedures for administering loans. Such loan procedures must be a written document and must include: (1) the procedure for applying for a loan; (2) the criteria for approving or denying a loan; (3) the limitations, if any, on the types and amounts of loans available; and (4) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. Any administrative procedures adopted under this Section 5.03 shall be construed as part of the Plan.

5.04 INDIVIDUAL ACCOUNTS / RECORDS. The Administrative Services Provider will maintain a separate Account in the name of each Participant to reflect the value of the Participant's Deferred Compensation under the Plan.

5.05 VALUE OF PARTICIPANT'S ACCOUNT. The value of each Participant's Account consists of his/her accumulated Deferred Compensation, as of the most recent Accounting Date or any later date as the Administrative Services Provider may determine.

5.06 ALLOCATION OF NET INCOME, GAIN OR LOSS. As of each Accounting Date (and each other valuation date determined under Section 5.04), the Administrative Services Provider will adjust Accounts to reflect net income, gain or loss, if any, since the last Accounting Date or Account valuation. The Administrative Services Provider will continue to allocate net income, gain and loss to a Participant's

Account subject to an installment distribution, until the Account is fully distributed.

5.07 ACCOUNT CHARGED The Administrative Services Provider will charge all distributions made to a Participant or to his/her Beneficiary, or transferred under Section 9.03 from his/her Account, against the Account of the Participant when made.

5.08 PARTICIPANT DIRECTION OF INVESTMENT. Subject to the terms and conditions required by the Administrative Services Provider and the Trustee, if any, a Participant will have the right to direct the investment or re-investment of the assets comprising the Participant's Account. The Administrative Services Provider will account separately for the Participant-directed Accounts. The Participant's right to direct investment does not give the Participant any vested interest or secured or preferred position with respect to assets over which he/she has investment responsibility.

5.09 VESTING / SUBSTANTIAL RISK OF FORFEITURE. Each Participant's Account will be immediately 100% vested.

5.10 PRESERVATION OF ELIGIBLE PLAN STATUS. The Employer may take any such necessary and appropriate action to preserve the status of the Plan as an Eligible 457 Plan.

5.11 LIMITED LIABILITY. The Employer will not be liable to pay plan benefits to a Participant in excess of the value of the Participant's Account as the Administrative Services Provider determines in accordance with the Plan terms. The Employer, the Administrative Services Provider, or the Trustee will not be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

5.12 LOST PARTICIPANTS. If the Administrative Services Provider is unable to locate any Participant or Beneficiary whose Account becomes distributable (a "lost Participant"), the Administrative Services Provider will apply the provisions of this Section 5.12.

**(A) Attempt to Locate.** The Administrative Services Provider will attempt to locate a lost Participant and may use one or more of the following methods: (1) provide a distribution notice to the lost Participant at his/her last known address by certified or registered mail; (2) use the IRS letter forwarding program under Rev. Proc. 94-22; (3) use a commercial locator service, the internet or other general search method; (4) use the Social Security Administration or PBGC search program; or (5) use such other methods as the Administrative Services Provider believes prudent.

**(B) Failure to Locate.** If a lost Participant is not located after 6 months following the date the Administrative Services Provider first attempts to locate the lost Participant using one or more of the methods described in Section 5.12(A), the Administrative Services Provider may employ the unclaimed property processes of the state of the lost Participant's last known address. Neither the Administrative Services Provider nor the Trustee shall be responsible for restoring the Account (including potential gains) if a lost Participant whose Account was deposited with a state later makes a claim for his/her Account.

**(C) Nonexclusivity and Uniformity.** The provisions of this Section 5.12 are intended to provide permissible but not exclusive means for the Administrative Services Provider to administer the Accounts of lost Participants. The Administrative Services Provider may utilize any other reasonable method to locate lost Participants and to administer the Accounts of lost Participants, including such methods as the Revenue Service or other regulatory agency may in the future specify. The Administrative Services Provider will apply Section 5.12 in a reasonable manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Administrative Services Provider's ability to establish and the expense of establishing a rollover IRA, and other factors. The Administrative Services Provider may charge to the Account of a lost Participant the reasonable expenses incurred under this Section 5.12 and which are associated with the lost Participant's Account.

5.13 PLAN CORRECTION. The Administrative Services Provider, as directed by the Employer, may undertake such correction of Plan errors as the Employer deems necessary, including but not limited to correction to maintain the Plan's status as an "eligible deferred compensation plan" under the Code.

**ARTICLE VI  
PARTICIPANT ADMINISTRATIVE  
PROVISIONS**

6.01 BENEFICIARY DESIGNATION. A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Administrative Services Provider or Trustee will pay the Participant's Account (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant also may designate the method of payment of his/her Account. The Administrative Services Provider will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's

filing the form with the Administrative Services Provider, the form revokes all designations filed prior to that date by the same Participant. Provided the Administrative Services Provider has been provided reasonable notice thereof, a divorce decree, or a decree of legal separation, revokes the Participant's designation, if any, of his/her spouse as his/her Beneficiary under the Plan unless: (a) the decree or a QDRO provides otherwise; or (b) the Participant has re-designated his/her former spouse as Beneficiary following the date of the divorce decree, or other decree of legal separation. The foregoing revocation provision (if applicable) applies only with respect to a Participant whose divorce or legal separation becomes effective on or following the date the Employer executes the Plan.

6.02 NO BENEFICIARY DESIGNATION. If a Participant fails to name a Beneficiary in accordance with Section 6.01, or if the Beneficiary named by a Participant predeceases the Participant, then the Administrative Services Provider will pay the Participant's remaining Account to the Participant's estate.

If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Account, the Trustee will pay the remaining Account to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; or (2) the Beneficiary has properly designated a Beneficiary. A Beneficiary only may designate a Beneficiary for the Participant's Account Balance remaining at the Beneficiary's death, and the Beneficiary's designation otherwise complies with the Plan terms. The Administrative Services Provider will direct a Trustee if applicable as to the method and to whom the Trustee will make payment under this Section 6.02.

6.03 PARTICIPATION AGREEMENT.

**(A) General.** A Participant must elect to make Salary Reduction Contributions on a Participation Agreement form the Administrative Services Provider provides for this purpose. The Participation Agreement must be consistent with the procedures of the Administrative Services Provider. The Participation Agreement may impose such other terms and limitations as the Employer or Administrative Services Provider may determine.

**(B) Election Timing.** A Participation Agreement may not take effect earlier than the first day of the calendar month following the date the Participant executes the Participation Agreement and as to Compensation paid or made available in such calendar month. However, if an Employee is eligible to become a Participant during the Employee's calendar month of hire, the Employee may execute a Participation Agreement on or before the date he/she

becomes an Employee, effective for the month in which he/she becomes an Employee.

**(C) Sick, Vacation and Back Pay.** If the Employer adopts a policy that permits Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay, a Participant who will incur a Severance from Employment may execute a Participation Agreement before such amounts are paid or made available provided: (i) such amounts are paid or made available before the Participant incurs the Severance; and (ii) the Participant is an Employee in that month.

**(D) Modification of Participation Agreement.** A Participation Agreement remains in effect until a Participant modifies it or ceases to be eligible to participate in the Plan. A Participant may modify his/her Participation Agreement by executing a new Participation Agreement. Any modification will become effective no earlier than the beginning of the calendar month commencing after the date the Participant executes the new Participation Agreement. Filing a new Participation Agreement will revoke all Participation Agreements filed prior to that date. The Employer or Administrative Services Provider may restrict the Participant's right to modify his/her Participation Agreement in any Taxable Year.

**6.04 PERSONAL DATA TO ADMINISTRATIVE SERVICES PROVIDER.** Each Participant and each Beneficiary of a deceased Participant must furnish to the Administrative Services Provider such evidence, data or information as the Administrative Services Provider considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Administrative Services Provider, provided the Administrative Services Provider advises each Participant of the effect of his failure to comply with its request.

**6.05 ADDRESS FOR NOTIFICATION.** Each Participant and each Beneficiary of a deceased Participant must file with the Administrative Services Provider from time to time, in writing, his/her address and any change of address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his/her last address filed with the Administrative Services Provider, or as shown on the records of the Employer, binds the Participant, or Beneficiary, for all purposes of this Plan.

**6.06 PARTICIPANT OR BENEFICIARY INCAPACITATED.** If evidence is submitted to the Administrative Services Provider which supports an opinion that a Participant or Beneficiary entitled to a

Plan distribution is not able to care for his/her affairs because of a mental condition, a physical condition, or by reason of age, the Administrative Services Provider or the Trustee may make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his/her attorney-in-fact or to other legal representative upon furnishing evidence of such status satisfactory to the Administrative Services Provider and to the Trustee. The Administrative Services Provider and the Trustee do not have any liability with respect to payments so made and neither the Administrative Services Provider nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

## ARTICLE VII MISCELLANEOUS

**7.01 NO ASSIGNMENT OR ALIENATION.** A Participant or Beneficiary does not have the right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments under the Plan or Trust and the Administrative Services Provider and the Trustee will not recognize any such anticipation, assignment, or alienation. The payments and the rights under this Plan are non-assignable and nontransferable. Subject to Section 8.15, a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

**7.02 EFFECT ON OTHER PLANS.** This Plan does not affect benefits under any other retirement, pension, or benefit plan or system established for the benefit of the Employer's Employees, and participation under this Plan does not affect benefits receivable under any such plan or system, except to the extent provided in such plan or system.

**7.03 WORD USAGE.** Words used in the masculine will apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural will be read as the singular and the singular as the plural.

**7.04 STATE LAW.** The laws of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of this Prototype Plan, except to the extent Federal law supersedes State law.

**7.05 EMPLOYMENT NOT GUARANTEED.** Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any Account, or the payment of any benefit, gives any Employee, Participant or Beneficiary any right to continue employment, any legal or equitable right against the Employer, the

Administrative Services Provider, the Trustee, any other Employee of the Employer, or any agents thereof except as expressly provided by the Plan.

7.06 NOTICE, DESIGNATION, ELECTION, CONSENT AND WAIVER. All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in a form acceptable to the Administrative Services Provider. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code.

7.07 LIMITATIONS ON TRANSFERS AND EXCHANGES. The Employer and the Administrative Services Provider may adopt procedures to govern Participant elections and directions concerning a Participant's, Beneficiary's, or Alternate Payee's investment specifications and may impose limitations on transfers and exchanges from one investment option with the Plan to another. These procedures shall be in addition to any established by investment providers to the Plan. The Employer and the Administrative Services Provider may decline to implement any investment instructions for a Participant, Beneficiary, or Alternate Payee where either deems appropriate.

7.08 EMPLOYER RESPONSIBILITY FOR DISTRIBUTION OF PLAN RELATED INFORMATION. The Employer will distribute all Plan related amendments, restated plan documents, and deferred compensation plan tax related documentation to the Administrative Service Providers when there are multiple Administrative Service Providers of the Plan.

7.09 USE OF PLAN ASSETS THAT ARE NOT ATTRIBUTABLE TO AN ACCOUNT. If the Plan receives money that is not attributable to an Account, then the Employer will direct the Administrative Services Provider as to the use of these amounts. Examples include, but are not limited to, money received by the Plan as part of a settlement, litigation award or fee reimbursement. The Employer may use these amounts to offset Plan expenses or may allocate these amounts to Participants or as it deems appropriate

#### ARTICLE VIII TRUST PROVISIONS

8.01 APPLICATION. The provisions of this Article VIII apply only if the Employer has not elected to substitute another trust, custodial accounts or annuity contracts in lieu of the Trust established under this Article VIII.

8.02 ACCEPTANCE / HOLDING. The Trustee accepts the Trust created under the Plan and agrees to perform the duties and obligations imposed. The Trustee must hold in trust under this Article VIII, all Deferred Compensation until paid in accordance with the Plan terms.

8.03 RECEIPT OF CONTRIBUTIONS. The Trustee is accountable to the Employer for the funds contributed to it by the Employer or the Administrative Services Provider, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan.

8.04 FULL INVESTMENT POWERS. The Trustee is authorized and empowered, but not by way of limitation, to exercise and perform the following duties:

(a) To invest any part or all of the Trust in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U. S. Treasury bills, U. S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, as a prudent person would do under like circumstances. Any investment made or retained by the Trustee in good faith will be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;

(b) To retain in cash so much of the Trust as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust in a bank account at reasonable interest;

(c) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund as described in Code §584, or in a collective investment fund, the provisions of which the Trust incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or its affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency;

(d) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides;

(e) To credit and distribute the Trust as directed by the Administrative Services Provider of the Plan. The Trustee will not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee will be accountable only to the Administrative Services Provider for any payment or distribution made by it in good faith on the order or direction of the Administrative Services Provider;

(f) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;

(g) To compromise, contest, arbitrate or abandon claims and demands;

(h) To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights;

(i) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interest in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders;

(j) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship;

(k) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;

(l) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes a final adjudication;

(m) To file all tax returns required of the Trustee;

(n) To furnish to the Employer and the Administrative Services Provider an annual statement of account showing the condition of the Trust and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts will be conclusive on all persons, including the Employer and the Administrative Services Provider, except as to any act or transaction concerning which the Employer or the Administrative Services Provider files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts; and

(o) To begin, maintain or defend any litigation necessary in connection with the administration of the Trust, except that the Trustee will not be obliged or required to do so unless

8.05 RECORDS AND STATEMENTS. The records of the Trustee pertaining to the Trust will be open to the inspection of the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer may specify in writing. The Trustee will furnish the Administrative Services Provider whatever information relating to the Trust the Administrative Services Provider considers necessary.

8.06 FEES AND EXPENSES FROM FUND. The Trustee will receive reasonable annual compensation in accordance with its fee schedule as published from time to time. The Trustee will pay from the Trust all fees and expenses the Trustee reasonably incurs in its administration of the Trust, unless the Employer pays the fees and expenses.

8.07 PROFESSIONAL AGENTS. The Trustee may employ and pay from the Trust reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Trust, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

8.08 DISTRIBUTION OF CASH OR PROPERTY. The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

8.09 RESIGNATION AND REMOVAL. The Trustee or the Custodian may resign its position by giving written notice to the Employer and to the Administrative Services Provider. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days

following the date of the Trustee's notice, unless the Employer consents in writing to shorter notice.

The Employer may remove a Trustee or a Custodian by giving written notice to the affected party. The Employer's notice must specify the effective date of removal which date must be at least 30 days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

#### 8.10 SUCCESSOR TRUSTEE.

**(A) Appointment.** In the event of the resignation or the removal of a Trustee, where no other Trustee continues to service, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee. If the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee.

**(B) Automatic Successor.** Any corporation which succeeds to the trust business of the Trustee, or results from any merger or consolidation to which the Trustee is a party, or is the transferee of substantially all the Trustee's assets, will be the successor to the Trustee under this Trust. The successor Trustee will possess all rights, duties and powers under this Trust as if the successor Trustee were the original Trustee. Neither the Trustee nor the successor Trustee need provide notice to any interested person of any transaction resulting in a successor Trustee. The successor Trustee need not file or execute any additional instrument or perform any additional act to become successor Trustee.

8.11 VALUATION OF TRUST. The Trustee will value the Trust as of each Accounting Date to determine the fair market value of the Trust assets. The Trustee will value the Trust on such other date(s) the Administrative Services Provider may direct.

8.12 PARTICIPANT DIRECTION OF INVESTMENT. Consistent with the Administrative Services Provider's policy adopted under Section 5.02(i), the Trustee may consent in writing to permit Participants in the Plan to direct the investment to the Trust assets. The Administrative Services Provider will advise the Trustee of the portion of the Trust credited to each Participant's Account under the Plan, and subject to such Participant direction. As a condition of Participant direction, the Trustee may

impose such conditions, limitations and other provisions as the Trustee may deem appropriate and as are consistent with the Administrative Services Provider's policy. The Trustee will report to the Administrative Services Provider the net income, gain or losses incurred by each Participant directed Account separately from the net income, gain or losses incurred by the general Trust during the Trust Year.

8.13 THIRD PARTY RELIANCE. No person dealing with the Trustee will be obliged to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Trust. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and will not be liable to any person whomsoever in so doing. The certificate of the Trustee that it is acting in accordance with the Trust will be conclusive in favor of any person relying on the certificate.

8.14 INVALIDITY OF ANY TRUST PROVISION. If any clause or provision of this Article VIII proves to be or is adjudged to be invalid or void for any reason, such void or invalid clause or provision will not affect any of the other provisions of this Article VIII and the balance of the Trust provisions will remain operative.

8.15 EXCLUSIVE BENEFIT. The Trustee will hold all the assets of the Trust for the exclusive benefit of the Participants and their Beneficiaries and neither the Employer nor the Trustee will use or divert any part of the corpus or income of the Trust for purposes other than the exclusive benefit of the Participants and Beneficiaries of the Plan. The Employer will not have any right to the assets held by the Trustee and the Trust assets will not be subject to the claims of the Employer's creditors or, except as provided in Section 4.06, of the creditors of any Participant or Beneficiary. No Participant or Beneficiary shall have any right to sell, assign, transfer or otherwise convey his/her Account or any interest in his/her Deferred Compensation. Notwithstanding the foregoing, the Administrative Services Provider may pay from a Participant's or Beneficiary's Account the amount the Administrative Services Provider finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary. The Trust created under the Employer's Plan is irrevocable and its assets will not inure to the benefit of the Employer.

8.16 SUBSTITUTION OF CUSTODIAL ACCOUNT OR ANNUITY CONTRACT. The



Employer may elect to use one or more custodial accounts or annuity contracts in lieu of or in addition to the Trust established in this Article VIII. Any such custodial account or annuity contract must satisfy the requirements of Code §457(g)(3) and applicable Treasury regulations.

**8.17 GROUP TRUST AUTHORITY.** Notwithstanding any contrary provision in this Plan, the Trustee may, unless restricted in writing by the Administrative Services Provider, transfer assets of the plan to a group trust that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Code section 401(a), individual retirement accounts that are exempt under Code section 408(e), and eligible governmental plans that meets the requirements of Code section 457(b). For this purpose, a trust includes a custodial account that is treated as a trust under Code section 401(f) or under Code section 457(g)(3). For purposes of valuation, the value of the interest maintained by the Plan in such group trust shall be the fair market value of the portion of the group trust held for Plan, determined in accordance with generally recognized valuation procedures.

#### ARTICLE IX AMENDMENT, TERMINATION, TRANSFERS

**9.01 AMENDMENT BY EMPLOYER / SPONSOR.** The Employer has the right at any time and from time to time:

(a) To amend this Plan and Trust Agreement in any manner it deems necessary or advisable in order to continue the status of this Plan as an Eligible 457 Plan; and

(b) To amend this Plan and Trust Agreement in any other manner, including deletion, substitution or modification of any Plan or Trust.

The Employer must make all amendments in writing. The Employer may amend the Plan by addenda, by separate amendment, or by restatement of the Plan. Each amendment must state the date to which it is either retroactively or prospectively effective. The Employer also may not make any amendment that affects the rights, duties or responsibilities of the Trustee or the Administrative Services Provider without the written consent of the affected Trustee or the Administrative Services Provider.

The Employer will accept amendments from the Administrative Services Provider (including adoption of a substitute Plan and Trust) without being required to re-execute the Plan, provided that the

amendments are necessary to continue the Plan as an Eligible 457 Plan.

**9.02 TERMINATION / FREEZING OF PLAN.** The Employer has the right, at any time, to terminate this Plan or to cease (freeze) further Deferral Contributions to the Plan. Upon termination or freezing of the Plan, the provisions of the Plan (other than provisions permitting continued Deferral Contributions) remain operative until distribution of all Accounts. Upon Plan termination, the Administrative Services Provider or Trustee shall distribute to Participants and Beneficiaries all Deferred Compensation as soon as is reasonably practicable following termination.

**9.03 TRANSFERS.** The Plan: (a) may accept a Transfer of a Participant's Account in another employer's Eligible 457 Plan; or (b) may Transfer a Participant's (or Beneficiary's) Account in this Plan to the another employer's Eligible 457 Plan. The other plan involved in the Transfer must provide for Transfers. The Participant or Beneficiary, after the Transfer will have Deferred Compensation in the recipient plan at least equal to his/her Deferred Compensation in the transferring plan immediately before the Transfer. Any Transfer also must comply with applicable Treasury regulations, and in particular Treas. Reg. §§1.457-10(b)(2) as to post-severance transfers between Eligible 457 Plans; 1.457-10(b)(3) as to transfers of all assets between Eligible 457 Plans; and 1.457-10(b)(4) as to transfers between Eligible 457 Plans of the same Employer. The Administrative Services Provider will credit any Transfer accepted under this Section 9.03 to the Participant's Account and will treat the transferred amount as a Deferral Contribution for all purposes of this Plan except such Transfer will not be treated as a Deferral Contribution subject to the limitations of Article III. The Plan's Transfer of any Participant's or Beneficiary's Account under this Section 9.03 completely discharges the Employer, the Administrative Services Provider, the Trustee and the Plan from any liability to the Participant or Beneficiary for any Plan benefits.

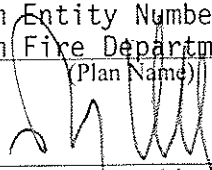
**9.04 PURCHASE OF PERMISSIVE SERVICE CREDIT.** A Participant, prior to otherwise incurring a distributable event under Article IV, may direct the Trustee to transfer (as of January 1, 2002, or later) all or a portion of his/her Account to a governmental defined benefit plan (under Code §414(d)) for: (a) the purchase of permissive service credit (under Code §415(n)(3)(A)) under such plan, or (b) the repayment of contributions and earnings previously refunded with respect to a forfeiture of service credited under the plan (or under another governmental plan within the same State) to which Code §415 does not apply by reason of Code §415(k)(3).

457 Governmental Plan and Trust

IN WITNESS WHEREOF, the undersigned has executed this Plan and Trust to become effective the 1st day of January, 2011 for the:

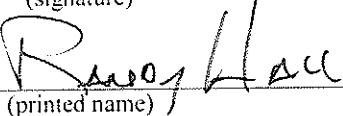
City of Ketchum Entity Number 0026904 and  
City of Ketchum Fire Department Entity Number 0035424  
(Plan Name)

By:



(signature)

Randy Hall



(printed name)

Mayor

MAYOR

(title/role)



# Nationwide<sup>®</sup> Retirement Solutions

a Nationwide Financial<sup>®</sup> company

## Plan Sponsor Signature Page

My signature below represents that I have the authority of my Employer to act on behalf of the plan. I acknowledge receipt of a copy of the Certificate of Participation and Disclosure Document (Certificate). I understand that the Certificate replaces prior versions. I have read and understand the Certificate and will contact my Nationwide representative if I have any questions or concerns. In addition, my Employer's plan makes the following selections:

**Plan Document** — My Employer's plan has formally adopted the Plan Document, effective January 1, 2011, and directs Nationwide to administer in accordance with its terms. I understand that the Plan Document provides that Nationwide may propose future amendments to this plan and outlines a process by which my Employer may file objections. I acknowledge that any future amendments to this Plan Document, to which my Employer has not objected, will be deemed adopted with my consent and at my direction. I certify that the signature will apply to all plan(s) listed below.

*If your Employer does not wish to adopt the Plan Document, please check the box below. A Nationwide representative will contact you to obtain additional information regarding the plan document applicable to your Employer's plan.*

I do NOT wish to adopt the Plan Document.

Name of authorized signer

July 18, 2011

Date

Randy Hall

Printed name of signer

City of Ketchum and  
City of Ketchum Fire Department

Entity Name

0026904

0035424

Entity #

RETURN THIS PAGE VIA FAX WITH YOUR SIGNATURE TO  
NATIONWIDE AT 1-877-677-4329.

Or, please send this self-addressed signature page via mail.



# Nationwide<sup>®</sup> Retirement Solutions

a Nationwide Financial<sup>®</sup> company

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\_\_\_\_\_  
Name of authorized signer

July 18, 2011

Date

Randy Hall

Printed name of signer

City of Ketchum and  
City of Ketchum Fire Department

Entity Name

0026904

0035424

Entity #

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NATIONWIDE AT 1-877-677-4329.**

Or, please send this self-addressed signature page via mail.

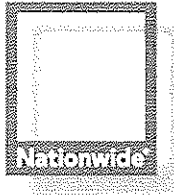
Variable Annuity  
and Plan Program

# Group Flexible Purchase Payment Deferred Variable Annuity and Plan Program



**Nationwide<sup>®</sup>**  
Retirement Solutions

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## GROUP FLEXIBLE PURCHASE PAYMENT DEFERRED VARIABLE ANNUITY AND PLAN PROGRAM DESCRIPTION

*Underwritten by*

### **Nationwide Life Insurance Company**

One Nationwide Plaza  
Columbus, Ohio 43215

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## INFORMATIONAL BROCHURE & DISCLOSURE DOCUMENT

This Informational Brochure and Disclosure Document ("Brochure") is designed to provide basic information regarding the Group Flexible Purchase Payment Deferred Variable Annuity Contract ("Contract") and Fixed Account Endorsement, if applicable, that provide Contract benefits to the Plan. This Brochure is designed for Plan Participants, Retired Participants, beneficiaries of the Plan, and the Contract Owner.

**This Brochure includes basic information about the Contract and benefits under it. Read this Brochure carefully before investing and retain it for future reference. If Contract and Brochure provisions differ, the provisions of the Contract will govern.**

Questions regarding this Brochure or requests for additional information should be directed using the contact information below.

Regular Mail	E-Mail	Telephone
[Nationwide Retirement Solutions P.O. Box 182797 Columbus, OH 43218-2797]	[nrsforu@nationwide.com]	[1-877-NRS-FORU (677-3678)]

**Before contributing money to the Plan, remember the Contract and this Brochure are not insured by the FDIC, NCUSIF, or any other government agency. Except as otherwise stated in this Brochure, the Investment Options offered under the Contract and this Brochure involve investment risk and may lose value.**

The Contract and this Brochure have not been registered with the Securities and Exchange Commission.

*Information deemed reliable as of April 30, 2010.*

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### SPECIAL TERMS USED IN THIS BROCHURE

**Brochure** - This disclosure document describing the benefits under the Contract. Where required by state law, this Brochure shall also be the Certificate of Participation.

**Business Day** - Each day the New York Stock Exchange and our home office are open for business or any other day during which there is enough trading of the Sub-Accounts of the Variable Account that the current net asset value of its Units might be materially affected.

**Companion Investment Option(s)** - Another investment option under the Plan. This may include other investment contracts and options offered by us or by another provider.

**Contract** - The annuity contract (NRC-0105) and any endorsements or amendments thereto describing the obligations and rights between the Employer and Nationwide.

**Contract Owner** - The entity identified on the face page of the Contract and the Contract Specifications Page as the Contract Owner; typically, the State, or political subdivision thereof, that establishes and maintains the Plan.

**Contract Specifications Page** - A page of the Contract that is customized to reflect the specific elections of the Contract Owner and associated charge structures. Changes to Contract elections or charge structures are reflected in updated Contract Specifications Pages sent to the Contract Owner.

**Employer** - The employer of the Participants that makes contributions to the Plan on the Participants' behalf.

**Exchange** - The movement of amounts in the Participant Account to a Companion Investment Option under the Plan or from one or more Sub-Accounts of the Variable Account to one or more Sub-Accounts of the Variable Account.

**Fixed Account** - A funding option that is part of our general account and credits interest rates. If made available by the Contract Owner, Participants may allocate Participant Contributions to the Fixed Account.

**Investment Options** - the Sub-Accounts of the Variable Account that correspond to the Underlying Investments.

**Nationwide** - Nationwide Life Insurance Company and its affiliates. References to "we," "our," or "us," will also mean Nationwide Life Insurance Company.

**Participant** - An employee or independent contractor eligible to participate in the Plan and entitled to benefits under the Plan. In the case of a deceased Participant, Participant refers to a beneficiary of a Participant under the terms of the Plan. The Participant is not the owner of the Contract.

**Participant Account** - An individual account established for each Participant in the Plan. A Participant Account will record all transactions attributable to the Plan on his or her behalf. This includes, but is not limited to, Participant Contributions, allocations of Participant Contributions to the Variable or Fixed Accounts, Exchanges, Transfers, and investment experience.

**Participant Account Value** - The present value of the Units attributable to each Participant Account.

**Participant Benefit Payments** - All payments of benefits that result from a Participant's retirement, termination of employment, or any payment that he or she is entitled to based on the terms of the Plan.

**Participant Contributions** - The portion of Purchase Payment that is contributed by the Employer to the Plan on behalf of the Participants including deferrals, deposited in the Contract pursuant to the Plan, and allocated by the Participants to the Variable or Fixed Accounts.

**Plan** - The retirement plan or tax deferred arrangement provided by the Plan Sponsor.



**Plan Sponsor** – The Sponsor of the Plan for which the Contract is issued, typically a city, county or other political subdivision of a State) that establishes and maintains the Plan and that acts as the Employer of the Participants in the Plan. The Plan Sponsor may delegate responsibilities to another entity or an independent board.

**Purchase Payment** – New money deposited into the Contract by the Contract Owner. It can include Participant Contributions and Employer Contributions.

**Retired Participant** – A Participant who has severed employment with the Employer sponsoring the Plan. In the case of a deceased Retired Participant, Retired Participant refers to a beneficiary of a Retired Participant under the terms of the Plan.

**SEC** - The United States Securities and Exchange Commission or any successor federal authority charged with the regulation of securities.

**Sub-Account(s)** – The Investment Options in the Variable Account corresponding to Underlying Investments where units are maintained separately.

**Transfer** - The movement of amounts attributable to a Participant Account to a non-Companion Investment Option.

**Underlying Investments** - The investment(s) corresponding to a Sub-Account of the Variable Account. These investments, to the extent permitted by law, may include: (1) registered or unregistered mutual funds offered by Nationwide or a third-party; (2) managed separate account options offered by Nationwide or one of its affiliates; or (3) any other investment vehicle Nationwide chooses to offer that is allowed by law and consistent with the investment guidelines of the Variable Account.

**Unit** - An accounting unit of measure used to calculate the value of the Sub-Account of the Variable Account.

**Unit Value** - The dollar value attributed to each Unit. This value increases or decreases based on the investment experience of the corresponding Sub-Account.

**Variable Account** - Our segregated investment account or "separate account" that owns shares or interests in the Underlying Investments and fluctuates in value based on the performance of the Underlying Investments.

#### **DESCRIPTION OF CHARGES AND EXPENSES**

Nationwide's Contracts contain charges and expenses that reduce the value of the Contracts and thus the value of Participants' Accounts. The charges and expenses listed below are the current maximum charges and expenses Nationwide assesses for this Contract. These charges and expenses are subject to change. The charges and expenses shown in this Brochure are in addition to the charges and expenses assessed by the Underlying Investment, and that are reflected in the value of those investments. The Contract Specifications page(s) issued to the Contract Owner details the Contract's specific charges and expenses.

The following table describes the maximum possible charges and expenses that will reduce the value of the Contract, and thus the value of the Participant Accounts, periodically during the life of the Contract (not including Underlying Investment fees and expenses). We reserve the right to charge less than the maximum rate.

<b>Recurring Contract Expenses</b>	
<b>Maximum Allowable Variable Account Charge Allowable Under the Contract</b>	2.00% <sup>1</sup>
<b>Maximum Allowable Fixed Account Charge Allowable Under the Contract (Endorsement?)</b>	2.00% <sup>2</sup>
<b>Maximum Allowable Contract Maintenance Charge</b>	\$10,000,000
<b>Maximum Allowable Participant Account Charge</b>	\$100
<b>Nationwide FundGuard<sup>SM</sup></b>	1.25% <sup>3</sup>

The following table describes the charges and expenses assessed at the time various transactions are conducted under the Contract.

<b>Transaction Based Expenses</b>	
<b>Maximum Premium Tax Charge</b>	5% <sup>4</sup>
<b>Maximum Short-Term Trading Fee (as a percentage of transaction amount)</b>	2%

#### **Variable Account Charge**

We assess a charge against each Sub-Account of the Variable Account. The charge is deducted as part of our calculation of each Sub-Account's Unit Value pursuant to the formula in the Contract. The charge is designed to reimburse us for expenses associated with administration, distribution, maintenance and risks assumed in connection with the Contract and this Brochure. We may earn a profit from this charge.

The Variable Account charge may be reduced under two different circumstances.

First, we may provide for reductions in the charge when the value of the Contract reach a certain total dollar value (or "break-point"). For example, if total Plan assets contributed to invested in the Contract reach \$10,000,001 we may decrease the Variable Account charge by 0.05%. Nationwide may not offer break points to every Contract.

Second, we may provide for reductions in the charge based upon the Investment Option in which Participant Contributions are allocated. We may designate "fund tiers" and apply a specific Variable Account charge reduction to all Investment Options in that tier. The Variable Account charge will vary by fund tier, meaning we may assess a different Variable Account charge against one Investment Option than another. Fund tiers are determined at our sole discretion but are commonly identified by expense characteristics that result in cost-savings to Nationwide, including the amount of payments the Underlying Investment providers make to us. Nationwide may not utilize fund tiers in every Contract.

#### **Fixed Account Charge**

<sup>1</sup> The Variable Account charge is an annualized rate of total Variable Account charges expressed as a percentage of daily net assets. The Variable Account Charge can range between 0% and 2.00% and may vary by Investment Option.

<sup>2</sup> If the Fixed Account is an available investment option, we may assess a fee at any time during the term of the Contract. The fee may range between 0% and 2.00% of assets in the Fixed Account option.

<sup>3</sup> New FundGuard programs are currently unavailable. If the Nationwide FundGuard was elected, we will assess monthly a maximum annualized rate of 1.25%. Withdrawals from the Contract when FundGuard is elected may be assessed a withdrawal Charge. Refer to the Addendum to this Brochure for details regarding FundGuard programs, including associated charges.

<sup>4</sup> Nationwide may charge between 0% and 5% of Purchase Payments for premium taxes levied by state or other government entities.

If the Contract Owner has elected to include the Fixed Account, we may assess a Fixed Account charge against the interest credited under the Contract any time during the term of the Contract. The charge is deducted from the interest yield we credit, resulting in a lower overall credited interest rate. We may earn a profit from this charge. Any applicable Fixed Account charge will be assessed on each Business Day. Contract Owners will receive 90-days' advance notice of any changes to the amount of the Fixed Account Charge.

#### **Contract Maintenance Charge**

The Contract maintenance charge is a flat-dollar fee assessed under the Contract. We may earn a profit from this charge. Any applicable Contract maintenance charge will either be taken instead of, or in addition to, the Variable Account charge. If we assess this fee, it will be collected on a monthly, quarterly, or annual basis as is negotiated between the Contract Owner and us. The Contract Owner will direct us how to apportion this charge among all Participant Accounts.

#### **Participant Account Charge**

The Participant Account charge is a flat-dollar fee we assess against Participant Accounts for administrative expenses incurred in maintaining these account. We may earn a profit from this charge. Any applicable Participant Account charge will either be taken instead of, or in addition to, the Variable Account charge. If we assess this charge, it will be collected on a monthly, quarterly, semi-annual, or annual basis as is negotiated between the Contract Owner and us. The Contract Owner will direct us how to apportion this fee among all Participant Accounts.

#### **Nationwide FundGuard<sup>SM</sup>**

If elected, the FundGuard<sup>SM</sup> program was added as an optional feature by endorsement to the Contract. Refer to the Addendum to this Brochure and your Contract endorsement for details. New Nationwide FundGuard programs are currently not available.

#### **Expenses of the Underlying Investments**

Expenses assessed by the Underlying Investments are in addition to fees and charges assessed by Nationwide and are reflected in the value of the Underlying Investments. Some Underlying Investments may also assess transaction based fees, such as redemption fees. Details concerning each Underlying Investment's fees and expenses are contained in the prospectus or other available disclosure document for such Investment.

#### **Premium Taxes**

Nationwide will deduct under the terms of the Contract the amount of any premium taxes levied by a state or other government entity. The method for recouping the amount of such taxes will be determined by Nationwide and in accordance with applicable law.

#### **Short-Term Trading Fees**

Some Underlying Investments may assess (or reserve the right to assess) a short-term trading fee in connection with transfers from a Sub-Account that occur within a specified number of days after the date of allocation to the Sub-Account. Please refer to the applicable prospectus or other available disclosure document for the Underlying Investments for specific information about the applicability of short-term trading fees.

#### **Other Expense and Service Charges**

The Plan Sponsor may request us to perform additional services for the Plan, provide additional Participant level services, or agree to deduct non-Contract, plan expenses under the Contract. We will determine the amount of charges associated with any additional services we provide and, at the direction of the Plan Sponsor, may deduct these charges from the Value of the Contract. With regard to any additional, non-Contract plan expenses, the

Contract Owner will direct us with regard to how these charges are deducted from the Contract's value, and how they will be applied among all Participant Accounts.

### **Spread**

Nationwide may earn a spread on assets held in the Fixed Account, which is reflected in the crediting rate. The spread represents the difference between what Nationwide earns on investments and what it credits to the Fixed Account as interest.

### **Important Discussion about Contract Charges and Expenses**

Nationwide and certain of its affiliates offer retirement plan products and services to a diverse array of governmental retirement plan clients. Our clients range from very large state retirement plans to the smallest special purpose district plans, and include city, county, and other state and special district plans of all sizes and demographic profile. We actively market our products and services to all of these plan types. Our revenue, expenses and any resulting profit vary widely among plan-types.

Negotiated Pricing. Nationwide including our affiliates does not negotiate charges and expenses with every plan, or with plans having similar characteristics. In many cases, only a standard package of products and services – with charges and expenses that are not negotiated -will be offered, regardless of the economic and demographic characteristics of the Plan. The Contract provides the flexibility to allow us to adjust the price to meet the needs of our varied client base.

Normally, whether Nationwide and its affiliates will negotiate the charges and expenses of any Nationwide product or service is based on one, or a combination, of the following: plan asset levels, number of participants, choice of companion Nationwide products, choice of Investment Options, historical or anticipated continuity of the plan's business with Nationwide, competitive considerations in the market, the overall expense structure of the Plan, and any specific requirements or processes of the plan as determined by the sponsor of the Plan. This category of factors, which largely relates to the economic and demographic characteristics of the plan, are typically and frequently considered but are by no means exclusive of other factors.

General Pricing Considerations. Regardless of whether charges and expenses are negotiated or standard, common factors and business interests have an influence on the price we establish for our products and services. These factors and considerations include, but are not limited to: current and expected profitability; the amount of payments received, or expected to be received, from Underlying Investment providers; expenses we incur, including payments to third parties for endorsement or promotion of products and services offered by Nationwide and its affiliates and commonplace business expenses (e.g., salaries and wages, rents, taxes, legal expenses, computer software, etc.); prevailing economic conditions; competitive considerations; and promotional and licensing activity expenses.

Payments to Third Parties. With respect to promotional and licensing activity, Nationwide incurs significant expense in the form of payments to unaffiliated organizations and associations which exclusively endorse and/or promote Nationwide's products and services. Services provided under these arrangements commonly include use of logos, access to conferences, promotion in various publications, and information concerning product competitiveness. The value of these endorsements can lead to increased sales and asset retention. Greater sales, and more successful asset retention, in turn, lead to economies of scale which, on a long-term basis, ultimately benefit both Nationwide and its public sector clients.

As with any expense, the cost of these relationships is reflected in the charges and expenses, of the contract and their impact is not uniform. In certain cases, a greater proportion of aggregate pricing may be attributable to this expense. Determining the precise correlation (or whether a precise correlation exists) between actual charges and expenses (and the interest rates credited by Nationwide if the fixed account is available), and payments by Nationwide, depends on the particular plan and the particular facts and circumstances associated with that plan and its association with the endorsing and promoting entity. See, the section titled, "Other Information" and visit [www.nrsforu.com](http://www.nrsforu.com) for additional information concerning our relationships with these third parties. The costs we incur to maintain our exclusive endorsements may have an impact on the long-term value of Participant Accounts.

Investment Options. The menu of Investment Options available through the Contract is selected by the Plan Sponsor. That menu is selected from an array of choices presented by Nationwide. That array is based upon several factors, many of which are detailed in the "Guidelines for the Array of Investment Options" section. For example, Nationwide may give priority for inclusion in the Contract to Investment Options that correspond to Underlying Investments managed by affiliates. Affiliates manage proprietary investments and receive investment management and other fees from those investments. Those fees are in addition to fees Nationwide receives on the Contract or its affiliates may receive for record-keeping, trust or custodial services being provided. The expenses and other information about the available investment options are contained in their prospectuses or other disclosure documents available at [www.nrsforu.com](http://www.nrsforu.com).

Nationwide also has business interests in deciding which Underlying Investment(s) or even which share class of a particular Investment Option, are included in the array of choices available with respect to a Contract. Our business interests include covering our own costs and expenses and achieving a profit. These interests may result in Nationwide choosing to offer a certain investment option or a more expensive share class of a particular investment option in order to ensure receipt of adequate payments from the underlying investment provider. More information about the payments Nationwide receives can be found in the "Other Information" section or at [www.nrsforu.com](http://www.nrsforu.com).

Nationwide is committed to providing quality products and services to Plan Sponsors and Participants. As a for-profit business, Nationwide expects to earn a profit, which is reflected in product pricing. Plan Sponsors are encouraged to review the advantages and disadvantages of the product including charges and expenses.

### **DESCRIPTION OF THE CONTRACT**

We issue the Contract to the Contract Owner to provide Investment Options and other benefits in connection with a Plan. Typically, the Plan is a governmental deferred compensation plan receiving favorable tax treatment under section 457(b) of the Internal Revenue Code or a defined contribution plan receiving favorable tax treatment under section 401(a) of the Internal Revenue Code. However, we may issue the Contract in connection with other employer sponsored benefit plans.

This Brochure describes some of the important terms of the Contract between Nationwide and the Contract Owner. You should read the Contract for a full description of its terms. The Contract does not create any contractual rights or obligations between us and the Participants. The Contract is not a trust, and its terms (and Nationwide's performance of its terms) do not create any fiduciary relationship between Nationwide or any of its affiliates and the Contract Owner, the Plan, or any of the Participants. The Plan and its Participants exercise all authority and control respecting the management and disposition of any Plan assets. Nationwide and its affiliates do not and will not act as a fiduciary for the Plan or exercise discretion over assets of the Plan. The only legal relationship is between Nationwide and the Contract Owner, and that relationship is limited to the terms of the Contract.

The Contract Owner or Nationwide may terminate the Contract under certain circumstances and transfer Participant Accounts to a successor that provides Investment Options. Unless otherwise specified in the Contract, termination of the Contract ends all benefits under the Contract.

The Contract is not a part of the Plan. Rights to receive benefits and tax treatment of benefits are not governed by the Contract, but instead are determined by the Plan.

### **THE VARIABLE ACCOUNT**

The Contract may be accompanied by one or more Variable Accounts. Singular references to Variable Account will also include the plural.

A Variable Account is a segregated asset account we established under Ohio law. A Variable Account has its own income, gains, and losses based on its own investment experience. The Variable Account's assets are held separately from our assets and are not chargeable with liabilities incurred in any of our other business. Purchase Payments allocated to the Variable Account are not Plan assets. We are obligated to accept those Purchase

Payments, and to pay benefits, in connection with the Variable Account under the terms of the accompanying Contract only, and do not assume any other legal obligations with respect to those Purchase Payments.

The Variable Account is divided into Sub-Accounts that are referred to here as Investment Options. Each Sub-Account corresponds to a mutual fund or other investment vehicle that is referred to here as an Underlying Investment. The Investment Options made available through the Contract are selected by the Plan Sponsor as described above. The particular Investment Options available through the Contract may change from time to time, and may be added, removed or closed off to future investment.

The Plan Sponsor is responsible for considering and directing any such additions, removals or other changes to the available Investment Options. Nationwide is not responsible for those decisions. Participants will receive advance notice of any such changes.

### **Guidelines for the Array of Investment Options**

The array of Investment Options that Nationwide will make available generally is based upon several factors, many of which are detailed in the investment guidelines established for the contracts by Nationwide. The contract investment guidelines serve as the basis for periodic monitoring (at least annually) of the array of options to determine continued product competitiveness, consistency with the purposes and opportunities presented by Underlying Investments, and Nationwide's business purposes. This evaluation and monitoring does not take into account the needs or interests of any particular Plan, Plan Sponsor, or Participant, and is not performed on behalf of any particular Plan. In some cases where the Contract is offered as part of an endorsed program, the third party endorser may have established guidelines applicable to the array of investment options available as part of the program. In any case, the Plan Sponsor is responsible for determining whether the available Investment Options meets the needs of the Plan both initially, and on an on-going basis. The guidelines are subject to change and may be amended by Nationwide from time to time. They are made available to Contract Owners upon request and as they are amended.

With respect to the array of available Investment Options, Nationwide or its designee (i) periodically reviews the options offered through the Variable Account for diversification of risk/return profiles; (ii) periodically monitors the performance of the Underlying Investment Options; and (iii) may remove, replace or add Underlying Investment Options in accordance with its own business interests. Nationwide or its designee will provide written or electronic notice to the Plan Sponsor of any such removal, replacement or addition. These notices will: (i) explain the proposed changes to the Investment Options; (ii) disclose any resulting changes in the fees paid to Nationwide by the Plan and by the investment option providers; (iii) identify the general effective date of the change; (iv) explain that the Plan Sponsor may reject the change; and (v) state that failure by the Plan Sponsor to object by the date contained in the notice will constitute consent to the proposed change. To the extent the Plan Sponsor provides an objection to the proposed change to Nationwide or its designee within the time frame contained in the notice, Nationwide will not make such change in respect of the Plan. The Plan Sponsor may also terminate the Contract if it no longer meets the needs of the Plan.

Nationwide may implement reasonable procedures, including notices to affected Participants and blackout periods, to accomplish changes to the Investment Options. Generally, Nationwide will provide written notice to the affected Participants at least thirty (30) days prior to implementation of the proposed change.

In its capacity as issuer of the Contract, Nationwide has its own business interests in deciding which Investment Options to offer in the Variable Account, and is expected to and will act in accordance with those business interests. Nationwide does not take into consideration the needs or objectives of any individual Participant or Plan when determining or reviewing the available array of Investment Options. Nationwide may propose proprietary Investment Options (investment options made available through itself or its affiliates) as part of its arrays for selection by the Plan Sponsor.

The Plan Sponsor has the sole and absolute discretion to determine whether the Investment Options are suitable and appropriate for the Plan, and exercises all authority and control over the investment options that should be selected.

## THE FIXED ACCOUNT

The Contract may be endorsed to provide for the availability of a Fixed Account as an investment option under the Contract. The Contract Owner elects whether to include the Fixed Account in connection with the Contract. Nationwide generally accepts exchanges and transfers to the Fixed Account, but we reserve the right to discontinue accepting additional Purchase Payments, Exchanges and Transfer allocations to the Fixed Account at any time. Certain restrictions also apply, see "Limitations on Exchanges and Transfers" in this Brochure and refer to the Contract Owner's Contract Specifications Page for more details.

The Fixed Account, if available, is backed by Nationwide's general account. This means any guarantees associated with the Fixed Account are liabilities of the general account and are guaranteed by Nationwide. Assets held in the Fixed Account are subject to the claims-paying ability of Nationwide, are not insured by the FDIC, NCUSIF, or any other governmental agency. The Fixed Account is non-participating – allocations do not share in any surplus of Nationwide.

The Fixed Account is structured with guaranteed annual minimum interest rates and guaranteed quarterly interest rates. The annual minimum guaranteed interest rate is established at the beginning of each calendar year. This guarantee means interest credited through the current calendar year will never be less than this minimum rate. The guaranteed quarterly rate is established at the beginning of each calendar quarter. During the current calendar quarter, interest credited will never be less than this minimum rate.

Nationwide establishes interest rate guarantees for the Fixed Account at our own discretion and based upon a multitude of factors not the least of which is our expectation of profit; *e.g.*, one measure of which is the difference between what we are able to earn on our investments in the general account and the rates we are able to guarantee within our contracts, or spread. Anticipated or required profit levels will change over time and may result in varying and lower rates of return on the Fixed Account which could lower overall return for Participants. Market fluctuations and costs we incur to manage the assets of the general account are some of the other significant factors that influence the amount of interest we can guarantee for any given period of time.

The Plan Sponsor has the discretion and responsibility to determine whether the interest credited in the Fixed Account is appropriate for the Plan, and exercises all authority and control over the decision to include or terminate the Fixed Account if the credited interest is not appropriate.

Payments to Third Parties. With respect to promotional and licensing activity, Nationwide incurs significant expense in the form of fees paid to unaffiliated organizations and associations which exclusively endorse and/or promote Nationwide's products and services. As with any expense, the cost of these relationships is reflected in product and service charges and expenses, and their impact is not uniform. Determining the precise correlation (or whether a precise correlation exists) between the interest rates guaranteed by Nationwide if the Fixed Account is available and payments by Nationwide depends on the particular Plan and the particular facts and circumstances associated with that Plan and its association with the endorsing and promoting entity. See, "Important Discussion about the Impact of Contract Pricing on the Value of Participant Accounts" for additional discussion about how Nationwide prices products. The costs we incur to maintain our exclusive endorsements may have some impact on the long-term value of Participant Accounts, including the long-term value of Purchase Payments to the Fixed Account.

Market Value Adjustment. In the event the Contract is terminated and the Contract Owner requests a lump-sum payment on the effective date of termination, amounts allocated to the Fixed Account (including Fixed Account allocations attributable to Participant Accounts) are subject to a market value adjustment that may reduce the value of the Contract and the Participants' Accounts. More information, including the assumptions used in calculating the market value adjustment, can be found in the "Termination of the Contract" section, and in "Exhibit A".

## **PARTICIPANT ACCOUNTS**

### **General Information Regarding Participant Accounts**

We establish a Participant Account for each Participant under the Plan. A Participant Account records all relevant transactions the Participant makes, or in some cases the Plan makes. Those transactions include Participant Contributions, allocations of those Participant Contributions among the Investment Options, Exchanges and Transfers of money among the Investment Options after the initial allocation, and Participant Benefit Payments.

We may delegate responsibilities regarding maintaining Participant Accounts to one of our third-party affiliates. The Contract Owner may direct us to use another third-party to maintain Participant Accounts. Even if we delegate responsibilities regarding Participant Accounts to a third-party, we will continue to be ultimately responsible for maintaining Participant Accounts.

### **Calculating the Value of Participant Accounts**

Each Business Day, we calculate the value of each Participant Account based on the terms of the Contract. If the Participant Account includes money allocated to Investment Options, the value of each such Sub-Account is determined by multiplying its Unit Value by the number of Units. The number of Units in a Sub-Account is increased by allocations of Participant Contributions and incoming Exchanges and Transfers. The number of Units in a Sub-Account is decreased by outgoing Exchanges and Transfers and the deduction of charges (except the Variable Account Charge, which is included in the calculation of the Unit Value). The combined value of the Sub-Accounts determines the Participant Account Value. If the Contract Owner has elected the Fixed Account, and the Participant Account includes any money allocated to that Fixed Account, any such amounts are added to determine the Participant Account Value.

### **Exchanges and Transfers**

If Participants have allocated money to a Sub-Account, they are permitted Exchanges from that Sub-Account to another or from the Sub-Accounts of the Variable Account to a Companion Investment Option (if applicable). Participants are also permitted Transfers from his or her Participant Account to a non-Companion Investment Option if permitted by the Plan. A Retired Participant is permitted Transfers to a funding successor.

When an Exchange or Transfer occurs, the outgoing dollar value attributable to the requested transaction is divided by the Unit Value as of the Business Day the Exchange or Transfer is effective. The result is the number of Units associated with the outgoing transaction. These Units are then subtracted from the Sub-Account. If an Exchange is being made to another Sub-Account, the incoming dollar value attributable to the requested transaction is divided by the Unit Value as of the Business Day the Exchange is requested. The result is the number of Units associated with the incoming Exchange. These Units are then added to the Sub-Account.

If there is a Fixed Account, and Participants have allocated money to that Fixed Account, Transfers and Exchanges can occur from that Fixed Account to a Variable Account. Those Transfers or Exchanges add or subtract to the value of the Fixed Account on the Business Day the transaction is requested. Exchanges to a Companion Investment Option or Transfers to a non-Companion Investment Option are governed by the terms and conditions of these external investment options.

We may permit Exchanges or Transfers to be performed in more than one manner, such as the telephone, in writing, or over the internet. All Exchange and Transfer requests are subject to rules we establish. Rules covering Exchanges and Transfers are designed to protect Participants and us, and to ensure all transactions are conducted in an orderly fashion consistent with all applicable laws.

### **Limitations on Exchanges and Transfers**

Exchanges and Transfers may be subject to the limitations and/or fees imposed by any of the Underlying Investment Options. Exchanges and Transfers are subject to any rules and regulations imposed by the SEC or any other applicable laws, rules or regulations.



We may refuse, limit or otherwise restrict Exchange and Transfer requests, or take any other reasonable action we deem necessary to protect the Contract Owner, Participants and Retired Participants from short-term trading strategies or other harmful investment practices that have a negative impact on the performance of an Underlying Investment Option.

If the Fixed Account is made available, then outgoing Exchanges and Transfers will be limited depending on elections made by the Contract Owner and reflected on the Contract Specifications Page. We will provide specific information regarding the restrictions applicable to the Fixed Account upon request.

Our failure to take action with regard to any one or more of the restrictions listed above is not a waiver on our part of our right to enforce the restrictions later. A failure to take action on the restrictions in one instance is not a waiver of our right to enforce the restrictions at a later date.

### **Excessive Trading and Market Timing**

As an intermediary for the Underlying Investment Options, Nationwide is in the position of managing excessive trading activity without consistent guidance from the investment options themselves, regulators or legislators. That notwithstanding, it is important to have measures in place designed to limit excessive trading activity.

As a general practice, Nationwide monitors all trading activity. Any Participant identified under Nationwide's monitoring process to be participating in excessive trading will receive a warning letter. If the activity continues, that participant will be restricted to trading by U.S. Mail only. In addition, Nationwide will support managers of the investment options in their investigations of suspected excessive trading activity.

### **Monitoring**

Generally, Nationwide or its designee will limit trade activity to twenty (20) trades within a calendar year. A trade is defined as any exchange, restructure, or series of exchanges in a given day. Also, if a Participant is on pace to exceed this 20 trade limit, Nationwide will require additional trade requests to be submitted in paper form by regular U.S. Mail.

- **If 6 or more trade events occur in one calendar quarter**, the Participant will be notified by U.S. Mail that they have been identified as engaging in potentially harmful trading practices.
- Subsequent to this notification, **if more than 11 trade events occur in 2 consecutive calendar quarters**, all future trade requests will be required to be submitted in paper form by regular U.S. Mail for the remainder of the calendar year.
- **If 20 trade events occur in a calendar year**, all future trade requests will be required to be submitted in paper form by regular U.S. Mail for the remainder of the calendar year.

The policies and procedures identified above are Nationwide's *general* policy for deterring the harmful effects that frequent or short-term trading may have on all investors in an investment option. Nationwide reserves the right to restrict trades made under any Participant Account for which it has been determined that it is necessary for the Participant to remain limited to U.S. mail requested trades, and may also be required to take other immediate actions as required by the managers of the investment option. Certain trades may be excluded from this policy. Common exceptions include trading related asset allocation tools or a managed account service.

Nationwide may make further changes to its trading policy as industry, fund management, regulatory and legislative responses develop. Additionally, Nationwide may be required to implement more restrictive or different procedures immediately and without notice to protect the interests of all plan participants.

### **Emergencies and Market Closure**

Situations may arise where the New York Stock Exchange or other stock exchanges are closed for short or extended periods of time. As a result, transaction activity and requests impacting the Contract and Participant Accounts may

be impossible to perform. If this situation occurs, we will comply with any emergency rules or regulations enacted by the governing authority (normally the SEC).

### **Participant Benefit Payments**

The Plan provides the right for Participants to receive Participant Benefit Payments. In most instances, Retired Participant or Participants who have otherwise severed employment with the Employer are permitted to receive Participant Benefit Payments. There may be other instances or conditions that arise that may permit a Participant to receive payment from his or her Participant Account in the form of a Participant Benefit Payment. Requirements and conditions of such payments are governed by the Plan and subject to the terms of the Contract.

### **Retirement Income Payment Options**

We will make the following payment schedules and annuity options available to Retired Participants. Payment frequencies available under these income payment options are monthly, quarterly, semi-annual and annual. All variable annuity payments are calculated using an assumed investment return of 3.5% or 5.0% depending on an election by the Contract Owner (or by the Participant if permitted by the Plan).

- (1) Payments of a Designated Amount - This payment schedule option represents a systematic liquidation of the Participant Account by taking a specified dollar amount at a determined frequency.
- (2) Payments of a Designated Period - This payment schedule option represents a systematic liquidation of the Participant Account by taking payments over a specific period of time at a determined frequency.
- (3) Life Income - This annuity payment provides the Retired Participant with payment contingent exclusively on his or her continuation of life. Payments are calculated using current annuity purchase rates and methods.
- (4) Life Income with Payment Certain (5, 10, 15 and 20 Years) - This annuity payment option provides the Participant with payment contingent on continuation of his or her life, but with a guarantee that at least a minimum pre-determined duration of payments are received by his or her beneficiaries, regardless of the Participant's mortality. Payments are calculated using our current annuity purchase rates and methods.
- (5) Joint and Last Survivor Life Income - This annuity payment option allows a Participant and another named individual to receive payments guaranteed throughout life and the life of the additional individual named. Payments cease upon the last "survivor's" death. We may also permit Joint and Last Survivor annuities with payment reductions after the first death. Payments are calculated using our current annuity purchase rates and methods.
- (6) Any Other Option - We may make any other payment plans available upon agreement of the Contract Owner and us. Additional annuity payment options we make available will be calculated using our current annuity purchase rates and methods.

### **TERMINATION OF THE CONTRACT**

The Contract may be terminated by the Contract Owner or us at any time. The proceeds of the Contract will be paid within one-hundred twenty days (120) of receipt of the notice to terminate by the non-terminating party (the "effective date of termination"). However, if an Underlying Investment cannot reasonably liquidate amounts on the effective date of termination, we may deliver, in addition to cash, any unliquidated securities held by the Underlying Investment Option that could not reasonably be liquidated.

We will discontinue accepting additional Purchase Payments to the Contract within thirty (30) days following receipt by the non-terminating party of notice to terminate. We may continue to accept Purchase Payments, however, if we reach a mutual agreement to do so with the Contract Owner. After notice of termination is received by the non-terminating party, further liquidations from the Contract will not be permitted.

Until the effective date of termination is reached, we will continue to maintain Participant Accounts and permit Participants to receive any applicable Participant Benefit Payments. Participants will not be able to make any Participant Contributions thirty (30) days after notice of termination is received by the non-terminating party. We may continue to accept Purchase Payments, however, if we reach a mutual agreement to do so with the Contract Owner. We will permit Participants continue to make Exchanges and Transfers, subject to any of the limitations imposed on Participant Accounts prior to termination.

When the effective date of termination is reached, the Contract, including amounts attributable to Participant Accounts, will be transferred to a funding successor. Once the Contract is terminated, our liability with regard to benefits and Participant Accounts and any benefits described in the Contract and this Brochure will end. However, if a Participant has purchased an annuity payment option (assuming one is available under the Contract) we will continue to send annuity payments and be obligated to provide such Participants the guaranteed income stream under the annuity payment option.

If the Contract Owner elected a Fixed Account to offer in conjunction with the Contract, the Fixed Account will be paid in one of the following two ways (depending on election of the Contract Owner).

- (1) Lump-sum Payment. This payment method involves a total liquidation of the Fixed Account, including amounts allocated to Participant Accounts. Participant Accounts will, however, be subject to a market value adjustment if the present value of assets in the Fixed Account are less than the value of the Contract's allocation to the Fixed Account. We determine any market value adjustment (MVA) at our sole discretion, but we do so in a manner consistent with approximation of the present value of assets attributable to the Fixed Account. Exhibit A explains the basic assumptions Nationwide uses to determine the MVA. If the MVA is applied, it will decrease the value of the Fixed Account, which, depending on the action taken by the Contract Owner, may reduce the amount of the Fixed Account allocated to Participant Accounts.

Nationwide calculates the MVA five (5) business days prior to the effective date of termination. An MVA can be avoided if the Contract Owner selects to withdraw the Fixed Account in sixty (60) monthly installments. The MVA is subject to change daily and fluctuates as a result of market conditions and other factors. The MVA calculation is complex and incorporates factors and data that may not be readily available. For example, one factor used in the calculation is the Baa component of the Barclays Capital Credit Index. Consequently, MVA calculations will almost certainly change, and may vary greatly from the MVA ultimately applied to any withdrawal. Consulting any other data to attempt to estimate the MVA is discouraged. At the request of the Contract Owner, Nationwide will provide periodic updates to the MVA calculations or the information used in the calculation.

- (2) Sixty (60) Monthly Installments. This payment method results in the Fixed Account being paid in sixty (60) monthly installments. We may not begin installment payments until the first month of the calendar year following the effective date of termination of the Contract. The amount of each installment is determined by the following:
  - (a) the Fixed Account value on the date before the installment is paid; divided by
  - (b) the number of remaining installments.

We will generally not permit Fixed Account liquidations, including Exchanges or Transfers, in addition to the installment payments described above. Participant Benefit Payments may be permitted.

### **Recapture of Acquisition Expenses**

If Nationwide has provided any additional credits to the initial Purchase Payment that have not been recouped upon termination, Nationwide will deduct any unrecouped expenses associated with such credits from the Withdrawal Value.

## **OTHER INFORMATION**

### **Legal Proceedings**

Nationwide is currently and has been involved in lawsuits common to the industry, which stem from routine business practices associated with administering employee benefit plans. These lawsuits have not impacted our ability to service this Contract or any of our contracts. For more information about the legal proceedings in which we are currently involved, please consult the filings of Nationwide Financial Services, Inc., our parent company, available from the Nationwide Investor Relations website available at <http://www.nationwide.com/investor-relations.jsp>.

### **Mutual Fund Payments**

Nationwide offers a variety of investment options to public sector retirement plans through variable annuity contracts, trust or custodial accounts. Nationwide may receive payments from mutual funds or their affiliates in connection with these investment options. For more detail about the payments Nationwide receives, please visit [www.nrsforu.com](http://www.nrsforu.com).

### **Other Relationships**

Nationwide has endorsement relationships with the National Association of Counties, the United States Conference of Mayors, and the International Association of Firefighters-Financial Corporation. More information about the endorsement relationships may be found online at [www.nrsforu.com](http://www.nrsforu.com).

**Exhibit A**  
**Nationwide's Market Value Adjustment Assumptions**

Nationwide's market value adjustment formula assumes that the net cash flow received each calendar quarter had been invested in a 10-year semi-annual coupon bond purchased at par, callable after 5 years at par. The rate on that bond is assumed to be the actual rate earned on investments acquired in that calendar quarter with an average quality of Baa. Therefore, the result is a set of hypothetical assets that reasonably represent the actual portfolio.

The hypothetical assets are assumed to be callable at par after 5 years. That means that if the yield on the hypothetical asset exceeds that current market rate (i.e. market rates have decreased), the bond is assumed to be called at the end of the 5-year call protection period. If the bond is already older than 5 years, it is assumed to be called immediately at par.

The current market rate, against which each hypothetical asset is compared, assumes that any asset that might be sold would have a rating of Baa. The current market rate is assumed to be the Lehman Baa component of the U.S. Credit index rate.

*Nationwide determines any market value adjustment by:*

1. Calculating the book value of each hypothetical asset. The book value is the:

- accumulation account balance increase (or zero if the balance decreased), **plus**
- the amount reinvested during the quarter from a prior quarter's maturing hypothetical asset, **less**
- any hypothetical asset sales resulting from accumulation account decreases (i.e. net cash outflow) in later quarters. In other words, if a calendar quarter's accumulation account balance decreases more than rollover, the hypothetical assets from prior quarters are liquidated pro-rata until account balance decrease is satisfied.

The sum of the book values for all calendar quarters will equal accumulation account balance on the cash out date.

2. Calculating the market value for each hypothetical asset. This is the present value of the hypothetical asset discounted at the **current market rate** (currently, Barclays Capital Baa). If the present value were calculated at the hypothetical bond's original rate, the present value would equal the book or par value. However, since discounting is done at the current market rate, the current market value results.

3. Calculating the total market value which is the sum of the market values for each hypothetical asset. The market value adjustment is the amount by which the total book value exceeds the total market value. If the total book value is less than the total market value, there will be no market value adjustment.