



Plan Document

for the

DEFERRED COMPENSATION PLAN FOR
EMPLOYEES OF
THE STATE OF NEW MEXICO

Amended and Restated

as of February 20, 2024

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STATE OF NEW MEXICO

PUBLIC EMPLOYEES DEFERRED COMPENSATION PLAN

Introduction:

In accordance with the provisions of the State of New Mexico Deferred Compensation Act, NMSA 1978, Section 10-7A-1 through 10-7A-12 (2017), the Public Employees Retirement Board hereby amends the Public Employees Deferred Compensation Plan ("Plan") pursuant to Section 457(b) of the Internal Revenue Code of 1986, as amended ("Code"). The purpose of the Plan is to provide a voluntary, supplemental retirement program with tax-deferred and Roth 457(b) options for eligible Employees with a convenient way to save on a regular and long-term basis and thereby provide for their retirement as set forth herein. The State and other local bodies can elect to provide their eligible Employees with such a savings mechanism by adopting the Plan. The benefits provided to any Participant under the Plan will be based upon the aggregate Plan Benefit and will depend upon the investment results achieved by the Deferred Compensation Carriers appointed to invest the assets of the Plan allocated to each of the Plan's Investment Options hereunder and the Participant's individual investment choices among the Plan's Investment Options. Each Participant shall be 100 percent vested at all times in his or her Plan Benefit in accordance with the terms of the Plan.

In accordance with amendments made to Section 457 of the Code and other federal laws by the Small Business Job Protection Act of 1996, the Economic Growth and Tax Relief Reconciliation Act of 2001, the Job Creation and Workers Assistance Act of 2002, the Pension Protection Act of 2006, the Heroes Earnings Assistance and Relief Act of 2008, the Worker, Retiree & Employer Recovery Act of 2008, and the Small Business Jobs Act of 2010 all amounts of Compensation deferred and Roth 457 (b) contributions made under the Plan, all property and rights purchased with such amounts and all income attributable to such amounts, property and rights are held in trust as of the Effective Date for the exclusive benefit of Participants and their Beneficiaries and Alternate Payees pursuant to the Trust Declaration, as it may be amended from time to time. The terms and provisions of the Plan in effect prior to the Effective Date shall govern with respect to periods prior to the Effective Date.

The Plan and the Trust Declaration are intended to satisfy the requirements for an "eligible deferred compensation plan" under Section 457 of the Code.

Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement for services between the Participants and the State or Local Public Body nor shall it be deemed to give a Participant any right to be retained in the employ of the State or Local Public Body.

SECTION 1. DEFINITIONS

When used herein the following terms shall have the following meanings:

1.1 “Account” means the account established and maintained on behalf of a Participant, Alternate Payee or Designated Beneficiary pursuant to Section 5.1(a). The Account shall include all Amounts Deferred, designated Roth 457 (b) contributions and Section 457 Transfers.

1.2 “Agent” means a person or organization as selected by the Board to provide services with respect to Investment Options held under the Plan or to provide record keeping and administration services for certain Accounts under the Plan including, but not limited to, the Third Party Administrator, Deferred Compensation Carriers providing Investment Options, and the Investment Consultant.

1.3 “Alternate Payee” means any spouse, former spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefit payable under the Plan with respect to such Participant.

1.4 “Alternate Payee Account” means the account established for an Alternate Payee pursuant to a domestic relations order, *provided, however*, that the Alternate Payee Account shall separately account for all amounts received from the Participant's Rollover Account.

1.5 “Amount Deferred” means Compensation deferred by a Participant pursuant to Section 3.1, including designated Roth 457(b) contributions.

1.6 “Board” means the New Mexico Public Employees Retirement Board, established by NMSA 1978, Section 10-11-130 (1995) of the Public Employees Retirement Act.

1.7 “Business Day” means any day the New York Stock Exchange (NYSE) is open for regular trading. A Business Day ends at 4 p.m. New York time, or, if earlier, the time that regular trading closes on the NYSE.

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

1.9 “Compensation” means all compensation for services rendered to the State and Local Public Body, including salary, wages, fees, overtime pay, and lump-sum payments for accumulated sick pay, accumulated vacation pay or back pay that is includible in the Employee's gross income for each Plan Year under the Code.

1.10 “Deferred Compensation Carrier” means any corporation, partnership or persons who provide Investment Options to Participants in the Plan pursuant to funding arrangements selected by the Board as provided for by NMSA 1978, Section 10-7A-5 (2017) to provide services in respect of the Plan. If the Trust Declaration so provides, the financial services provided by a Deferred Compensation Carrier may be performed by the Third Party Administrator, provided that the Third Party Administrator otherwise qualifies as a Deferred Compensation Carrier.

1.11 "Deferred Compensation Manager" means the person employed by the Public Employees Retirement Association (PERA) to serve as the manager of the Plan.

1.12 "Deferred Compensation Rules and Regulations" means the rules and regulations promulgated by the Board pursuant to the Deferred Compensation Act, as amended from time to time.

1.13 "Designated Beneficiary" means the individual who is designated as the beneficiary under Section 11 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

1.14 "Distributee" means (a) an Employee or former Employee, (b) a Designated Beneficiary, and (c) the spouse or former spouse of an Employee or former Employee, but only to the extent such spouse or former spouse is an Alternate Payee under a Qualified Domestic Relations Order and only with regard to the interest of such spouse or former spouse.

1.15 "Distribution Calendar Year" means a Plan Year for which a minimum distribution, if applicable, is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the Plan Year immediately preceding the Plan Year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the Plan Year in which distributions are required to begin under Section 8.6(b)(ii). 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.

1.16 "Effective Date" means January 1, 2002, unless otherwise stated.

1.17 "Eligible Retired Public Safety Officer" for purposes of the exclusion under Code Section 402, 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.

1.18 "Eligible Retirement Plan" as defined under Code Section 402(c)(8)(B), means: (1) an individual retirement account described in Code Section 408(a); (2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b); (3) an annuity plan described in Code Section 403(a); (4) an annuity contract described in Code Section 403(b); (5) a qualified plan described in Code Section 401(a); and (6) an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A), that accepts the distributee's eligible rollover distribution. If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account. Effective for distributions prior to January 1, 2002, notwithstanding the above, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is only an individual retirement account or individual retirement annuity.

1.19 "Eligible Rollover Distribution" means all or any portion of the pre-tax contributions, Roth 457(b) contributions and earnings thereon to the credit of a Distributee, except that an Eligible Rollover

Distribution shall not include (a) any distribution that is (i) one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Designated Beneficiary or (ii) for a specified period of ten years or more, (b) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code, (c) any distribution due to a hardship of the Distributee, including, without limitation, an Unforeseeable Emergency pursuant to Section 6.1, and (d) the portion of any distribution that is not includible in gross income.

1.20 "Employee" means any individual who receives compensation for services from the State or Local Public Body, including any elected or appointed officer or employee of the State or Local Public Body. An Employee shall not include an independent contractor, a consultant or any other individual classified by the State or Local Public Body as not eligible to participate in the Plan.

1.21 "Employer" means the State of New Mexico or Local Public Body, within the meaning of Section 457(e)(1)(A) of the Code.

1.22 "Enrollment Date" means, with respect to Participant, any payroll date on which such Employee receives Compensation.

1.23 "Includible Compensation" as determined in accordance with Code Sections 457(e)(5) and 415(c)(3) and the regulations promulgated thereunder, means the Participant's compensation for a taxable year for services performed for the State or Local Public Body, including the amount of any elective deferral, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the Participating Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Sections 125, 132(f)(4), or 457.

1.24 "Investment Option" means one of the available alternatives for crediting investment earnings to a Participant's Account, which shall be based upon the performance of one or a combination of the investment portfolios maintained under the Trust Fund.

1.25 "Investment Consultant" means any corporation, partnership or persons who provide investment consultation services to the Board on behalf of the Plan.

1.26 "Life Expectancy" means Life Expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

1.27 "Local Public Body" means all political subdivisions of the State, their agencies, instrumentalities and institutions.

1.28 "Normal Retirement Age" means, for purposes of Section 3.2(b), the age designated by the Participant between:

(a) any age that is on or after the earlier of age 65 or the earliest age at which a Participant has the right to retire under the Participating Employer's basic pension plan, if any, without the Participating Employer's consent and to receive immediate retirement benefits without actuarial or similar reduction because of early retirement, and

(b) that is not later than age 70½.

In the case of a Participant who continues to work beyond age 70½ and who, upon the attainment of age 70½, had not made the catch-up election provided for under Section 3.2(b), the Normal Retirement Age shall be the age at which the Participant Severs from Employment with the Employer. Notwithstanding anything in the Plan to the contrary, the Participant's designation of a Normal Retirement Age under Section 3.2(b) shall not control the date that payment of such Participant's benefits shall commence pursuant to Section 8.

1.29 "Participant" means an Employee or former Employee who has given an investment direction under Section 4 and who continues to have an Account or Rollover Account under the Plan.

1.30 "Participant's Account Balance" means the account balance as of the last valuation date in the Plan 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 amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

1.31 "Participating Employer" means the State or any Local Public Body, the governing body of which has adopted the Plan by appropriate resolution and has filed such resolution with the Deferred Compensation Manager and approved by the Board pursuant to 2 NMAC 85.400.8 (A). Any Participating Employer that so adopts this Plan shall be deemed thereby to appoint the Board its exclusive agent to exercise on its behalf all of the power and authority conferred hereby upon the Board. The authority of the Board to act as such agent shall continue until the Participating Employer has withdrawn from the Plan pursuant to Section 13 and 2 NMAC 85.400.8 (B) and the value of the Plan Benefits attributable to such Participating Employer's Employees have been distributed or transferred to another eligible deferred compensation plan under Section 457 of the Code, as provided in the Plan.

1.32 "Participation Agreement" means a written or electronic agreement between a Participant and the Participating Employer, pursuant to which the Participant elects to reduce his or her Compensation and to have the Amount Deferred contributed to the Plan on his or her behalf in accordance with the terms of the Plan.

1.33 "Plan" means the State of New Mexico Deferred Compensation Plan, as amended from time to time.

1.34 "Plan Benefit" means, with respect to a Participant, the interest of such Participant in the Trust Fund, excluding any portion of such interest payable to an Alternate Payee pursuant to a Qualified Domestic Relations Order.

1.35 "Plan Trustee" means the Public Employees Retirement Board of New Mexico in its role as fiduciary to the Plan. The Plan Trustee's only duty under the Plan is to ensure that all investments, amounts, property and rights held under the Plan trust are held for the exclusive benefit of the Participants and their beneficiaries.

1.36 "Plan Year" means the calendar year in which the Plan becomes effective, and each

successive calendar year.

1.37 “Public Safety Officer” for purposes of Code Section 402, is an individual servicing a public agency in an official capacity as a law enforcement officer, firefighter, chaplain, or a member of a rescue squad or ambulance crew as defined in Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 USC §3796b(9)(A)).

1.38 “Qualified Domestic Relations Order” means any judgment, decree or order, including, but not limited to, approval of a property settlement agreement or withholding of a child support obligation, which has been determined by the Third Party Administrator to meet the requirements of a qualified domestic relations order within the meaning of Section 414(p) of the Code.

1.39 “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 Section 7702B(b).

1.40 “Required Beginning Date” means April 1 of the Plan Year following the later of (i) the Plan Year in which the Participant reaches age seventy and one-half (70½), or (ii) the Plan Year in which the Participant retires.

1.41 “Rollover Account” means the account established and maintained on behalf of a Participant pursuant to Section 5.1(a) that may consist of one or more of the following: a 401(a) Rollover Account (that should include any 401(k) rollovers), an IRA Rollover Account, a 403(b) Rollover Account, a 457 Rollover Account, and a Roth 457(b) Rollover Account.

1.42 “Rollover Contribution” means a cash amount contributed by a Participant to a Rollover Account which the Third Party Administrator has determined qualifies as an Eligible Rollover Distribution and which the Third Party Administrator, in accordance with guidelines promulgated by the Board, has determined may be contributed; *provided* that the distributing Eligible Retirement Plan shall have separately accounted for all amounts included in the Rollover Contribution.

1.43 “Roth 457(b) Contribution” means contributions that are:

- (a) made by the Employer to the Plan pursuant to a Participation Agreement entered into by a Participant, which qualifies as a “designated Roth contribution” within the meaning of Code Section 402(a);
- (b) irrevocably designated by the Participant at the time of the cash or deferred election as a Roth 457(b) Contribution that is being made in lieu of all or a portion of the Elective Deferrals the Participant is otherwise eligible to make under the Plan; and
- (c) treated by the Employer as includible in the Participant’s income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

1.44 “Roth 457(b) In Plan Conversion” means converting a pre-tax account, or portion thereof, to a post-tax account within the meaning of Code Section 402(a).

1.45 “Roth 457(b) Rollover Account” means an In-Plan Roth 457(b) Rollover Account, a rollover of In-Plan Roth 457(B) Rollover Account, a rollover of In-Plan Roth Non-457(b) Rollover Account, a Roth 457(b) Contribution Account, and a Roth non-457(b) Rollover Account.

1.46 "Section 457 Transfer" means a transfer made into an Account pursuant to Section 9.3(a).

1.47 "Severance from Employment" means the Participant dies, retires, or otherwise has a severance from employment with the Participating Employer within the meaning of Code Section 457(d)(1)(A)(ii). A Participant shall be deemed to have severed employment for purposes of the Plan when, in accordance with the established personnel practices of the Participating Employer, the employment relationship is considered terminated. 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.

1.48 "Service" means any period of time the Employee is in the employ of the Employer, including 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).

1.49 "State" means the State of New Mexico.

1.50 "Surviving Spouse" means the survivor of a deceased Participant to whom such Participant was legally married on the date of the Participant's death.

1.51 "Third Party Administrator" means the contract administrator that performs record keeping, enrollment, education services and other administrative duties for the Plan.

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

1.53 "Trust Declaration" means the written agreement made between the Board and the Third Party Administrator for the purposes of the Plan, as may be amended from time to time, pursuant to which all cash and other rights and properties and all income attributable to such cash and rights and properties are held in trust for the exclusive benefit of Participants and their Beneficiaries and Alternate Payees, as such agreement may be amended from time to time.

1.54 "Trust Fund" means the assets of the Plan, including cash and other rights and properties arising from Amounts Deferred, Section 457 Transfers, Rollover Contributions, and Roth 457(b) Rollover Contributions, which are held and administered by the Plan Trustee pursuant to the Trust Declaration.

1.55 "Unit" means a unit measuring the value of a Participant's proportionate interest in an Investment Option.

1.56 "Unforeseeable Emergency" means a severe financial hardship to a Participant resulting from a sudden and unexpected illness or accident of the Participant, of the Designated Beneficiary, or of a spouse, or of a dependent of the participant or a Designated Beneficiary, as defined by Section 152(a) of the Code, loss of the Participant's or Designated Beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the

control of the Participant. Withdrawals for foreseeable expenditures normally budgetable shall not constitute Unforeseeable Emergencies. The Third Party Administrator shall determine in its sole discretion whether a hardship to a Participant constitutes an Unforeseeable Emergency.

1.57 "USERRA" means the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 contained in chapter 43 of title 38 of the United States Code.

1.58 "Valuation Date" means each Business Day, except that for purposes of an Investment Option invested primarily in guaranteed investment contracts and synthetic guaranteed investment contracts, Valuation Date shall mean the last Business Day of each month of each Plan Year unless the Board shall, in its discretion, determine that the Valuation Date of such Investment Option shall occur more frequently.

SECTION 2. PARTICIPATION

2.1 (a) Each Employee shall be eligible to participate in the Plan as of any Enrollment Date following the date he or she becomes an Employee, and shall commence such participation in the Plan by duly filing with their Employer and the Third Party Administrator, in a manner prescribed by the Third Party Administrator, a Participation Agreement and any enrollment forms or other pertinent information concerning the Employee and his or her Designated Beneficiary which the Third Party Administrator may require; *provided, however*, that in no event shall any deferral be accepted until the first Enrollment Date following the date on which such Participation Agreement is filed.

(b) Each Employee enrolling in the Plan shall provide the Third Party Administrator, at the time of initial enrollment and thereafter if there are any changes, with such information as may be required by the Third Party Administrator.

2.2 Participation in the Plan by Employees shall be wholly voluntary. The participation of a Participant shall cease upon payment to the Participant of the entire value of his or her Plan Benefit or upon the Participant's death prior to such payment.

SECTION 3. AMOUNTS DEFERRED

3.1 (a) A Participant may elect to defer Compensation under the Plan, including Roth 457(b) contributions, by authorizing, on his or her Participation Agreement, regular payroll deductions that do not in the aggregate exceed the limitations of Section 3.2.

(b) A participant may increase or decrease the rate of, or change the deferral of his or her Compensation, within the limitations of Section 3.2, by duly filing a new Participation Agreement, or such other form authorized for such purpose by the Third Party Administrator, with the Employer and the Third Party Administrator in the manner prescribed by the Third Party Administrator.

(c) A participant may discontinue, or temporarily suspend, his or her deferral of Compensation as of any Enrollment Date by giving written notice thereof to the employer and the Third Party Administrator in the manner prescribed by the Third Party Administrator prior to such date.

3.2 (a) The amount that may be deferred by a Participant for any Plan Year shall be a minimum of \$260 and shall not exceed the lesser of: (i) the maximum allowable amount as may be permitted pursuant to Section 457(e)(15) of the Code, and (ii) 100% of the Participant's Includible Compensation for the Plan Year.

(b) Notwithstanding the limitation provided for in Section 3.2(a), a Participant may file an election in the manner prescribed by the Third Party Administrator to have the catch-up limitation set forth in this Section 3.2(b) apply to the determination of the maximum amount that may be deferred during one or more of the last three Plan Years ending before attainment of the Participant's Normal Retirement Age. If the catch-up limitation is elected, the maximum amount that may be deferred for each of the Plan Years covered by the election shall not exceed the lesser of:

(i) twice the dollar amount in effect under Code Section 457(b)(2)(A) and as set forth in Section 3.2(a)(i); and

(ii) the sum of the maximum elective deferral amount established for purposes of Code Section 457(b)(2) for the taxable year (determined without regard to Code Section 457(b)(3)) and as set forth in Section 3.2(a), plus so much of the maximum elective deferral amount established for purposes of Code Section 457(b)(2) for taxable years before the taxable year as has not previously been used under Code Section 457(b)(2) or Code Section 457(b)(3). For years prior to 2002, the underutilized amounts must be reduced by salary reductions or elective contributions under any eligible Code Section 457(b) plan, any Code Section 401(k) plan, any Code Section 402(h)(1)(B) arrangement, any Code Section 403(b) annuity, any Code Section 408(p) account or any contribution to a Code Section 501(c)(8) organization. For taxable years beginning in or after 2002, the underutilized amount must be reduced by the annual deferrals under this Plan. A Participant may not elect to have this Section 3.2(b) apply more than once, whether or not the Participant rejoins the Plan after Severance from Employment.

(c) All Participants who have attained age 50 before the close of a Plan Year and who are not permitted to defer additional Compensation pursuant to Section 3.2(a) for such Plan (or other applicable) Year, due to the application of any limitation imposed by the Code or the Plan, shall be eligible to make additional catch-up contributions in accordance with, and subject to, the limitations of this Section 3.2(c) and Section 414(v) of the Code and the Treasury Regulations thereunder; *provided, however*, that Participants who are eligible to make catch-up contributions under Section 3.2(b) shall not be eligible to make additional catch-up contributions under this Section 3.2(c). Additional catch-up contributions pursuant to this Section 3.2(c) shall not exceed the lesser of: (i) the excess if 100% of Participant's Includible Compensation for the Plan Year, over the sum of any other Amounts Deferred by the Participant for such Plan Year; and (ii) such allowable amount as may be permitted by Section 414(v)(2)(B) of the Code.

(d) The Third Party Administrator shall disallow deferral of Compensation under the Plan in excess of the limitations stated above. In the event that the limit on deferral of Compensation is exceeded as a result of a failure to apply the Code Section 457 limitations (without regard to a Participant's individual limitation under Code Section 457(c)), the Third Party Administrator shall distribute such excess deferrals to the Participant, with allocable net income, as soon as administratively practicable after the Third Party Administrator determines that the amount is an excess deferral. The Third Party Administrator shall have no liability to a Participant if the Third Party Administrator fails to disallow a deferral in excess of such limitations, if the Participant's Participation

Agreement directed such deferral.

(e) Notwithstanding any provisions of this Plan to the contrary, if the Participant is rehired following qualified military service, as defined in the Uniformed Services Employment and Reemployment Rights Act, the Participant shall be entitled to make contributions to the Plan from his or her current earnings attributable to the period of time contributions were not otherwise allowable due to military service. Such contributions shall be in addition to contributions otherwise permitted under the Plan, and will be made as permitted under the Plan and Internal Revenue Code Section 414(u). Such additional contributions shall be based on the amount of Compensation and employer contribution amounts that the Participant would have received from the Employer but for the military service, and such contributions shall be subject to the Plan's terms and conditions in effect during the applicable period of military service. Such contributions may be made during the period that begins upon reemployment and extends for the lesser of five years or the Participant's period of military service multiplied by three.

(f) Effective January 1, 2002, the maximum amount of the Compensation of any one individual which may be deferred under Code Section 457(a) during any taxable year shall not exceed the amount in effect under Code Section 457(b)(2)(A) (as modified by any adjustment provided under Code Section 457(b)(3)).

(g) The amount of Compensation deferred under an eligible 457 plan, whether by salary reduction, is taken into account as an annual deferral in the taxable year of the participant in which deferred, or, if later, the year in which the amount of Compensation deferred is no longer subject to a substantial risk of forfeiture.

(h) The Participating Employer and the Participant are responsible for ensuring coordination of these limits with all other 457 plans in which the Participant participates.

(i) Upon separation from service or attaining Required Minimum Distribution age in accordance with IRC 457b, a participant may elect to irrevocably convert an entire pre-tax balance, or a portion thereof, to a Roth source. The amount of the Roth in-plan conversion shall be subject to ordinary income taxes in the year of the conversion and the Third Party Administrator shall process the transaction in accordance with IRS guidelines. There shall be no tax withholding on the conversion.

SECTION 4. INVESTMENT OF AMOUNTS DEFERRED AND ROLLOVER CONTRIBUTIONS

4.1 All amounts of Compensation deferred in accordance with Section 3 shall be paid by the Employer as promptly as possible, but in no event later than two Business Days from the applicable payroll date, to the Third Party Administrator and shall be invested promptly in accordance with the investment directions of the Participant by the Third Party Administrator (but in no event later than one Business Day following receipt thereof by the Third Party Administrator) in the Investment Options provided by one or more Deferred Compensation Carriers appointed by the Board in accordance with NMSA 1978, Section 10-7A-5 (2017). The Board shall have the right in its sole discretion to replace any Deferred Compensation Carrier or Investment Option with a successor Deferred Compensation Carrier or Investment Option or to select any additional Deferred Compensation Carrier or Investment Option and to incur any and all reasonable fees and expenses on behalf of the Plan and to allocate such fees and expenses among Accounts and Rollover Accounts in connection with such replacement or addition.

4.2 An Employee who has enrolled in the Plan pursuant to Section 2 shall, by filing an investment direction on such manner as prescribed by the Third Party Administrator, specify the percentage (in multiples of one percent or such other percentage as may be prescribed by the Third Party Administrator from time to time) of the amount of his or her Amounts Deferred, Section 457 Transfers, and Rollover Contributions that shall be allocated to each Investment Option made available by the Board; *provided, however*, that the same percentages shall apply to the Rollover Account, as apply to the Account.

4.3 Any investment direction given by a Participant shall be deemed to be a continuing direction until changed. A Participant may change his or her investment direction with respect to future Amounts Deferred, future Section 457 Transfers, and future Rollover Contributions by giving notice on such manner as prescribed by the Third Party Administrator; *provided, however*, that the same percentages shall apply to the Rollover Account, as apply to the Account. All future Amounts Deferred, future Section 457 Transfers, and future Rollover Contributions shall be invested by the Third Party Administrator in the Investment Options in accordance with such changed direction.

4.4 (a) As of any Valuation Date during a Plan Year, a Participant may direct, by giving notice in the manner prescribed by the Third Party Administrator, to the Third Party Administrator that all, or any multiple of one percent (or such other percentage as may be prescribed by the Third Party Administrator from time to time), of his or her interest in any of the Investment Options be liquidated and the proceeds thereof transferred to one or more other Investment Options in the proportions directed by such Participant.

(b) If the Third Party Administrator, Investment Consultant, or any Deferred Compensation Carrier appointed by the Board shall advise the Board that it is not reasonably able to prudently liquidate the necessary amount and transfer it from one of the Investment Options to another, the amount to be transferred with respect to each Participant who duly requested such a transfer may be reduced in proportion to the ratio which the aggregate amount that the Third Party Administrator, Investment Consultant, or the Deferred Compensation Carrier has advised the Board may not prudently be so transferred bears to the aggregate amount that all Participants have duly requested be so transferred. Regardless of any Participant's investment direction, no transfer between Investment Options may be made in violation of any restriction imposed by the terms of the agreement between the Board or the Third Party Administrator and a Deferred Compensation Carrier providing any Investment Option or of any applicable law. Notwithstanding anything in this Section 4.4(b) to the contrary, the Third Party Administrator or the Deferred Compensation Carrier may have the right, without prior notice to any Participant, to suspend for a limited period of time daily transfers between and among Investment Options for one or more days if the Third Party Administrator or the Deferred Compensation Carrier determines that such action is necessary or advisable (i) in light of unusual market conditions, (ii) in response to technical or mechanical problems with the Plan's automated system, if any, or the Plan's Third Party Administrator and (iii) in connection with any suspension of normal trading activity on the New York Stock Exchange.

4.5 The Third Party Administrator shall have the right to decline to implement any investment direction upon determination that: (i) the person giving the direction is legally incompetent to do so; (ii) implementation of the investment direction would be contrary to the Plan or applicable law or governmental ruling or regulation including, but not limited to, Treasury Regulations; or (iii) implementation of the investment direction would be contrary to a court order, including, but not limited to, a Qualified Domestic Relations Order.

4.6 Each Participant is solely responsible for the investment and allocation of his or her Plan

Benefit in and among the Investment Options and shall assume all risk in connection with any decrease in the value of any or all of the Options. The fact that a particular Investment Option is available to Participants for investment under the Plan shall not be construed as a recommendation for investment in such Investment Option.

4.7 The entire value of each Participant's Account and Rollover Account and each Alternate Payee Account under the Plan shall be set aside and held in the Trust Fund pursuant to the Trust Declaration for the exclusive benefit of Participants and their Designated Beneficiaries and Alternate Payees and defraying reasonable expenses of the Plan and of the Trust Fund pursuant to Section 5.3.

(a) Each Participant shall be 100% vested at all times in his or her Plan Benefit in accordance with the terms of the Plan. Each Alternate Payee shall be 100% vested at all times in his or her Alternate Payee Account in accordance to the terms of the Plan.

4.8 (a) Notwithstanding any other provision of the Plan, during any period when an Alternate Payee Account is created and the corresponding interest in the Trust Fund is segregated on behalf of an Alternate Payee pursuant to a Qualified Domestic Relations Order as provided in Section 15.4(b), the Alternate Payee may be entitled to direct the investment of such interest in accordance with this Section 4 as if he or she were the Participant, to the extent provided in such order. In the event that an Alternate Payee fails to specify an investment direction, such Alternate Payee's interest in the Trust Fund shall be invested in the same manner as the relevant Participant's Plan Benefit as of the date of creation of the Alternate Payee Account.

(b) Notwithstanding any other provision of the Plan, during any period following the death of a Participant and prior to distribution of the entire Plan Benefit of such Participant, such Participant's Designated Beneficiary shall be entitled to direct the investment of such Plan Benefit, or, as applicable, his or her proportional interest in such Plan Benefit, in accordance with this Section 4 as if he or she were the Participant.

4.9 No power of attorney, other than one properly executed in accordance with the Uniform Statutory Power of Attorney Act, NMSA 1978, Sections 45-5-601 through 45-5-617 (1995), as such may be amended from time to time, shall be effective to permit an attorney-in-fact to make any investment direction on behalf of a Participant except upon specific determination by the Third Party Administrator that the instrument expressly grants the power to act on behalf of the Participant regarding investment direction under this Plan.

SECTION 5. ACCOUNTS AND RECORDS OF THE PLAN

5.1 (a) The Third Party Administrator shall establish and maintain an Account and, as necessary, a Rollover Account on behalf of each Participant and, to the extent his or her entire Plan Benefit has not been distributed, each former Participant showing the value of his or her Plan Benefit, the value of the portion of his or her Plan Benefit, if any, which is invested in each Investment Option and other relevant data pertaining thereto. Each Account and Rollover Account shall be adjusted as of each Valuation Date to reflect all Units or dollars credited thereto and valued as provided in Section 5.2(b) less all Units or dollars distributed, withdrawn or deducted therefrom in accordance with the terms of the Plan. With respect to each Participant all Amounts Deferred, all Section 457 Transfers in accordance with Section 9.3(a) and all Rollover Contributions in accordance with Section 9.2(a) shall be credited to his or her Account or Rollover Account, as applicable.

(b) Each Participant, and, for any period following the death of a Participant and prior to distribution of the entire Plan Benefit of such Participant, each Designated Beneficiary, shall be furnished with a written statement of his or her Account and Rollover Account (including the value of the interest he or she has, if any, in each Investment Option and the amount of and explanation for each allocation to or deduction from his or her Account and Rollover Account since the last statement provided) at least quarterly. During the period prior to distribution of his or her entire interest under the Plan, each Alternate Payee shall be furnished with a written statement of his or her Alternate Payee Account (including the value of the interest he or she has, if any, in each Investment Option and the amount of and explanation for each allocation to or deduction from his or her Alternate Payee Account since the last statement provided) at least quarterly.

(c) The establishment and maintenance of, or allocations and credit to, the Account and Rollover Account of any Participant shall not vest in such Participant or his or her Designated Beneficiary any right, title or interest in and to any Trust Fund assets or Plan benefits except at the time or times and upon the terms and conditions and to the extent expressly set forth in the Plan and the Trust Declaration. The establishment and maintenance of, or allocations and credit to, the Alternate Payee Account of any Alternate Payee shall not vest in such Alternate Payee any right, title or interest in and to any Trust Fund assets or Plan benefits except at the time or times and upon the terms and conditions and to the extent expressly set forth in the Qualified Domestic Relations Order, the Plan and the Trust Declaration.

5.2 (a) The Plan Benefit shall equal the value of a Participant's Account and Rollover Account, which shall be determined by aggregating the value of his or her separate interests, if any, in each Investment Option.

(b) The Trust Fund shall consist of the Investment Options. The aggregate value of the Accounts and the Rollover Accounts, the Alternate Payee Accounts and any reserve for expenses and suspense accounts, if any, shall be equal to the value of the Trust Fund. Each Investment Option shall be valued pursuant to the Trust Declaration and the agreements between the Board or the Third Party Administrator and the Deferred Compensation Carriers to reflect the effect of income received and accrued, realized, and unrealized profits and losses, and all other transactions of the preceding period.

5.3 (a) The expenses of administering the Plan, including (i) the fees and expenses of the Deferred Compensation Carriers and Third Party Administrator for the performance of their duties under the Plan, (ii) the fees and expenses, if any, incurred by Public Employees Retirement Association in the performance of its duties under the Plan (including reasonable compensation for any legal counsel, settlements of claims or legal actions approved by counsel to the Plan, certified public accountants, consultants, and agents and cost of services rendered in respect of the Plan and the Trust Declaration (as provided therein), and (iii) all other proper charges and disbursements of the Deferred Compensation Carriers, Third Party Administrator, shall be paid out of the Trust Fund, and allocated to and deducted from the Accounts, Rollover Accounts, and Alternate Payee Accounts as of each Valuation Date.

(b) Brokerage fees, transfer taxes and any other expenses incident to the purchase or sale of securities by the Deferred Compensation Carriers for the Investment Options shall be deemed to be part of the cost of such securities, or deducted in computing the proceeds therefrom, as the case may be. Taxes, if any, of any and all kinds whatsoever which are levied or assessed on any assets held or income received by the Trust Fund shall be allocated to and deducted from the Accounts and Alternate Payee Accounts in accordance with the provisions of this Section 5.

SECTION 6. WITHDRAWALS FOR UNFORESEEABLE EMERGENCIES; WITHDRAWALS OF SMALL ACCOUNTS

6.1 Upon determination of an Unforeseeable Emergency, the Third Party Administrator may, in its sole discretion, permit a payment to be made to the Participant in an amount which does not exceed the lesser of (i) the amount reasonably needed to satisfy the emergency need, which may include any amounts necessary to pay any federal, state, or local taxes, or (ii) an amount which, together with any prior distribution or withdrawal, does not exceed the value of the Participant's Plan Benefit determined as of the most recent Valuation Date. Any such payment shall be made from the Trust Fund by the Third Party Administrator and shall be withdrawn by the Third Party Administrator pro rata from the Investment Options in which the Participant has an interest. Such payment shall first be charged to the Account of the Participant and, if necessary, then to the Rollover Account, unless otherwise directed by the Participant. All payments shall be made in one lump cash sum within the servicing time as provided in the Plan Services Agreement, or such other time period the Board shall determine, after approval of the request.

6.2 (a) For purposes of the Section 6, an Unforeseeable Emergency is defined, as required by the Treasury Regulations promulgated under Section 457 of the Code, as a severe financial hardship to a Participant resulting from a sudden and unexpected illness or accident of the Participant, of the Designated Beneficiary, or of a spouse, or of a dependent of the participant or a Designated Beneficiary, as defined in Section 152(a) of the Code, of the Participant, loss of the Participant's or Designated Beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Treasury Regulations provide that, "except in extraordinary circumstances," the need to send a Participant's child to college or the desire to purchase a home does not constitute an Unforeseeable Emergency. In accordance with Deferred Compensation Rules and Regulations, divorce does not constitute an Unforeseeable Emergency.

(b) For purposes of this Section 6, an amount will not be considered to be reasonably needed to meet the financial need created by an Unforeseeable Emergency to the extent that such need is or may be relieved (i) through reimbursement or compensation by insurance or otherwise, (ii) by liquidation of a Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or (iii) by cessation of deferrals under the Plan.

6.3 A Participant with respect to whom his or her Account, irrespective of the amount in the Participant's Rollover Account, does not exceed \$5,000 (or such greater amount as may be permitted by Section 401(a)(11) of the Code) may elect at any time to receive a lump sum distribution of the entire balance to the credit of his or her Account and Rollover Account within the servicing time as provided in the Plan Services Agreement, or such other time period the Board shall determine, following such election, *provided* that:

(a) There has been no Amount Deferred by such Participant during the two-year period ending on the date of distribution; and

(b) There has been no prior distribution elected by such Participant pursuant to this Section 6.3.

SECTION 7. LOANS TO PARTICIPANTS

7.1 A Participant may apply for and receive a loan from his or her Account, as provided for in this Section 7.

7.2 Any loan by the Plan to a Participant under this Section 7 shall be subject to the loan administrative procedures established by the Third Party Administrator as well as the following requirements:

(a) Any Participant may apply for a loan from the Plan. A Participant who has defaulted on a previous loan from the Plan shall not be eligible for another loan from the Plan until the defaulted loan is repaid in full, including accrued interest and fees.

(b) A Participant must complete and return to the Third Party Administrator a loan application. A non-refundable application fee established by the Third Party Administrator will be deducted from the Participant's Account(s) at the time of loan origination. Before a loan is issued, the Participant must enter into a legally enforceable loan agreement as provided for by the Third Party Administrator.

(c) Any such loan by the Plan to the Participant shall be withdrawn by the Third Party Administrator pro rata from the Investment Options in which the Participant has an interest unless otherwise directed by the Participant, subject to any applicable investment period requirement.

(d) The Participant receiving a loan shall be required to furnish to the Third Party Administrator any information and authorization necessary to effectuate repayment of the loan prior to the commencement of the loan.

(e) The maximum term over which a loan may be repaid is five (5) years, unless the Participant certifies in writing to the Third Party Administrator that the loan is to be used to acquire a dwelling unit which, within a reasonable time, is to be used as a principal residence of the Participant, in which case the maximum term shall be fifteen (15) years.

(f) Each loan shall be amortized in substantially equal payments consisting of principal and interest during the term of the loan, except that the amount of the final payment may be higher or lower.

(g) In the event that a payment cannot be processed because of lack of sufficient funds, the Third Party Administrator shall assess an insufficient funds charge, which will be deducted from the Participant's Account(s).

(h) The interest rate shall be equal to one (1) percentage point above the prime rate as published in the Wall Street Journal two weeks prior to the end of the most recent calendar-year quarter. The interest rate shall be determined at the time the loan is made and shall be fixed for the duration of the loan.

(i) Each Participant may have only one (1) Plan loan outstanding at any given time. A Plan loan which is in default, even if the defaulted loan was treated as a "deemed distribution" under federal regulations, shall be treated as an outstanding loan until such participant's account balance is offset by the amount of principal and accrued interest under the loan.

(j) The Participant must pay the full amount of each loan payment (principal and interest) on the date that it is due. Failure to make such a payment by the due date, or within any cure period established by the Third Party Administrator, shall cause the Participant to be in default for the entire amount of the loan, including any accrued interest. A loan will also be in default if the Participant either refuses to execute, revoke, or rescind any agreement necessary to comply with the provisions of this Section 7 or the loan administrative procedures established by the Third Party Administrator, commences or has commenced against Participant a bankruptcy case, or upon the death of the Participant. Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan, with the Beneficiary or Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan.

(k) By accepting a loan, the Participant is giving a security interest in their vested Plan balance as of the loan process date, together with all additions thereof, to the Plan that shall at all times be equal to one hundred percent (100%) of the unpaid principal balance of the loan together with accrued interest.

(l) The maximum amount of any loan permitted under the plan is the lesser of: (i) fifty percent (50%) of the Participant's vested account balance less any outstanding loan balances under the Plan, or (ii) \$50,000.00 less the highest outstanding loan balance during the preceding one-year period. The Third Party Administrator shall establish the minimum loan amount. The Participant and not the Third Party administrator shall at all times remain responsible for ensuring that any loan received under the Plan is in accordance with these limits with regard to any other loans received by the Participant under any other plans of the Participant's employer.

(m) Until a loan is repaid in full, an annual loan maintenance fee established by the Third Party Administrator will be deducted from the Participant's Account(s).

(n) At the time when a default occurs and for each year thereafter until the defaulted loan is paid in full, a loan default fee established by the Third Party Administrator will be deducted from the Participant's Account(s).

7.3 The Third Party Administrator shall fix such other terms and conditions necessary to the administrative maintenance of the provisions of this Section 7 and as necessary to comply with the Internal Revenue Code and Regulations thereunder.

SECTION 8. DISTRIBUTIONS FROM THE PLAN AND OTHER ELIGIBLE RETIREMENT PLANS

8.1 (a) Except as otherwise provided in Sections 6, 8.6 and 9, a Participant may not receive a distribution of his or her Plan Benefit earlier than: (i) the Plan Year in which the Participant attains age 70½; or (ii) when the Participant has a severance from employment with the Employer.

Upon a Participant's Severance from Employment with the Participating Employer for any reason other than death, at the beginning of the Plan Year in which he or she attains age 70½, the Participant

shall be entitled to receive an amount equal to the value of his or her Plan Benefit, which shall be paid in accordance with Section 8.3 as of the commencement date elected by the Participant in accordance under Section 8.4(a), so long as the commencement date is in compliance with Code Section 401(a)(9).

(b) In the case of a Participant who continues in service with the Employer following his or her attainment of age 70½, such Participant may elect to commence the distribution of his or her Plan Benefit and such election shall designate a method of payment in accordance with Section 8.3.

(c) Notwithstanding anything in this Section 8.1 to the contrary, in accordance with the requirements of Section 401(a)(9) of the Code, distributions shall commence no later than the April 1st following the Plan Year in which (i) the Participant attains age 70½ or (ii) the Participant Severs from Employment, whichever is later.

8.2 If a Participant dies before receiving final distribution of his or her Plan Benefit, an amount equal to the value of the unpaid portion thereof as of the date of death shall be paid in cash by the Third Party Administrator from the Trust Fund to the Participant's Designated Beneficiary by one of the methods described in Section 8.3; *provided, however*, that if the Participant dies after payments have commenced then payment to the Participant's Designated Beneficiary must be made at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

8.3 (a) Subject to the following provisions of this Section 8.3, any payment made under this Section 8 shall be made in one of the following methods, as the Participant (or, in the case of the death of a Participant, his or her Designated Beneficiary) may elect pursuant to Section 8.4 hereof:

(i) One cash lump sum payment; or

(ii) With respect to such Participant's Account and Rollover Account, monthly, quarterly, semi-annual or annual installment payments

(iii) A Participant who elects to receive installment payments or who is currently receiving installment payments pursuant to Section 8.3(a)(ii) may elect, subject to any limitations set forth by the Board and in accordance with procedures established by the Third Party Administrator to receive a portion of his or her Account and Rollover Account distributed in a lump sum; *provided, however*, that no lump sum payment shall be less than an amount determined by the Third Party Administrator, and *provided further*, that such elections shall not be made more than twelve times per Plan Year, or such other number as the Third Party Administrator shall determine. Such lump sum payment shall not result in a discontinuation of subsequent installment payments.

(b) If a Participant (or, in the case of death of a Participant, his or her Designated Beneficiary) elects a lump sum payment to Sections 8.3(a)(i) or 8.3(a)(iii), the value of the Participant's Plan Benefit shall be determined as of the Valuation Date coincident with or last preceding the date on which the Plan Benefit is withdrawn from the Investment Options and liquidated for distribution.

(c) If a Participant (or, in the case of death of a Participant, his or her Designated Beneficiary) elects to receive installment payments subject to Section 8.3(a)(ii), such Participant's Account shall continue to participate in the investment performance of the Investment Option in which such amounts are invested and to bear its allocable share of administrative and investment expenses, until the Valuation Date coincident with or last preceding the date on which such Plan Benefit amounts are withdrawn from the Investment Options and liquidated for distribution.

8.4 (a) In the case of the Participant's Severance from Employment with the Employer or the Participant's death, a distribution election may be made by the Participant or his or her Designated Beneficiary prior to, or after, payments commence pursuant to the provisions of this Section 8. Such election shall specify the form of payment described in Section 8.3 elected and the date on which payments shall commence. A Participant or his or her Designated Beneficiary, including a Participant or his or her Designated Beneficiary who is currently receiving distributions under the Plan, irrespective of the date on which such distributions commenced, may change both the timing and the form of payment elected in accordance with procedures established by the Third Party Administrator, subject to Section 8.6.

(b) If a Participant dies before distribution of his or her Plan Benefit has commenced, a distribution will be made to the Designated Beneficiary pursuant to the Designated Beneficiary's election duly filed with the Third Party Administrator in accordance with the provisions of Section 8.4(a); *provided, however*, any distribution to a Designated Beneficiary shall be made in accordance with the provisions of Section 401(a)(9) of the Code. All distributions shall commence not later than the close of the Plan Year immediately following the Plan Year in which the Participant died, or, in the event such Designated Beneficiary is the Participant's Surviving Spouse, on or before the close of the Plan Year in which such Participant would have attained age 70½, if later (or, in either case, on any later date prescribed by the Treasury Regulations). If such Designated Beneficiary who is also the Surviving Spouse dies after the Participant's death but before distributions to such Designated Beneficiary commence, this provision shall be applied to require payment of any further benefits as if such Surviving Spouse were the Participant.

8.5 The Third Party Administrator shall withhold or cause to be withheld from any amounts distributed in respect of a Participant's Plan Benefit or in respect of a Qualified Domestic Relations Order, all federal, state, city or other taxes as shall be required pursuant to any law or governmental ruling or regulation, including, but not limited to, Treasury Regulations.

8.6 A Participant may choose to receive a distribution from his or her 457(b) Roth Account or Roth 457 (b) Rollover Account and such distributions shall be tax-free for federal income tax purposes if:

(a) The distribution meets the requirements of Sections 8.1;

(b) The amounts are held for a 5-year holding period, measured from the first year that the initial Roth 457(b) Contribution was made on behalf of the Participant to a Roth 457(b) Contributions Account; and

(c) The distribution is due to a Participant's attainment of age 59½, death, or in the event of the Participant's becoming disabled.

8.7 Minimum Distribution Requirements

(a) General Rules.

(i) The provisions of this Section will apply for purposes of determining required minimum distributions for Plan Years beginning with the 2003 Plan Year.

(ii) The requirements of this Section will take precedence over any inconsistent provisions of the Plan.

(iii) All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

(b) Time and Manner of Distribution.

(i) 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.

(ii) 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) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, then distributions to the Surviving Spouse will begin by December 31 of the Plan Year immediately following the Plan Year in which the Participant died, or by December 31 of the Plan Year in which the Participant would have attained age 70 1/2, if later.

(B) 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 Plan Year immediately following the Plan Year in which the Participant died.

(C) 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 Plan Year containing the fifth anniversary of the Participant's death.

(D) 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 (except for Section 8.7(b)(ii)(A)), will apply as if the Surviving Spouse were the Participant.

For purposes of this Section, unless Section 8.7(b)(ii)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 8.7(b)(ii)(D) applies, distributions are considered to begin on the date distributions are required to begin to the Surviving Spouse under Section 8.7(b)(ii)(A).

(c) Required Minimum Distributions During Participant's Lifetime.

(i) During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(A) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, then distributions to the Surviving Spouse will begin by December 31 of the Plan Year immediately following the Plan Year in which the Participant died, or by December 31 of the Plan Year in which the Participant would have attained age 70 1/2, if later.

(B) 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 section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(ii) Required minimum distributions will be determined under this Subsection (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.

(i) Death On or After Date Distributions Begin

(A) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

(1) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the Surviving Spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the Surviving Spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the Surviving Spouse's death, the remaining Life Expectancy of the Surviving Spouse is calculated using the age of the Surviving Spouse as of the spouse's birthday in the Plan Year of the spouse's death, reduced by one for each subsequent Plan Year.

(3) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(4) If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) Death Before Date Distributions Begin.

(A) 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 8.7(d)(i).

(B) 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 Plan Year

containing the fifth anniversary of the Participant's death.

(C) 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 8.7(b)(ii)(A), this Section 8.7(d)(ii) will apply as if the Surviving Spouse were the Participant.

8.8 General 2009 Waiver. The requirements of Code Section 401(a)(9) and the provisions of the Plan relating thereto, will not apply for the distribution calendar year 2009.

(a) Special rule regarding waiver period. For purposes of Code Section 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 Section 8.7 for purposes of applying Code Section 401(a)(9) for distribution calendar years other than 2009; and (b) if the 5- year rule of Code Section 401(a)(9)(B)(ii) applies, the 5-year period described therein shall be determined without regard to calendar year 2009.

(b) 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 Section 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 Section 401(a)(31), the notice requirements of Code Section 402(f), or the 20% withholding requirement of Code Section 3405(c).

(c) Participant may elect. The Plan will permit an affected Participant to elect whether to receive his/her required minimum distribution for 2009. If the Participant fails to notify the Third Party Administrator of his/her waiver, the Plan will distribute the 2009 required minimum distribution to the Participant.

SECTION 9. ELIGIBLE ROLLOVERS AND PLAN TRANSFERS

9.1 In connection with a Participant's Severance from Employment, the Distributee may elect, at the time and in the manner prescribed by the Third Party Administrator to have all or any portion of the Participant's Account and Rollover Account that qualifies as an Eligible Rollover Distribution paid directly to the trustee of an Eligible Retirement Plan, *provided* that such other plan provides for the acceptance of such amounts by the trustee. The Plan shall provide written information to Distributees regarding Eligible Rollover Distributions to the extent required by Section 402(f) of the Code.

9.2 (a) A Participant's accrued benefit under an Eligible Retirement Plan that is distributed to the Participant as an Eligible Rollover Distribution may be accepted as a Rollover Contribution by the Third Party Administrator in the manner specified by the Third Party Administrator; *provided, however*, that such Participant has made an Investment Option direction pursuant to Sections 4.2 or 4.3, whichever is applicable, and filed a written request with the Third Party Administrator requesting that such transfer be accepted.

(b) The Third Party Administrator, in accordance with the Code and procedures established by the Plan Trustee, shall, as soon as practicable following its receipt of the Participant's written request, determine whether the Rollover Contribution shall be accepted by the Plan. Any

written request filed by a Participant pursuant to this Section 9.2(b) shall set forth the fair market value of such Rollover Contribution and a statement satisfactory to the Third Party Administrator that the amount to be transferred constitutes a Rollover Contribution. In the event the Third Party Administrator permits the transfer of the Rollover Contribution, the Third Party Administrator shall accept such Rollover Contribution and the transfer of such Rollover Contribution shall be deemed to have been made on the Valuation Date next following the date on which it was paid over to the Third Party Administrator. The Rollover Contribution shall be maintained in a separate, fully vested Rollover Account for the benefit of the contributing Participant and shall be invested in accordance with the Participant's investment direction, pursuant to Sections 4.2 or 4.3, whichever is applicable.

(c) All amounts so transferred shall be credited to the Participant's Rollover Account and shall be available for distribution in no event later than two Business Days following receipt thereof and in the manner prescribed by the Third Party Administrator, following the date on which such amounts are credited to the Rollover Account. No other contributions shall be allocated to the Rollover Account.

(d) A Participant may, at any time, elect to receive a distribution of all or any portion of the amount held in the Participant's Rollover Account.

9.3 (a) Compensation previously deferred by a Participant pursuant to another eligible deferred compensation plan under Section 457 of the Code maintained by another employer shall be accepted for transfer by the Third Party Administrator in the form and in the manner specified by the Third Party Administrator. All such Section 457 Transfers shall be credited to the Participant's Account within 24 hours of receipt by the Third Party Administrator and shall be invested in accordance with the Participant's investment direction pursuant to Sections 4.2 or 4.3, whichever is applicable; such Section 457 Transfers are subject to all of the terms and conditions of the Plan.

(b) A transfer from an eligible governmental plan to another eligible governmental plan shall be permitted only if:

- (i) The transferor plan provides for transfers;
- (ii) The receiving plan provides for the receipt of transfers;

(iii) The Participant or Designated Beneficiary whose amounts deferred are being transferred shall have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Designated Beneficiary immediately before the transfer; and

(iv) The Participant or Designated Beneficiary whose amounts deferred are being transferred has had a Severance from Employment with the transferring employer and is performing services for the entity maintaining the receiving plan. Subsection (iv) shall not be required to be satisfied if:

- (A) All of the assets held by the eligible governmental plan are transferred;
- (B) The transfer is to another eligible governmental plan maintained by an eligible employer that is a state entity within the same state; and
- (C) The Participants whose deferred amounts are being transferred are not

eligible for additional annual deferrals in the receiving plan unless they are performing services for the entity maintaining the receiving plan.

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

SECTION 10. ELECTION TO DEDUCT FROM DISTRIBUTION

10.1 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 10.2.

10.2 The Plan will pay directly to the to the provider of the 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 the Code.

SECTION 11. DESIGNATION OF BENEFICIARIES

11.1 Each Participant shall file with the Third Party Administrator a written designation of one or more persons, or a trust, as the Designated Beneficiary who shall be entitled to receive the Plan Benefit, if any, payable under the Plan upon his or her death. A Participant may from time to time revoke or change his or her Designated Beneficiary designation without the consent of any prior Designated Beneficiary by filing a new designation with the Third Party Administrator. Any beneficiary designation or any change in Designated Beneficiary shall take effect when accepted by the Third Party Administrator. The last such designation received by the Third Party Administrator shall be controlling; *provided, however*, that no designation or change or revocation thereof shall be effective unless received and accepted by the Third Party Administrator prior to the Participant's death, and in no event shall it be effective as of a date prior to such receipt.

11.2 (a) If no such Designated Beneficiary designation is in effect at the time of a Participant's death, or if no Designated Beneficiary survives the Participant, or if no Designated Beneficiary can be located with reasonable diligence by the Third Party Administrator, the payment of the Plan Benefit, if any, payable under the Plan upon his or her death shall be made by the Third Party Administrator from the Trust Fund to his or her estate.

(b) If the Third Party Administrator is in doubt as to the right of any person to receive such amount, it shall inform the Plan Trustee and the Third Party Administrator may retain such amount, without liability for any interest thereon, until the rights thereto are determined, or the Third Party Administrator may pay such amount into any court of appropriate jurisdiction or to any other person pursuant to applicable law and such payment shall be a complete discharge of the liability of the Third

Party Administrator, Plan, Plan Trustee, Employer, Deferred Compensation Manager and Deferred Compensation Carriers.

(c) If the primary Beneficiary so designated by the Participant shall die after the death of the Participant but prior to receiving a complete distribution of the amount that would have been paid to such Designated Beneficiary had such Beneficiary's death not then occurred, then, for purposes of the Plan, the distribution that would otherwise have been received by such Designated Beneficiary shall be paid to the Participant's contingent Beneficiary, if any, in accordance with the provisions of the Plan, or, if none, then to the primary Beneficiary's estate.

11.3 No power of attorney, other than one properly executed in accordance with the Uniform Statutory Power of Attorney Act, NMSA 1978, Sections 45-5-601 through 45-5-617 (1995), as such may be amended from time to time, shall be effective to permit an attorney-in-fact to make or change a Beneficiary designation on behalf of a Participant except upon specific determination by the Third Party Administrator that the instrument expressly grants the power to act on behalf of the Participant regarding Beneficiary designation under this Plan.

SECTION 12. ADMINISTRATION

12.1 Except as otherwise provided herein, the operation and administration of the Plan shall be the responsibility of the Board. The Board shall have the power and the duty to take all action and to make all decisions necessary or proper to carry out its responsibilities under the Plan. All determinations of the Board as to any question involving its responsibilities under the Plan, including, but not limited to, interpretation of the Plan or as to any discretionary actions to be taken under the Plan, shall be solely in the Board's discretion and shall be final, conclusive and binding on all parties.

12.2 Without limiting the generality of the foregoing, the Board shall have the following powers and duties:

(a) To require any person to furnish such information as it may request for the purpose of the proper administration of the Plan as a condition to receiving any benefit under the Plan;

(b) To make and enforce such rules and regulations and prescribe the use of such forms as it shall deem necessary for the efficient administration of the Plan;

(c) To interpret the Plan and to resolve ambiguities, inconsistencies and omissions;

(d) To decide all questions concerning the Plan and the eligibility of any Employee to participate in the Plan;

(e) To determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan;

(f) To permit more lenient time periods than otherwise may be specified in Sections 2.1, 3.1(b), 3.1(c), 4.3, 6.1, 6.3, 12.5 or 13.1 of the Plan; *provided, however*, in no case may a Participant's election to commence Compensation deferrals, or to modify existing Compensation deferrals, be effective until written notice of such election is filed with the Third Party Administrator and the Employer; and

(g) To determine the methods and procedures for the implementation and use of any automated telephone, computer, internet, intranet or other electronic or automated system adopted by the Board for purposes of Plan administration, including, without limitation, for receiving and processing enrollments and instructions with respect to the investment of assets allocated to a Participant's Account or Rollover Account and for such other purposes as may be designated from time to time.

12.3 Except as may be prohibited by applicable law, neither the Board, nor the Third Party Administrator, nor any person, firm or corporation to whom may be delegated any duty or power in connection with administering, managing or supervising the administration or management of the Plan or Trust Fund, shall be liable for anything done or omitted to be done by it or by them unless the act or omission claimed to be the basis for liability amounted to a failure to act in good faith or was due to gross negligence or willful misconduct; nor for the payment of any amount under the Plan; nor for any mistake of judgment made by it or on its behalf by the Board; nor for the neglect, omission or wrongdoing of the Board. Neither the Board, nor any delegate, shall be personally liable under any contract, agreement, bond or other instrument made or executed by him or her or on his or her behalf in connection with the Plan or Trust Fund.

12.4 Except as otherwise provided in the Plan and the Trust Declaration, the Third Party Administrator shall have responsibility with respect to the control or management of the assets of the Plan and the Trust Fund. The Board shall periodically review the performance and methods of the Third Party Administrator and may remove or change the Third Party Administrator. The Board shall have the power to remove one or more Deferred Compensation Carriers and to delegate to such Deferred Compensation Carrier(s) authority and discretion to manage (including the power to acquire and dispose of) the assets of the Plan and Trust Fund in accordance with the NMSA 10-7A-1 et. seq. (2017), as it may be amended from time to time, and Deferred Compensation Rules and Regulations. The Board shall periodically review the performance and methods of the Deferred Compensation Carrier(s), may remove or change one or more such Deferred Compensation Carrier(s), and may direct the acquisition or disposition of the assets in any Investment Option.

12.5 (a) The Board shall have general authority under the Plan. The decisions of the Board shall be final, binding, and conclusive on all interested persons for all purposes. The Board may delegate its general authority as it deems appropriate in accordance with the terms of the Plan and all applicable Code sections and Treasury Regulations; *provided, however*, that such delegation shall be subject to revocation at any time at the discretion of the Board. Notwithstanding any other provision of the Plan, the Board's general authority shall include the right to review, revise, modify, revoke, or vacate any decision made or action taken by any party under the Plan which right includes, but is not limited to, the right to review, revise, modify, revoke, or vacate any decision of the Agent at any time upon reasonable notice to the claimant.

(b) Any claim to rights or benefits under the Plan, including, without limitation, any purported Qualified Domestic Relations Order, or request for Unforeseeable Emergency Withdrawal under Section 6 must be filed in writing with the Third Party Administrator, or with such other entity as the Board may designate. Upon determination of such claim, the Third Party Administrator, or such other entity designated by the Board, shall notify the claimant and, if such claimant is not the Participant, any Participant against whose Plan Benefit the claim is made, that the claim has been granted or denied, in whole or in part. Notice of denial of any claim in whole or in part by the Third Party Administrator, or by such other entity designated by the Board, shall include the specific reasons

for denial and notice of the rights of appeal, if any.

12.6 The Board shall arrange for the engagement of legal counsel, Investment Consultants, and certified public accountants, which may be counsel or accountants for the Employer, and other consultants, and make use of Agents and clerical or other personnel, for purposes of this Plan. The Board may rely upon the written opinions of the New Mexico Attorney General and of such counsel, accountants and Investment Consultants, and upon any information supplied by the Third Party Administrator, a Deferred Compensation Carrier, or Deferred Compensation Manager, and delegate to any Agent or to any member of the Board its authority or the authority of the Employer to perform any act hereunder, including without limitation those matters involving the exercise of discretion; *provided, however*, that such delegation shall be subject to revocation at any time at the discretion of the Board.

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

12.8 Any action of the Board may be taken in compliance with the Open Meetings Act, NMSA 1978, Sections 10-15-1 through 10-15-3 at a meeting. The Board shall establish its own procedures and the time and place for its meetings and provide for the keeping of minutes of all meetings.

SECTION 13. WITHDRAWALS OF PARTICIPATING EMPLOYERS

13.1 Any Participating Employer may terminate its adoption of the Plan, not less than two years after the date its participation became effective, by filing with the Deferred Compensation Manager for adoption by the Board a certified copy of a resolution or other legal action, adopted in the same manner as the resolution or other legal action adopted pursuant to Section 1, specifying a termination date which shall be the last Business Day of a month subsequent to the date such notice is received by the Deferred Compensation Manager and the Board. The Board may terminate any Participating Employer's adoption of the Plan, as of any termination date specified by the Board, for the failure of the Participating Employer to comply with any provision of the Plan or the Regulations and shall terminate a Participating Employer's adoption of the Plan upon complete and final discontinuance of deferrals.

13.2 Upon termination of the Plan as to any Employer which was formerly a Participating Employer, such Employer shall not permit any further deferrals of Compensation under the Plan and all Plan Benefits of Participants who are or were Employees of such Employer shall thereafter be payable to or in respect of such Participants as provided in the Plan. Any distributions, transfers or other dispositions of such Plan Benefits as provided in the Plan shall constitute a complete discharge of all liabilities under the Plan with respect to such Employer's previous adoption of the Plan and any Participant who is or was an Employee of such Participating Employer. The rights of such Participants and their Beneficiaries and Alternate Payees under the Plan shall be unaffected by the termination of the Plan as to such Employer.

SECTION 14. AMENDMENT OR TERMINATION

14.1 (a) Subject to 14.1(b) and any requirements of State or federal law, the Board reserves the right at any time and with or without prior notice to amend, suspend or terminate the Plan, any deferrals

thereunder, the Trust Declaration and any Investment Option, in whole or in part and for any reason and without the consent of any Participating Employer, Employee, Participant, Designated Beneficiary or other person. The Plan shall be terminated automatically upon complete and final discontinuance of all deferrals thereunder.

(b) No amendment or modification shall be made which would retroactively impair any individual's rights to any benefits under the Plan, except as provided in Section 14.1(c).

(c) Any amendment, suspension or termination of any provisions of the Plan, any deferrals thereunder, the Trust Declaration or any Investment Option may be made retroactively if required to meet any applicable requirements of the Code or any other applicable law,

14.2 The Board shall give notice on a reasonably timely basis of any amendment, suspension or termination pursuant to Section 14.1 to all Participating Employers.

14.3 Upon termination of the Plan, no Participating Employer shall permit any further deferrals of Compensation under the Plan and all Plan Benefits and other interests in the Trust Fund shall thereafter be payable as provided in the Plan. Any distributions, transfers or other dispositions of the Plan Benefits as provided in the Plan shall constitute a complete discharge of all liabilities under the Plan. The Board and the Third Party Administrator shall remain in existence and the Trust Declaration and all of the provisions of the Plan, which in the opinion of the Board are necessary for the execution of the Plan and the administration and distribution, transfer or other disposition of interests in the Trust Fund shall remain in force.

SECTION 15. GENERAL LIMITATIONS AND PROVISIONS

15.1 The Plan, as duly amended from time to time, shall be binding on each Participant and Surviving Spouse, heirs, administrators, trustees, successors, assigns, and Designated Beneficiaries and all other interested persons.

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

15.3 If the Third Party Administrator shall find that any person to whom any amount is payable under the Plan is unable to care for his or her affairs, is a minor, or has died, then it shall so notify the Board, and any payment due him or her or his or her estate (unless a prior claim therefore has been made by a Designated Beneficiary, Surviving Spouse or duly appointed legal representative or the time period during which a Designated Beneficiary or Surviving Spouse could make a claim under the Plan has not elapsed) may, if the Board so elects, be paid to his or her spouse, a child, a relative, or any other person maintaining or having custody of such person otherwise entitled to payment or deemed by the Board to be a proper recipient on behalf of such person. Any such payment shall be a complete discharge of all liability under the Plan therefor.

15.4 (a) Except insofar as may otherwise be required by law or in accordance with this Section 15.4, no amount payable at any time under the Plan shall be subject in any manner to alienation by anticipation, sale, transfer, assignment, bankruptcy, pledge, attachment, garnishment, charge or

encumbrance of any kind, and any attempt to so alienate such amount, whether presently or thereafter payable, shall be void. If any person shall attempt to, or shall, so alienate any amount payable under the Plan, or any part thereof, or if by reason of bankruptcy or other event happening at any time such amount would not be enjoyed by the person to whom it is payable under the Plan, then the Third Party Administrator shall notify the Board and, if the Board so elects, may direct that such amount be withheld and that the same or any part thereof be paid to or for the benefit of such person, his or her spouse, children or other dependents, or any of them, in such manner and proportion as the Board may deem proper.

(b) Payments with respect to a Participant's Plan Benefit may be made by the Third Party Administrator from the Trust Fund to one or more Alternate Payees pursuant to the terms of a Qualified Domestic Relations Order; *provided however*, that such Qualified Domestic Relations Order shall not create any rights greater than the Participant's rights under the Plan. Notwithstanding any provisions of the Plan to the contrary, any distribution due to an Alternate Payee may be paid in accordance with Section 414(p) of the Code following the qualification of the order if the Alternate Payee consents thereto. Upon receipt of a Qualified Domestic Relations Order by the Plan, portion of the Participant's Account and Rollover Account, which portion shall be determined in accordance with the Qualified Domestic Relations Order, shall be segregated and maintained on behalf of each Alternate Payee designated under such Qualified Domestic Relations Order until payment is made to the Alternate Payee in accordance with this Section 15.4 and the terms of the Plan. No liability whatsoever shall be incurred by the Board, Participating Employer, Third Party Administrator, or any Deferred Compensation Carrier solely by reason of any action taken in accordance with this Section 15.4 pursuant to the terms of a Qualified Domestic Relations Order.

(c) The Third Party Administrator may pay from a Participant's, Beneficiary's, or Alternate Payee's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant, Beneficiary, or Alternate Payee or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant, Beneficiary, or Alternate Payee.

15.5 Each Participant shall file with the Third Party Administrator such pertinent information concerning himself or herself and his or her Designated Beneficiary or Alternate Payee as the Board may specify, and no Participant, Designated Beneficiary, Alternate Payee or other person shall have any rights or be entitled to any benefits under the Plan unless such information is filed by or with respect to him or her.

15.6 All elections, designations, requests, notices, instructions, and other communications from a Participating Employer, Employee, Participant, Designated Beneficiary, Surviving Spouse, Alternate Payee or other person to the Board, Third Party Administrator, Deferred Compensation Manager, or the Employer required or permitted under the Plan shall be in such form as is prescribed from time to time by the Board, shall be mailed by first class mail, emailed to the address currently on record, or delivered to such location as shall be specified by the Board and shall be deemed to have been given and delivered only upon actual receipt thereof at such location. Copies of all elections, designations, requests, notices, instructions and other communications from an Employee, Participant, Designated Beneficiary, Surviving Spouse, Alternate Payee or other person to the Employer shall be promptly filed with the Third Party Administrator.

15.7 All notices, statements, reports and other communications from a Participating Employer, the Third Party Administrator or the Board to any Employee, Participant, Designated Beneficiary,

Surviving Spouse, Alternate Payee, or other person required or permitted under the Plan shall be deemed to have been duly given when delivered to, or when mailed by first class mail, emailed, postage prepaid and addressed to such Employee, Participant, Designated Beneficiary, Surviving Spouse, Alternate Payee, or other person at his or her mailing address or email address last appearing on the records of the Board, the Third Party Administrator, or the Participating Employer.

15.8 The Board may, upon the recommendation of the Third Party Administrator enlarge or diminish any time periods set forth in Sections 2.1, 3.1(b), 3.1(c), 4.3, 6.1, 6.3, 12.5 and 13.1; *provided* it determines that such action is necessary or desirable to facilitate the proper administration of the Plan and, *provided further* that in no case may a Participant's election to commence Compensation deferrals, or to modify existing Compensation deferrals, be effective until written notice of such election is filed with the Third Party Administrator and the Employer.

15.9 The amounts set aside and held in the Trust Fund shall be for the exclusive purpose of providing benefits to the Participants and their Designated Beneficiaries and Alternate Payees and defraying expenses of Plan and Trust Fund administration and no part of the Trust Fund shall revert to any Employer; *provided, however*, that the setting-aside of any amounts to be held in the Trust Fund is expressly conditioned upon the following: If an amount is set aside to be held in the Trust Fund by an Employer in a manner which is inconsistent with any of the requirements of Section 457(b) of the Code, such amount shall be returned to such Employer prior to the first day of the first Plan Year commencing more than 180 days after the date of notification of such inconsistency by the Secretary of the Treasury. Any amounts so returned to the Employer, and the earnings thereon, shall be distributed to the Participants on whose behalf such amounts were set aside.

15.10 The Trust Fund shall be the sole source of benefits under the Plan and, except as otherwise required by applicable law, the Board, the Employer, and the Third Party Administrator assume no liability or responsibility for payment of such benefits, and each Participant, his or her spouse or Designated Beneficiary, or other person who shall claim the right to any payment under the Plan shall be entitled to look only to the Trust Fund for such payment and shall not have any right, claim or demand therefore against the Board, or any member thereof, the Employer, the Third Party Administrator, or any employee or director thereof.

15.11 Any and all rights or benefits accruing to any persons under the Plan shall be subject to the terms of the Trust Declaration or any other funding instrument that is part of the Plan and the Trust Fund.

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

15.13 The captions preceding the Sections hereof have been inserted solely as a matter of convenience and in no way define or limit the scope or intent of any provisions hereof.

15.14 The Plan and all rights thereunder shall be governed by and construed in accordance with the Code and the Treasury Regulations promulgated thereunder and the laws of the State.