

# Alaska Deferred Compensation Plan

*For Employees of the State of Alaska  
and participating Political Subdivisions*

## Plan Document

As in Effect on the Date of Publication of this Booklet  
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The State of Alaska (hereinafter referred to as the “Employer”) herewith establishes a deferred compensation plan for the benefit of its eligible employees, under Internal Revenue Code section 457(b), as follows:

## Article I. Definitions

- A. “**Account**” means an investment account within the Trust Fund, established for each Plan Participant, Beneficiary, or Alternate Payee for the purposes of allocation of Employee contributions and the investment and reporting of the Participant’s benefit under the Plan.
- B. “**Act**” means Chapter 45 of Title 39 of the Alaska Statutes, as now in force or hereafter amended.
- C. “**Actuarial Equivalent**” means benefits of equal value to the aggregate amounts expected to be received under different forms of payment, based upon annuity purchase rates established by the Administrator at the time the benefit is to be determined.
- D. “**Alternate Payee**” means the spouse, child, or other dependent of a Participant for whom an amount has been separated into an account under a domestic relations order described in Article VIII.G.
- E. “**Beneficiary**” means the person or persons entitled under the provisions of this Plan to receive benefits after the death of a Participant.
- F. “**Compensation**” means the total remuneration earned by an Employee for personal services rendered, including State of Alaska employee cost-of-living differentials, as reported on the Employee’s Federal Income Tax Withholding Statement (Form W-2) from the Employer for the calendar year, plus the wage reduction amount contributed to the Plan, but does not include Employer Matching Contributions as defined herein.

Notwithstanding the above, compensation shall also include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of the Employee under sections 125, 132(f)(4), 401(a), 402(e)(3), 402(h)(1)(B) or 403(b) of the Code.

- G. “**Deferred Compensation**” means all Compensation which is deferred by payroll reduction on a pre-tax basis in accordance with the provisions of this Plan.
- H. “**Designated Roth Account**” A Designated Roth account is a separate account in the 457(b) plan that holds designated Roth contributions. Designated Roth contributions are elective deferrals that the participant elects to include in gross income. Qualified distributions from a Designated Roth Account are excluded from gross income when the participant is age 59-1/2 or older and has held the Roth account for at least 5 years.
- I. “**Employee**” means (1) any person (and only such person), including an officer, who is employed by the Employer and whom the Employer determines in the exercise of its sole discretion to be a common law employee who is rendering personal services to the Employer on a permanent employment basis, where the term permanent employment shall exclude short-term nonpermanent (but include long-term non-permanent), and also exclude temporary, casual, emergency, intermittent or poverty employment; (2) any person elected or appointed to a term of office with the Employer; and (3) any person who performs services in the capacity of an independent contractor as a member of a board or commission of the State of Alaska.
- J. “**Employer**” means the State of Alaska or a State of Alaska political subdivision or public organization who has contracted to participate in the plan by executing a Participation Agreement under AS 39.45.020.
- K. “**Employer Matching Contribution**” A political subdivision or public organization of the state of Alaska who has contracted to participate in the plan may elect to make matching contributions up to 6% of the Employee’s Compensation to the Employee contribution account. Employee catch-up contributions under Article 111.C.2. shall not be eligible for Employer Matching Contributions. Employer Matching Contributions are not Compensation under

AS 39.35.680(9) and shall not be included as Compensation for any purpose under the Public Employees' Retirement System, Teachers' Retirement System, or Judicial Retirement System. Employer Matching Contributions shall be derived from a source other than from the Compensation earned by an Employee for personal services rendered to the Employer. Employer Matching Contributions are tax deferred. The Total Contributions may not exceed the maximum amount allowable under Internal Revenue Code section 457(b)(2), as adjusted by the Internal Revenue Service. Employees are 100% vested in Employer Matching Contributions at the time the contributions are paid to the plan.

- L. **"Includible Compensation"** means Compensation for services performed for the Employer as defined in Code section 457(e)(5) up to the limits as proscribed by the Internal Revenue Service. Nothing in this definition shall be construed to mean that Employer Matching Contributions are includable as compensation for the purposes of AS 39.35.680(9).
- M. **"Internal Revenue Code"** or **"Code"** means the Internal Revenue Code of 1986, as amended from time to time.
- N. **"Investment Provider"** means a corporation or individual selected to provide a particular investment vehicle to the Trust Fund through which a Participant, Beneficiary, or Alternate Payee, by exercising his or her control, is permitted to direct the Trustee or Trustees to purchase investments on his or her behalf.
- O. **"Investment Funds"** means those separate funds which are provided within and which comprise the Trust Fund, and are established for the purpose of directing investments through the exercise of the sole control of a Participant, Beneficiary or Alternate Payee under the terms of the Plan and Trust Agreement.
- P. **"Normal Retirement Age"** means age 70 before March 1, 2006, and 70-1/2 on or after March 1, 2006, unless the Participant makes a one-time written election to reduce normal retirement age. This election is irrevocable. Such election will be valid only if the Participant would have the required number of years of service for normal retirement age under AS 39.35.370 or AS14.25.220(27). If the Participant is not eligible to receive benefits under a basic defined benefit pension or money pension purchase plan, the Participant's alternative Normal Retirement age may not be earlier than age 65; no later than 70-1/2. A special rule shall apply to qualified police or firefighters under the Plan, if any. Any Qualified police or firefighters, as defined under the Code section 415(b)(2)(H)(ii)(I), who is participating in the Plan may choose a Normal Retirement Age that is not earlier than 50 nor later than age 70-1/2. Any Participant who has at any time used the Catch-Up provisions of Article III, Paragraph C, Subparagraph 2 may not subsequently change his retirement age.
- A Participant who continues in the employ of the Employer after reaching Normal Retirement Age shall continue to participate in the Plan and may have contributions allocated to his or her Account.
- Q. **"Participant"** means any Employee or former Employee who retains a right to benefits under the Plan.
- R. **"Participation Agreement"** A legal instrument signed by the person authorized by the participating Employer to enter into the participation agreement. The Employer agrees to abide by the terms of the agreement and the terms of the plan during the period of the Employee's participation in the plan. The Employer may elect, within the agreement, to offer Employer Matching Contributions to employees up to 6% of the Employee's Compensation. The agreement shall contain a provision stating that Employer Matching Contributions are not Compensation under AS 39.35.680(9) and shall be derived from a source other than from the Compensation earned by an Employee for personal services rendered to the employer.
- S. **"Plan"** means the "State of Alaska Deferred Compensation Plan" issued May 31, 1974, amended January 17, 1980, October 1, 1981, October 1, 1982, October 28, 1982, December 31, 1983, May 1, 1986, November 1, 1993, November 15, 1994, April 1, 1995, January 1, 1997, July 1, 1998, January 1, 2002, April 1, 2003, March 1, 2006, February 1, 2010, August 1, 2017, January 1, 2023, and includes any future amendments.
- T. **"Plan Administrator"** or **"Administrator"** means the Commissioner of Administration, State of Alaska, or the Commissioner's designee. The Plan Administrator shall be responsible for the administration and interpretation of the Plan and shall establish and carry out a funding policy consistent with the purposes of the Plan.

- U. **“Record Keeper”** means an operating entity selected by the Plan Administrator to provide administrative services and financial education on behalf of the Plan.
- V. **“Termination of Employment”** means the termination of the Employee’s employment with the Employer for any reason, the end of the employee/employer relationship, or the expiration of the term of office of an elected or appointed Employee.
- W. **“Trustee(s)”** means that corporation and/or individuals who are designated by the Commissioner of Administration of the State of Alaska as a Trustee or Trustees of the Alaska Deferred Compensation Plan Trust.
- X. **“Trust Fund”** means all cash, securities, real estate, and any other property, together with income thereon, of this Plan held by the Trustee pursuant to the terms of the State of Alaska Deferred Compensation Plan Trust Agreement entered into between the State of Alaska and the Commissioner of the Department of Revenue, as the designated Trustee, as such agreement may subsequently be amended from time to time.
- Y. **“Total Contribution(s)”** means the combined amount of Employee contributions and Employer Matching Contributions.
- Z. **“Terminal Leave Pay”** A participant may elect to defer any payments of the values of accrued funded leave (funded annual or funded personal leave) that will become payable to the participant no later than two and one-half (2-1/2) months after the participant ceases to be an Employee. This election must be filed with the authorized Employer representative before the beginning of the month in which the Participant voluntarily ceases to be an Employee. An Employee who is involuntarily terminated from employment with or without cause must file his/her election with the authorized Employer representative prior to the payment of the final compensation from the Employer.

## Article II. Eligibility and Participation

### A. Eligibility Requirements

An Employee is eligible to participate effective the first day of the month immediately following the completion of a pay period.

### B. Participation

An Employee of a participating employer shall complete the required enrollment process with the Administrator or the Administrator’s designee. Subject to the approval of the Administrator, deferral of Compensation may commence on the first pay period day of the month following completion, and submission and acceptance of the required enrollment forms. Participation in the Plan continues until a Participant is no longer entitled to benefits under the Plan. In the event an Employer terminates participation in the plan, the Employee remains a participant for accrued contributions, gains and losses but future contributions to the plan will cease upon the date the Employer terminates participation

## Article III. Employee Contributions

### A. Source of Deferred Compensation

With the exception of Employer Matching Contributions, all Deferred Compensation for Participants shall be derived by pre-tax, payroll reduction solely from Compensation earned after the date the Employee became a Participant. Employer Matching Contributions shall be derived from a source other than from Compensation earned by an Employee for personal services rendered to the employer. Combined, the Participant’s Deferred Compensation and the Employer Matching Contributions, if any, constitute the Total Contributions on behalf of the Participant. All contributions will be transmitted so they are received by the Administrator or the Administrator’s Designee by the 15th day after the pay period ends. Late contributions may result in loss of earnings due to investment gains. The State of Alaska and the Public Employees’ Deferred Compensation Plan are not responsible for account actions caused by an Employer’s late reporting of contributions.

## **B. Minimum Amount of Deferred Compensation**

As a part of the enrollment process, the Employee shall specify the amount of Compensation to be deferred which may not be less than \$50.00 per month. All contributions must be in whole dollar amounts.

## **C. Maximum Amount of Deferred Compensation**

### **1. Primary Limitation**

Except as provided in C.2 and C.3 of this Article 111, the maximum Total Contributions under the Plan for any taxable year of a Participant, shall not exceed the lesser of (a) the applicable dollar amount in effect for the year, as adjusted for the calendar year in accordance with Code section 457(e)(15) (the "Primary Limitation"), or (b) 100% of the participants' Includible Compensation.

### **2. Catch-up Limitation**

However, when the participant reaches age 50+ or for one or more of the Participant's last three taxable years ending prior to Normal Retirement Age, the maximum amount of Deferred Compensation shall be increased.

For one or more of the Participant's last three taxable years ending prior to Normal Retirement Age, the maximum amount of Deferred Compensation shall be:

- a) *Special Catch-Up.* For one or more of the Participants last three taxable years ending prior to Normal Retirement Age the maximum amount of Deferred Compensation shall be: the Primary Limitation, plus so much of the Primary Limitation as has not been utilized for prior calendar years beginning after December 31, 1978, if, during each such years, compensation deferred under the Plan was subject to the Primary Limitation, and the Employee was eligible to participate in the Plan.
- b) *Age 50 and Over Catch-Up.* Participants age 50 and over are allowed to contribute those additional amounts allowed under Code section 414(v), subject to Code section 414(v)(6)(C), which provides that such additional contributions allowed by this Subparagraph are not available during the three years the Participant is utilizing the catch-up limitation provided for in Subparagraph 2(a) of this Paragraph C.

### **3. Participant Covered by More Than One Eligible Plan**

If the Participant is or has been a participant in one or more other eligible plans within the meaning of section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article III. For this purpose, the Employer shall take into account any other such eligible plan maintained by the Employer prior to reporting contributions to the Plan with regard to maintaining contribution limits as provided by 457(b) of the Code.

## **D. Changing Amount of Deferred Compensation**

A Participant may increase or decrease the amount of Deferred Compensation subject to the minimum and maximum deferrals once each month by completing the required forms or methods which are provided for this purpose. The change shall be subject to the approval of the Administrator, and shall be effective no earlier than the first day of the month following receipt of the change request (completion and submission of the required forms). For Participating Employers who have elected to provide Employer Matching Contributions, the Employer Matching Contribution will be based on the increased or decreased contribution as elected by the Employee. The change will be effective no earlier than the first day of the month following receipt of the change request.

## **E. Temporary Suspension or Decrease of Deferred Compensation**

Deferred Compensation will be suspended or decreased to an appropriate amount that would allow the reduced contribution to be made for any month or months in which there are insufficient monies available to make the deferral agreed upon. Deferrals will be reinstated in the next month in which there are sufficient monies available to make the deferral agreed upon.

## **F. Ceasing Deferred Compensation**

### **1. Voluntary Cessation**

A Participant may stop deferring Compensation without withdrawing from the Plan by providing the Administrator with written notice of intent to cease deferrals. Deferrals will thereupon cease as soon as administratively feasible after the written notice is approved by the Administrator.

### **2. Mandatory Cessation**

A Participant must stop deferring Compensation prior to making a request for a withdrawal due to an unforeseeable emergency by giving the Administrator written notice of intent to cease deferrals. This cessation must remain in effect for one year, after which the Participant may reinstate his deferral of Compensation.

## **G. Reinstatement of Deferred Compensation**

If deferral of Compensation ceases pursuant to Paragraph F.2. of this Article III, the Participant may reinstate deferral by completing the required paper or electronic form provided for this purpose. The Participant may reinstate his deferral of Compensation effective the first day of the month following completion and submission of the required form. Reinstatement may not be effective until the required form is approved by the Administrator. Deferrals will commence in the amount provided on the new forms.

## **H. Correction of Excess Deferrals**

If the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described above, or the Deferred Compensation on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under section 457(b) of the Code for which the Participant provides information that is accepted by the Administrator, then the Deferred Compensation, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant, as soon as administratively practicable after the Plan determines that the amount is an excess deferral.

## **I. Terminal Leave Pay**

A Participant may elect to defer any payments of the value of accrued funded leave (funded annual or funded personal leave) that will become payable to the participant no later than two and one-half (2-1/2) months after the participant ceases to be an Employee. This election must be filed with the authorized Employer representative before the beginning of the month in which the Participant ceases to be an Employee. Severance pay and other amounts that are not payable during active employment are not eligible for deferral under this Plan.

# Article IV. Allocations to Employees' Accounts

## **A. Accounts**

The Plan Administrator has delegated its responsibility to maintain separate accounts on behalf of each Participant, Beneficiary, and Alternate Payee to the Record Keeper. Each Account shall reflect the amounts allocated thereto and distributed therefrom and such other information as affects the value of such Account pursuant to the Plan as described in this Article IV. The Account of each Participant, Beneficiary, and Alternate Payee shall be adjusted daily by the following credits and debits:

### **1. Payments**

Subtract the total amount of any payments made from the Account since the preceding date.

### **2. Contributions**

Add the Total Contributions to the Account since the preceding date.

### **3. Investment Fund Transfers**

Add or subtract the amount of any adjustments to the Account resulting from transfers of Investment Funds.



#### 4. **Change-in-Value**

Add or subtract the change in value of the Account based on the increase or decrease in the market value of the Investment Fund units held in the Account.

#### 5. **Administrative Fees**

Subtract the administrative fees in the amount of the prescribed percentage of the month-end asset balance of the Account at the end of each calendar month and a prescribed annual fee during each plan year.

#### 6. **Miscellaneous Adjustments**

Add or subtract any additional miscellaneous adjustments which are required to reflect the current valuation of the Account.

### **B. Plan-to-Plan Transfers**

#### 1. **Transfers to the Plan**

Plan-to-plan transfers (but not rollovers) may be accepted from an eligible Code section 457 deferred compensation plan maintained by another governmental employer and will be credited to a Participant's Account with this Plan under the following conditions:

- a) The Participant was formerly a participant in an eligible deferred compensation plan maintained by another governmental employer.
- b) The Participant has separated from service with that employer and becomes an employee of the State or other political subdivision or public organization employer participating in the Plan.
- c) The Participant has not begun receiving payment of benefits from the other plan.
- d) The other employer's Plan permits the direct transfer of the Participant's interest therein to this Plan and such transfer is a "plan-to-plan transfer" which the Code and Regulations permit an employee to transfer, either directly or indirectly, from one eligible plan to another eligible plan. Before accepting a transfer, the Administrator may require an Employee to furnish satisfactory evidence that the proposed transfer is in fact a plan-to-plan transfer which the Code and Regulations permit an employee to make to an eligible plan.
- e) The Participant whose account is being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred under the other governmental deferred compensation plan with respect to that Participant immediately before the transfer.
- f) The participant files with the Administrator the prescribed form for a plan-to-plan transfer and obtains the Employer's written consent.

Any irrevocable or revocable election executed with respect to the assets in the former plan shall become null and void as of the date the assets are transferred into this Plan. An eligible employee, prior to satisfying the Plan's eligibility requirements, may make a plan-to-plan transfer to the same extent and in the same manner as the Participant, provided the employee has completed the necessary enrollment forms.

The transferred amounts shall be held, accounted for, administered, and otherwise treated in the same manner as Compensation deferred by the Participant under this Plan. The transferred amounts shall not be considered Compensation deferred under this Plan in the taxable year of such transfer in determining the maximum deferral available for that year. However, for the purposes of Article III, Paragraph C, an amount deferred during any taxable year under the Plan from which the transfer is accepted shall be treated as if it had been deferred under this Plan during such taxable year.

The Plan may require such documentation from the predecessor plan as it deems necessary to confirm that such plan is an eligible deferred compensation plan within the meaning of Code section 457(b), and to assure that transfers are provided under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.



## 2. **In-Plan Roth Transfer**

Effective July 15, 2016, a Participant, the surviving spouse of a Participant (or a Participant's former spouse who is the Alternate Payee under a Qualified Domestic Relations Order as defined in Code § 414(p)) (herein collectively called "distributee") may elect, at the time and manner prescribed by the Plan Administrator, to have any portion of an eligible plan-to-plan transfer paid to the Plan in an in-Plan Roth transfer to the distributee's Designated Roth Contribution Account. The amount transferred in plan-to-plan Roth transfer continues to be taken into consideration for mandatory distributions.

## 3. **Transfers to Another Eligible 457(b) Plan**

An account may be transferred to an eligible deferred compensation plan maintained by another governmental employer, if

- a) The Participant has separated from service with the Employer and becomes an employee of the other employer.
- b) The other employer maintains an eligible deferred compensation plan pursuant to section 457(b) of the Code.
- c) The other employer's Plan provides that such a plan-to-plan transfer will be accepted.
- d) The other employer has provided assurance that the Participant whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant under the Plan immediately before the transfer.

Such election to transfer must be made prior to the time that payment of benefits have commenced under the Plan. The Plan Administrator may require such documentation from the other plan as it deems necessary to confirm that such plan is an eligible deferred compensation plan pursuant to section 457(b) of the Internal Revenue Code and its regulations.

## 4. **Rollovers From Certain Other Employer-Sponsored Plans and IRAs Not Allowed**

The plan will not accept rollover contributions of distributions from IRAs described in Code sections 408(a) and (b) or from the following types of plans: qualified plans described in Code sections 401(a) and 401(k), 403(b) plans, or Code section 457(b) plans.

## 5. **In-Service Transfers For The Purchase of Defined Benefit Plan Service Credits**

An Account, or a portion thereof, may be transferred, while the Participant is in-service, to a governmental defined benefit plan for the purchase of permissive service credit as allowed by Code section 457(e)(17), if:

- a) The governmental defined benefit plan provides that such a plan-to-plan transfer will be accepted.
- b) The governmental defined benefit plan has provided assurance that it will pay the benefits to the Participant as may be allowed under its Plan.

Such election to transfer must be made prior to the time that payment of benefits has commenced under this Plan. The Administrator may require such documentation from the other plan as it deems necessary to confirm that such plan provides for the purchase of permissive service credit (as defined in Code section 415(n)(3)(A)) under such plan or a repayment to which Code section 415 does not apply by reason of subsection 415(k)(3).

## C. **Amounts Placed in Trust, Fees and Adjustments**

The Total Contributions specified in Article III shall be deposited into the Trust Fund as soon as administratively feasible after receipt by the Trustee.

The Plan Administrator shall direct the Trustee to make payment from the Trust Fund for any fees (administrative, investment, or other) incurred by the Plan in such amounts and at such times as deemed necessary by the Plan Administrator for the maintenance of the Plan. No fees shall be paid from the Trust Fund on account of reimbursement for settlor expenses. Settlor expenses shall include those incurred by the State on account of the creation, amendment, or termination of the Plan.

Amounts remaining in the Trust Fund following the payment of necessary and reasonable administrative expenses associated with the administration of the Plan shall be invested by the Trustees in accordance with the direction of the Participant, Beneficiary or Alternate Payee in one or more Investment Funds as may be made available by the Plan Administrator and shall increase or decrease depending upon changes in investment value. The corpus or income of the trust or custodial account may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries.

**D. Valuation of Trust Fund**

The Trust Fund shall be valued at least once a quarter, and the value and investment performance of each individual Account shall be reported to respective Participants at a reasonable time following the valuation date based on information assembled by the Plan Administrator.

**E. Participant Election to Direct Investments Among Available Investment Funds**

**1. Initial Deposit of Employee Contributions to Investment Funds**

Investment of Plan funds held in an Account may be directed by a Participant, Beneficiary or Alternate Payee among available Investment Funds in accordance with rules established by the Plan Administrator. Initial investment of Plan funds allocated to an Account shall be allocated to the default investment fund as specified by the Plan Administrator if the Participant does not specify an investment fund choice. Once made, the Plan funds allocated to an Account shall be directed to the available Investment Funds in accordance with the provisions of this Paragraph E.

**2. Participant Direction of Investment**

A Participant, Beneficiary, or Alternate Payee may elect to change the investment of Total Contributions to be allocated to his or her Account among available Investment Funds once each day in accordance with the rules established by the Plan Administrator. Only the last election that has been filed with the Plan Administrator prior to the transmittal of Employee contributions to the Trust Fund for allocation to the individual Account will be used to direct the investment of the Employee contributions received.

**3. Investment Direction to Transfer Existing Individual Account Balance Among Investment Funds**

A Participant, Beneficiary or Alternate Payee may elect to transfer all or a portion of his or her existing Account balance among available Investment Funds once each day in accordance with the rules established by the Plan Administrator. Such a direction shall be effective as indicated in the rules established by the Plan Administrator.

**4. Liability**

The Employer, Plan Administrator, State of Alaska, Alaska Retirement Management Board, or a person or entity who is otherwise a fiduciary, is not liable for any investment loss, or by reason of any breach, that results from the direction of the Participant, Beneficiary, or Alternate Payee in the exercise of control over the Plan assets allocated to his or her Account for the purpose of directing the investment of those funds.

**5. Right to Select Investment Options for Participant Use**

Effective October 1, 2005, the Alaska Retirement Management Board retains the right to select the investment options to be made available to Participants, and may change them from time to time, in accordance with AS 39.45.030.

## Article V. Vesting and Payment of Benefits

**A. Vesting**

Each Participant's Account comprised of both Employee and, for eligible Employees the Employer Matching Contributions, shall be fully vested and nonforfeitable at all times. Such vesting in the Plan in no way abrogates the right of the Employer or the Participant to terminate the Participant's employment at any time, with or without cause.

## **B. Eligibility for Payment**

1. A terminated Employee shall be eligible to elect distribution of his or her Account, in accordance with this Article V, subsequent to termination of employment, within an administratively feasible time in accordance with the business practices established by the Plan.
2. An employee age 59-1/2 shall be eligible to elect distribution of his or her Account, in accordance with this Article and Clause (i) of section 457(d)(1)(A) of the Internal Revenue Code of 1986.
3. The distribution of an Account can be made in whole or in part. Partial distributions cannot be requested more than two (2) times in a calendar year. Where a distribution of an Account involves a periodic payment, the periodic payment amount and/or frequency cannot be changed more than two (2) times in a calendar year. Where a distribution of an Account involves an annuity option, such annuity option cannot be changed once the benefit has commenced.
4. If a Participant dies before benefits commence, a Beneficiary shall be immediately eligible to elect distribution of the deceased Participant's Account, in accordance with the terms and conditions of this Article V.
5. Notwithstanding the foregoing, in the event that a domestic relations order qualifying as such is received and approved by the Plan Administrator as specified in Paragraph G of Article VIII, benefits shall be payable to the Alternate Payee in accordance with the terms and conditions of such order, as that order has been accepted by the Plan.

## **C. Hardship Withdrawals for an Unforeseeable Emergency**

### **1. General**

In the event of an unforeseeable emergency which is beyond the control of the Participant and which causes extreme financial hardship, a Participant may apply to the Administrator or the Administrator's Designee to distribute all or a portion of the Participant's Deferred Compensation. Such application shall be made by completing and submitting all required forms for this purpose. The Participant must, prior to application, cease deferring Compensation in accordance with Paragraph F of Article III. If the application for the payment is approved by the Administrator, payments shall be effective as soon as possible after the date specified in the Participant's application or the date of approval by the Administrator, if later.

### **2. Unforeseeable Emergency Defined**

An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from:

- a) an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined in Code section 152(a)).
- b) loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster);
- c) the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in section 152(a) of the Code);
- d) or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant; for example,
  - i) the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency.
  - ii) the need to pay for medical expenses, including nonrefundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency.

Except as otherwise specifically provided in Paragraph C of this Article V, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

### 3. **Unforeseeable Emergency Distribution Standard**

A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved:

- a) through reimbursement or compensation from insurance or otherwise,
- b) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or
- c) by cessation of deferrals under the Plan.

### 4. **Demonstration of Need**

A Participant requesting a hardship withdrawal by reason of an unforeseeable emergency must clearly demonstrate that the circumstances giving rise to the emergency were not under the Participant's control and constitute a real emergency which is likely to cause the Participant great financial hardship. The Administrator may require such medical, financial, or other evidence deemed appropriate to make a determination concerning the Participant's withdrawal request.

### 5. **Distribution Necessary to Satisfy Emergency Need**

Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution). In no event shall the distribution exceed the value of the Participant's Deferred Compensation Account. Any money remaining in the Account shall be distributed in accordance with the provisions of this Plan.

### 6. **Method of Distribution**

The method of distribution of any withdrawal for unforeseeable emergency shall be determined by the Administrator.

## **D. Distribution Requirements**

### 1. **General Rule**

Notwithstanding any other provision of the Plan, distributions shall be determined and made in accordance with the applicable requirements of Code sections 401(a)(9) and 457(d) and proposed or final Treasury Regulations hereunder. These rules also apply to distributions to Beneficiaries or Alternate Payees.

### 2. **Required Beginning Date**

The entire interest of a Participant must be distributed or begin to be distributed no later than the Employee's required beginning date. The required beginning date of a Participant is the later of the first day of April of the calendar year following the calendar year in which the Participant attains age 70-1/2 or the date of actual retirement.

### 3. **Small Account Distribution under Section 457(e)(9)(A)**

A Participant who has not had a Termination of Employment may elect to receive a one-time distribution of the Participant's entire Account, provided that

- a) the Participant's Account is valued at \$5,000 or less,
- b) the Participant has had no Deferred Compensation for the two-year period ending on the date of the distribution, and
- c) the Participant has not previously received a distribution pursuant to this subsection 3.

#### **E. Benefit Commencement Date**

1. Payments to a Participant or Beneficiary who meets the requirements of Paragraph B of this Article V shall commence as soon as administratively feasible following the benefit commencement date. The benefit commencement date is the first date on which one of the following occurs:
  - a) A Participant or Beneficiary meets the requirements of Paragraph B of this Article V and has made a complete application for payment;
  - b) A Participant attains age 72 (age 70-1/2 if the Participant was born on or before June 30, 1949) and has not made an application for payment.
  - c) A Beneficiary did not begin receiving payments by December 31 of the year following the Participant's death, and five years have elapsed since the Participant's death.
  - d) A Participant requests a direct trustee-to-trustee transfer to another plan as permitted in paragraph E of this Article V.
2. A Participant or Beneficiary may elect to defer receipt of payment to a date later than the date specified in Paragraph E(1) of this Article V in accordance with the following:
  - a) A Participant may defer to any date up to April 1 of the year after attaining age 72 (age 70-1/2 if the Participant was born on or before June 30, 1949.)
  - b) A spouse Beneficiary may defer to any date on or before December 31 of the year in which the Participant would have attained age 72 (age 70-1/2 if the Participant was born on or before June 30, 1949). Payments must be made over a period no longer than the life expectancy of the spouse.
  - c) A non-spouse Beneficiary must receive a distribution
    - i) of the entire amount by December 31 of the calendar year that contains the fifth anniversary of the Participant's death, or,
    - ii) if the distribution is started by December 31 of the calendar year following the year of the Participant's death, it can be made payable over the life of the Beneficiary, but not beyond his or her life expectancy.
3. Payments to an Alternate Payee shall commence as soon as administratively feasible for an Alternate Payee who meets the requirements of Paragraph B, subparagraph 4 of this Article V and has made a complete application for payment.
4. Notwithstanding any other provisions of this Article V, the entire Account balance of a Participant, Beneficiary, or Alternate Payee who meets the requirements of Paragraph B of this Article V will be distributed automatically in a lump sum if the balance is \$1,000 or less.
5. Notwithstanding any other provisions of this Article V, upon the death of a Participant on or after January 1, 2022, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:
  - a) If the Participant dies before the distribution of his/her entire Account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a Designated Beneficiary:
    - i) The entire Account shall be distributed to the Designated Beneficiary by December 31 of the calendar year containing the 10th anniversary of the Participant's death.
    - ii) Notwithstanding subparagraph (i), if the Designated Beneficiary is an Eligible Designated Beneficiary, then the Participant's Account shall be distributed beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the Eligible Designated Beneficiary or over a period not exceeding the life expectancy of the Eligible Designated

Beneficiary. If the Eligible Designated Beneficiary is the Surviving Spouse, then distributions to the Surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or, if later, by December 31 of the calendar year in which the Participant would have attained age seventy-two (72) (age seventy and one-half (70-1/2) if the Participant was born on or before June 30, 1949).

- iii) Upon either (1) the death of an Eligible Designated Beneficiary before distribution of the Participant's entire Account or (2) the attainment of the age of majority for an Eligible Designated Beneficiary who is a minor child, subparagraph (ii) shall no longer apply, and the remainder of the Account shall be distributed under paragraph (i).
- b) If the Participant dies before distributions of his/her Account begins and the Participant has no Designated Beneficiary, the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of his/her Account begins and the Participant has no Designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.
- c) For purposes of this subsection 5, an Eligible Designated Beneficiary means a Designated Beneficiary who, as of the date of the death of the Participant, is:
  - i) the Surviving Spouse of the Participant;
  - ii) a child of the Participant who has not reached the age of majority;
  - iii) disabled within the meaning of Code Section 72(m)(7);
  - iv) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or
  - v) any other individual who is not more than 10 years younger than the Participant.

Notwithstanding the preceding, a child described in (ii) above shall cease to be an Eligible Designated Beneficiary as of the date he or she reaches the age of majority.

#### **F. Form of Payment**

1. A Participant may elect to receive his or her Account in the form of (i) a total or partial lump-sum as described in subparagraph (a); (ii) an annuity described in subparagraphs (b), (c), (d), or (e); (iii) a periodic payment described in subparagraph (f); or (iv) a partial lump-sum plus an annuity described in subparagraphs (b), (c), (d), or (e), defined as follows:
  - a) Lump-Sum – The payment of all or any part of a Participant's Account balance in a payment amount of a single distribution that is not less than the lesser of (I) \$1,000 or (II) the amount of the participant's account. The Participant may designate the time and amount of each payment; but may not elect this form of distribution for frequently than two (2) times in any calendar year.
  - b) Period Certain Annuity – An annuity payable in a fixed number of monthly installments for a duration of 60, 120 or 180 months;
  - c) Life Annuity with a Period Certain – An annuity payable until the later of (1) the first day of the month in which the annuitant's death occurs, or (2) the date on which the payment of a fixed number of monthly installments is completed. The duration of the installments shall be 120 or 180 months;

- d) Single Life Annuity – An annuity payable monthly until the first of the month in which the annuitant’s death occurs;
  - e) Joint and Survivor Annuity – An annuity payable monthly to the Participant until the first of the month in which the Participant’s death occurs. Following the Participant’s death, a survivor annuity equal to 50% or 100% of the Participant’s benefit (as previously elected by the Participant) shall be paid monthly to the joint annuitant for the remainder of his or her lifetime; or
  - f) Periodic Payment – A form of payment which allows Participants to receive benefit payments out of their Accounts while staying invested in the current fund offerings provided by the Plan. The payment schedules are:
    - i) Period Certain – Participant selects length of time to receive funds.
    - ii) Minimum Distribution Option – amounts paid will be recalculated annually and paid at the minimum distribution level.
    - iii) Payment Certain – Participant selects amount to be paid out and continue until funds are depleted.
  - g) A Participant may not elect more frequently than two (2) times in any calendar year to receive a partial account payment or the commencement of an annuity purchased with a partial account payment.
2. This subparagraph applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee’s election under this part, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution that is equal to at least \$200 paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- a) For purposes of this subparagraph, an “eligible rollover distribution” is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income; any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code received after December 31, 1998; any hardship distribution described in Section 402(c)(4) of the Code received after December 31, 2001; and any other distribution(s) reasonably expected to total less than \$200 during a year.
  - b) For purposes of this subparagraph, an “eligible retirement plan” is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, a qualified plan described in Section 401(a) of the Code, and on and after January 1, 2002, a tax sheltered annuity plan described in Section 403(b) of the Code or a governmental plan described in Section 457(b) of the Code, that accepts the distributee’s eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, prior to January 1, 2002, an eligible retirement plan is an individual retirement account or an individual retirement annuity. Effective on or after January 1, 2008, an eligible retirement plan includes a Roth IRA described in Code Section 408A. Effective for distributions after December 18, 2015, a SIMPLE IRA as described in Code Section 408(p) is an eligible retirement plan, provided that the rollover contribution to the SIMPLE IRA is made after the two-year period beginning on the date the distributee first participated in any qualified salary reduction arrangement maintained by the distributee’s employer under Code Section 408(0)(2), as described in Code Section 72(t)(6).



- c) For purposes of this subparagraph, a distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Effective January 31, 2013, a distributee includes a non-spouse beneficiary, provided that a non-spouse beneficiary may only make a direct rollover to an inherited IRA.
  - d) For purposes of this subparagraph, a "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee.
  - e) This Plan does not accept contributions of eligible rollover distributions.
3. A Participant may request that the Plan Administrator transfer all or a portion of his or her Account in a direct trustee-to-trustee transfer to another defined benefit governmental plan defined in Code Section 414(d) allowed to receive such a transfer for the purpose of purchasing permissive past service credits as defined in Code Section 415 (n)(3)(A) under the receiving plan in accordance with the terms of that plan. Such transfers are limited to no more than two (2) in a calendar year.
4. Any form of payment elected shall be the Actuarial Equivalent of the value of the Participant's Account as of the benefit commencement date.
- 5. Plan Distributions on Account of Death**
- a) Upon the death of a Participant whose payments have commenced, a Beneficiary shall receive further payments only to the extent provided in accordance with the form of payment that was being made to the deceased Participant. The remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.
  - b) If the Participant dies before distribution of his or her interest begins, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (i) or (ii) below:
    - i) if any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the Participant died;
    - ii) if the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (i) above shall not be earlier than the later of (A) December 31 of the calendar year immediately following the calendar year in which the Participant died and (B) December 31 of the calendar year in which the Participant would have attained age 70-1/2.
- If the Participant has not made an election pursuant to this subparagraph by the time of his or her death, the Participant's designated Beneficiary must elect the method of distribution no later than the earlier of (A) December 31 of the calendar year in which distributions would be required to begin under this section, or (B) December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated beneficiary, or if the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- iii) For purposes of subparagraph 4(b) above, if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of subparagraph 4(b), with the exception of paragraph (2) therein, shall be applied as if the surviving spouse were the Participant.

- iv) For purposes of this subparagraph, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.
  - v) For the purposes of this subparagraph 4, distribution of a Participant's interest is considered to begin on the Participant's required beginning date (or, if subparagraph 4(c) above is applicable, the date distribution is required to begin to the surviving spouse pursuant to subparagraph 4(c) above). If distribution in the form of an annuity irrevocably commences to the Participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.
- c) In the case of a death of a Participant on or after January 1, 2022, the distribution provisions set forth in Article V, Section E, subsection 5 shall apply.

#### **G. Changing Elections**

A Participant or Beneficiary may change any

1. form of payment election, or
2. election to commence benefits, or
3. joint annuitant designation

at any time, prior to the issuance of a lump-sum payment or prior to the issuance of an initial annuity payment.

Changes will not be allowed on or after the issuance of such payment. A Participant may change the periodic form of payment with respect to the period certain schedule, the payment certain schedule, or the frequency of payments (or stop the periodic payments) at any time, but no more frequently than two (2) times in any calendar year.

#### **H. Failure to Elect a Form of Payment**

If a Participant who is not married, or a Beneficiary in the case of the Participant's death, fails to elect a form of payment prior to the required benefit commencement date, the Account shall be paid in the form of a Lump Sum. If a married Participant fails to elect a form of payment prior to the benefit commencement date, the Account shall be paid in the form of a 50% Joint and Survivor Annuity, with the Participant's spouse as the joint annuitant.

#### **I. Late Contributions**

Contributions pursuant to Article III made on behalf of a terminated Employee after the benefit commencement date shall not affect the form or amount of payments already being made to the Participant or a Beneficiary. If that Participant is not currently employed by the Employer, these contributions shall be paid directly to the Participant or Beneficiary as soon as administratively feasible.

#### **J. Reemployment After Benefits Have Commenced**

Annuity benefits which are being paid to a Participant shall not be affected by the Participant's subsequent employment with the Employer. Periodic payment benefits or partial lump sum withdrawals paid to a Participant will cease upon reemployment. Benefits which are being paid to a Participant shall not be affected by the Participant's subsequent employment with the employer. Upon such employment, a new account shall be established for the Participant, pursuant to Article IV, to which any future employer contributions shall be allocated. Upon subsequent termination of employment, the new account shall be distributed in accordance with this Article IV.

#### **K. Return of Overpayments and Interest on Overpayment Amounts**

A Participant, Beneficiary, or Alternate Payee shall remain responsible for repayment to the Plan of any excess amounts received pursuant to a distribution should it be determined that the Participant, Beneficiary, or Alternate Payee is not entitled to the entire amount he or she actually received.

The Participant, Beneficiary, or Alternate Payee shall also pay interest on amounts overpaid at a prescribed rate of interest at seven percent due to an overpayment of a benefit withdrawal.

## L. Qualified Birth or Adoption Distributions

### 1. Definitions.

- a) "Qualified Birth or Adoption Distribution" means a distribution made to a Participant within the one-year period beginning on the date on which a child of the Participant is born or on which the legal adoption by the Participant of an eligible adoptee is finalized.
  - b) "Eligible Adoptee" means an individual (other than the child of the Participant's spouse) who has not attained age 18 or is physically or mentally incapable of self-support.
2. A Participant, regardless of whether he/she has had a Termination of Employment, may request to receive one or more Qualified Birth or Adoption Distributions from his/her Account subject to the provisions of this subsection L. Qualified Birth or Adoption Distributions made from this Plan and all other plans maintained by the Employer or a related Employer may not exceed \$5,000 per birth or adoption. A Participant shall certify that he or she satisfies the criteria to receive a Qualified Birth or Adoption Distribution.

## M. Coronavirus-Related Distributions

### 1. Definitions.

- a) "Coronavirus-Related Distribution" means a distribution made on or after January 1, 2020, but before December 31, 2020, or such later date as provided in subsequent legislation and/or regulatory guidance, to a Qualified Individual in accordance with subsection (2).
- b) "Qualified Individual" means a Participant:
  - i) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;
  - ii) whose spouse or dependent (as defined in Code Section 152) is diagnosed with such virus or disease by such a test; or
  - iii) who experiences adverse financial consequences as a result of
    - I) the Participant, the Participant's spouse, or a person residing in the Participant's household (1) being quarantined, (2) being furloughed or laid off or having work hours reduced due to such virus or disease, (3) being unable to work due to lack of child care due to such virus or disease, (4) having a reduction in pay (or self-employment income) due to such virus or disease, or (5) having a job offer rescinded or start date for a job delayed due to such virus or disease;
    - II) closing or reducing hours of a business owned or operated by the Participant, the Participant's Spouse, or a person residing in the Participant's household due to such virus or disease; or
    - III) other factors as determined by the Secretary of the Treasury (or the Secretary's delegate); or
  - iv) any other Participant who satisfies the definition of a Qualified Individual as provided in subsequent legislation and/or regulatory guidance.

For purposes of this subparagraph (b), a person residing in the Participant's household means someone who shares the Participant's principal residence.

2. Notwithstanding any other section to the contrary, a Participant eligible to receive a distribution described in this subsection M who is a Qualified Individual may request to receive his/her Account, in part or in full, as a Coronavirus-Related Distribution on or after January 1, 2020 (or as soon as administratively practicable after January 1, 2020), and before December 31, 2020.
3. Coronavirus-Related Distributions to a Participant from this Plan and all other plans maintained by a related Employer may not exceed One Hundred Thousand Dollars (\$100,000).

4. A Participant shall certify that he/she is a Qualified Individual prior to receiving a Coronavirus-Related Distribution.

**N. Waiver of 2020 Required Minimum Distributions.**

Notwithstanding any other provisions of this Section N, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 2, 2021) but for the enactment of Code Section 401(a)(9)(I) (“2020 RMDs”), and who would have satisfied that requirement by receiving distributions that are either

1. equal to the 2020 RMDs, or
2. one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years (“Extended 2020 RMDs”) will not receive those distributions for 2020 unless the Participant or Beneficiary chooses to receive such distributions.

For purposes of the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs also will be treated as eligible rollover distributions in 2020.

## Article VI. Beneficiaries

**A. Designation**

A Participant may designate a Beneficiary, on a paper or electronic form provided for that purpose by the Plan Administrator, to receive the Plan distributions payable following the Participant’s death as described in Paragraph F, Subparagraph 5 of Article V. Except as provided in Subparagraph 4 below, any Beneficiary designation, whether filed with the Plan Administrator before, on, or after March 1, 2006, is subject to the rules under Subparagraphs 1 – 3 below. A Participant may change or revoke a Beneficiary designation without notice to the Beneficiary or Beneficiaries at any time by filing a new designation with the Plan Administrator. Any new Beneficiary designation is subject to the spousal consent rules described below.

1. If a Participant who was married at the time of death designated a non-spouse Beneficiary, the actuarial equivalent value of the benefit payable to such Beneficiary shall not exceed 50% of the Participant’s Account balance. The spouse to whom the Participant is married at the time of the Participant’s death shall automatically be deemed the Beneficiary for the remaining 50% of the Account balance unless the spouse specifically consents to the non-spouse Beneficiary designation in the manner prescribed by Subparagraph 2 below. If the spouse consents in this manner, a married Participant may designate a non-spouse Beneficiary for the entire benefit or any portion of the benefit which is payable in an available form of payment contained in this Plan except to the extent a qualified domestic relations order filed with the Administrator provides for payment to a former spouse or other dependent of the Participant unless the Participant filed a revocation of Beneficiary accompanied by a written consent to the revocation from each person entitled under the qualified domestic relations order.
2. The spouse’s consent to the Beneficiary designation must be contained in a writing signed by both the Participant and the Participant’s spouse, must specifically acknowledge the effect of the consent, and must be witnessed by a Plan representative or notary public. Any consent by a spouse shall be effective only with respect to such spouse.
3. Except as provided by the express terms of a qualified domestic relations order, which has been accepted by the Plan Administrator, the dissolution of a marriage between the Participant and his or her spouse will automatically revoke a Beneficiary designation in favor of that former spouse executed by the Participant before the dissolution unless the Participant, subsequent to the dissolution, specifically reaffirms the former spouse as a Beneficiary on the form provided for that purpose by the Plan Administrator.

4. The requirement that the spouse to whom the Participant is married at the time of the Participant's death shall automatically be deemed the Beneficiary for 50% of the Participant's Account balance does not apply in the case of a Participant whose most recent Beneficiary designation form was received by the Administrator before January 1, 2002, if the Participant's death occurred before March 1, 2006.

**B. Failure to Designate a Beneficiary**

If upon the death of a Participant there is no valid designation of Beneficiary on file with the Plan Administrator, a divorce or annulment has revoked the Beneficiary designation naming the Participant's spouse as a Beneficiary, or the Beneficiary is deceased, then benefits shall be paid in the following order of succession:

1. Payments shall be made to the surviving spouse, if the spouse survives the Participant for 30 days;
2. If there is no surviving spouse, payments shall be made in equal parts to the surviving children, including adopted children, who survive the Participant for 30 days;
3. If there are no surviving children, payments shall be made in equal parts to the surviving parents who survive the Participant for 30 days; or
4. If there are no surviving parents, payments shall be made to the Participant's estate.

**C. Payments to Beneficiaries**

The Plan Administrator may request proper proof of the Participant's death and may require the Beneficiary to provide evidence of his or her right to receive a distribution from the Plan in any form or manner the Plan Administrator may deem appropriate. The Plan Administrator's determination of the Participant's death and of the right of a Beneficiary to receive payment under the Plan shall be conclusive. If a distribution is to be made to a minor or incompetent Beneficiary, payments may be made to the person's legal guardian, conservator, or custodian in accordance with the Uniform Gifts to Minors Act or similar law as permitted under the laws of the state where the Beneficiary resides. The Plan Administrator or Trustee will not be liable for any payments made in accordance with this Paragraph C of Article VI, and they are not required to make any inquiries with respect to the competence of any person entitled to benefits under the Plan.

## Article VII. Amendment and Termination

**A. Amendment**

The Plan Administrator shall have the right to amend this Plan, at any time and from time to time, in whole or in part. Such power to amend includes the right, without limitation, to make those retroactive amendments referred to in the Internal Revenue Code. However, such right to amend the Plan shall be subject to the provisions of Paragraph C of this Article VII. Further, no amendment of the Plan shall permit any assets of the Plan to be used to pay premiums or contributions of the Employer under any other plan maintained by the Employer.

**B. Termination, Partial Termination, or Complete Discontinuance of Contributions**

1. Although the State of Alaska has established the Plan with the bona fide intention and expectation that it will continue the Plan indefinitely, the State of Alaska may in its sole and absolute discretion terminate the Plan in whole or part at any time without liability whatsoever for such termination. If the Plan shall be terminated, all investments shall remain in force until all Participants' Accounts have been completely distributed in accordance with the Plan.
2. An Employer, other than the State of Alaska, has sole and absolute discretion to discontinue participation in the plan with no liability to a person or entity except under the terms of the Participation Agreement. The Employer shall notify the Administrator of the plan of termination at least 90 days prior to the date on which the Employer wishes to terminate. The participating Employer shall continue to transmit contributions or coverage during the 90-day interim. The employer shall submit written notice of termination accompanied by a resolution adopted by the governing body of the participating employer.

### **C. Nonreversion**

1. The corpus or income of the trust or custodial account may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries.
2. If Plan benefits are provided through the distribution of annuity or insurance contracts, any refunds or credits in excess of Plan benefits (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) will be paid to the trust or custodial account.
3. Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.
4. The Plan Administrator shall have no right to modify or amend the Plan retroactively in such a manner as to reduce the benefits of any Participant accrued to date under the Plan by reason of contributions made by the Employer prior to the modification or amendment except to the extent permitted by law.

## Article VIII. Miscellaneous

### **A. Limitation of Rights; Employment Relationship**

Neither the establishment of the Plan, nor any modification thereof, nor the creation of any fund or Account, nor the payment of any benefits, shall be construed as giving any Participant or other person any legal or equitable right against the State of Alaska, Employer, the Investment Provider, the Plan Administrator or the Record Keeper, except as provided in the Plan, and, in no event, shall the terms of employment of any Employee be modified or in any way be affected by the Plan.

### **B. Transfer of Assets of Plan**

In no event shall this Plan be merged or consolidated with any other plan, nor shall there be any transfer of assets or liabilities from this Plan to any other plan, unless immediately after such merger, consolidation or transfer, each Participant's benefits, if such other plan were then to terminate, are at least equal to or greater than the benefits which the Participant would have been entitled to had this Plan been terminated immediately before such merger, consolidation, or transfer.

### **C. Safeguard Provision**

Neither the State of Alaska, Employer, Investment Provider, Record Keeper, or the Plan Administrator, shall recognize any attempt to alienate amounts held on behalf of, or payable to, an Employee or other person who is or who might become eligible for benefits under the Plan. Such amounts are not subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge of any kind, either voluntary or involuntary, before being received by the person entitled to the amount under the terms of the Plan. An attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of a right to amounts held under the plan is void. Except as provided in AS 09.38.065, amounts held on behalf of, or payable to, an Employee or other person who is or who might become eligible for benefits under the Plan are exempt from garnishment, execution, or levy.

### **D. Interpretation; Severability**

The Plan hereby created shall be construed, administered and governed in all respects in accordance with the Internal Revenue Code and other pertinent federal laws, and the laws of the State of Alaska, provided, however, that if any provision is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the Plan being an eligible deferred compensation plan within the meaning of section 457(b) of the Internal Revenue Code. If any provision of this Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

This Plan is also intended to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) and is intended to be construed in accordance with EGTRRA and guidance issued thereunder. If a provision of EGTRRA is mandatory as it applies to the eligibility of this Plan, then that provision is adopted, and to the extent provisions of the Plan exist that are inconsistent with such mandatory EGTRRA requirements, the mandatory requirements of EGTRRA shall supersede the provisions of this Plan, to the extent the provisions of this Plan as written are inconsistent with EGTRRA.

If a provision of EGTRRA is optional as it may apply to a Code section 457(b) plan, then only those provisions herein specifically adopted are part of this Plan. All other optional provisions of EGTRRA, not specifically adopted into this Plan, are not included in this Plan.

#### **E. Plan Administration**

The Plan Administrator shall establish rules and regulations for administration of the Plan, and shall be responsible for its interpretation. A determination by the Plan Administrator shall be conclusive and binding upon all interested parties. The Plan Administrator shall have the sole discretion, authority and responsibility to interpret and construe the Plan document (including ambiguous provisions thereof) and to determine all factual and legal questions under the Plan, including but not limited to the entitlement of Employees, Participants and Beneficiaries and the amounts of their respective interests. The Trustee and other interested parties may act and rely upon all information reported to them hereunder and need not inquire into the accuracy thereof, nor be charged with any notice to the contrary. No rule, regulation or interpretation shall discriminate in favor of persons who are highly compensated employees.

#### **F. Form of Election**

Any election or any alteration or revocation of a prior election by a Participant, Beneficiary, or Alternate Payee for any purpose under this Plan shall be on forms or made in a manner prescribed for that purpose by the Plan Administrator. To be effective, the forms required or the required action for any purpose under this Plan must be completed and filed in accordance with the requirements set forth herein, and in accordance with rules, regulations and/or procedural policies prescribed by the Plan Administrator. To be effective, an election must be received by the Plan Administrator or the Plan Administrator’s designee, such as the Record Keeper, prescribed for the purpose of receiving the election information.

#### **G. Domestic Relations Orders**

Notwithstanding the nonalienation provisions in paragraph C “Safeguard Provision,” the Plan Administrator may direct that benefits be paid to someone other than a Participant or Beneficiary pursuant to a valid qualified domestic relations order, meeting the requirements of section 414(p)(11) of the Code, that has been executed by a judge of a competent court in accordance with applicable state law, and which has been accepted by the Plan Administrator.

The Plan Administrator shall determine whether an order meets the requirements of this section within a reasonable period after receiving an order. The Plan Administrator shall notify the Participant and any Alternate Payee that an order has been received and indicate to the Alternate Payee and Participant when the Plan has accepted the order. A separate account for the Alternate Payee portion shall be established as soon as administratively feasible after the order has been accepted by the Plan.

#### **H. Participant Loans**

Participants loans from the Plan are not allowed.

#### **I. Treatment of Persons Who Serve in a Uniformed Service.**

Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) (as codified at Chapter 43, Title 38, of the United States Code); Code section 414(u); and, effective January 1, 2007, Code section 401(a)(37), as amended from time to time an Employee whose employment is interrupted by qualified military service as defined in Code section 414(u) or who is on a leave of absence for qualified military service as defined in Code section 414(u) may elect to make additional Annual



Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This prerogative applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave) notwithstanding the fact that Code section 414(u) is not applicable to this Plan.