

# **WakeMed**

## **Select Group 457(b) Deferred Compensation Plan**

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Amended & Restated effective September 1, 2023

### **IMPORTANT NOTE**

This document has not been approved by the Department of Labor, Internal Revenue Service, or any other governmental entity. An adopting Employer may not rely on this document to ensure any particular tax consequences or to ensure that the Plan is “unfunded and maintained primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees” under Title I of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Employer’s particular situation. FMR LLC, its affiliates and employees cannot provide you with legal advice in connection with the execution of this document. This document should be reviewed by the Employer’s attorney prior to execution. This Plan is intended for adoption only by an Eligible Employer as defined in Section 457(e)(1)(B) of the Code)

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## **Preamble**

WHEREAS, WakeMed established the WakeMed Select Group 457(b) Deferred Compensation Plan for the benefit of its eligible employees effective October 1, 2006; and

WHEREAS, WakeMed now desires to amend and restate the Plan to make certain changes to the administrative structure of the Plan.

NOW, THEREFORE, WakeMed hereby amends and restates the Plan, effective as of September 1, 2023, on the terms and conditions described herein.

## **Purpose and Intent**

The Plan is intended to be a plan under Section 457(b) of the Code and the regulations thereunder as issued by the Department of the Treasury; the Plan shall be interpreted, implemented and administered in a manner consistent therewith. The Plan is also intended to be an unfunded, deferred compensation arrangement for (i) a select group of its management or highly compensated employees or (ii) employees of a church or an organization associated with a church. As such, the Plan is intended to be exempt from the requirements of Parts 2, 3 and 4 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and certain reporting and disclosure requirements of Part 1 of Subtitle B of Title I of ERISA.

To the extent this Plan contains provisions that conflict with the requirements of Section 457(b) of the Code or regulations thereunder, the Administrator shall apply and interpret Plan provisions in a reasonable manner that conforms to the requirements of Section 457(b) of the Code and regulations thereunder.

## **Article I - General**

### **1.1. Plan**

The Plan will be referred to by the name specified in Section 1.02 of the Adoption Agreement.

### **1.2. Effective Dates**

- (a) Original Effective Date. The Original Effective Date is the date as of which the Plan was initially adopted.
- (b) Amendment Effective Date. The Amendment Effective Date is the date specified in Section 1.01(b) of the Adoption Agreement as of which the Plan is amended and restated, except to the extent otherwise provided herein or in the Adoption Agreement.
- (c) Special Effective Date. A Special Effective Date may apply to any given provision if so specified in Appendix A of the Adoption Agreement. A Special Effective Date will control over the Original Effective Date or Amendment Effective Date, whichever is applicable, with respect to such provision of the Plan.

## Article II - Definitions

### 2.1. *Definitions*

For purposes of this Plan, the following terms shall have the meanings set forth below, unless a different meaning is clearly required by the context:

**“Account”** means the Deferred Compensation Account of a Participant as described in Section 5.1.

**“Administrator”** means the person or persons designated by the Plan Sponsor in Section 1.05 of the Adoption Agreement to be responsible for the administration of the Plan. If no Administrator is designated in the Adoption Agreement, the Administrator shall be the Plan Sponsor.

**“Adoption Agreement”** means the agreement adopted by the Plan Sponsor that establishes the Plan.

**“Affiliate”** means (i) any member of a controlled group of corporations (as determined under Code Section 414(b)) of which the Plan Sponsor is a member, (ii) any member of a group of trades or businesses under common control (as determined under Code Section 414(c)) with the Plan Sponsor, (iii) any member of an affiliated service group (as determined under Code Section 414(m)), and (iv) any other entity that is required to be aggregated with the Plan Sponsor pursuant to the provisions of Code Section 414(0).

**“Applicable Dollar Limit”** means with respect to any calendar year, the “applicable dollar limit” in effect for such calendar year under Code Section 457(b)(2)(A) and Code Section 457(e)(15), adjusted as provided in Code Section 457(e)(15)(B).

**“Beneficiary”** means the individual or individuals, trusts, estates, or other entities entitled to receive the beneficial interest of a Participant in the event of his death pursuant to the provisions of Section 6.4.

**“Board”** means the Board of Trustees (or the Board of Directors, as the case may be) of the Plan Sponsor or any individual who is an officer and is so authorized by the Board of Trustees (or the Board of Directors, as the case may be) to act on behalf of the Plan Sponsor.

**“Catch-Up Calendar Years”** means three calendar years preceding the calendar year in which an Eligible Employee attains Normal Retirement Age.

**“Code”** means the Internal Revenue Code of 1986, as amended, including the Treasury Regulations and rulings thereunder. Reference to a section of the Code shall include such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section; and also shall include any Treasury Regulations (including interim and proposed), rulings, notices, general counsel memoranda, and other interpretations thereunder.

**“Compensation”** has the meaning as defined in this definition unless the Plan reference, or the Employer in its Adoption Agreement, modifies this definition. Except as the Plan otherwise specifically provides, the Plan Administrator will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. If the initial Plan Year of a new Plan consists of fewer than 12 months, calculated from the Effective Date stated in the Adoption Agreement through the end of such initial Plan Year, Compensation for such initial Plan Year shall be determined from such Effective Date through the end of the initial Plan Year. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code Sections 3121 and 3306. Additionally, in the event the Plan has a short Plan Year, i.e., a Plan Year consisting of fewer than 12 months, otherwise applicable limits and requirements that are applied on a Plan Year basis shall be prorated, but only if and to the extent required by law.

(a) **Base Definitions and Modifications.** The Employer in its Adoption Agreement must elect one of the following base definitions of Compensation: W-2 Wages, Code Section 3401(a) Wages, or 415 Compensation. The Employer may elect a different base definition as to different Contribution Types. The Employer in its Adoption Agreement may specify any modifications thereto, for purposes of contribution allocations under Article IV. If the Employer fails to elect one of the above-referenced definitions, the Employer is deemed to have elected the W-2 Wages definition.

(i) **W-2 Wages.** W-2 Wages means wages for federal income tax withholding purposes, as defined under Code Section 3401(a), plus all other payments to an Employee in the course of the Employer’s trade or business, for which the Employer must furnish the Employee a written statement under Code Sections 6041, 6051, and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

(ii) **Code Section 3401(a) Wages (Income Tax Wage Withholding).** Code Section 3401(a) Wages means wages within the meaning of Code Section 3401(a) for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or the location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

- (iii) **Code Section 415 Compensation (Current Income Definition/Simplified Compensation Under Treas. Reg. Section 1.415(c)-2(d)(2)).** Code Section 415 Compensation means the Employee's wages, salaries, fees for professional service and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. Section 1.62-2(c)).

Code Section 415 Compensation does not include:

- (A) **Deferred Compensation/SEP/SIMPLE.** Employer contributions (other than Elective Deferrals) to a plan of deferred compensation (including a simplified employee pension plan under Code Section 408(k) or to a SIMPLE retirement account under Code Section 408(p)) to the extent the contributions are not included in the gross income of the Employee for the Taxable Year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified), regardless of whether such amounts are includible in the gross income of the Employee when distributed.
- (B) **Option Exercise.** Amounts realized from the exercise of a non-qualified stock option (an option other than a statutory option under Treas. Reg. Section 1.421-1(b)), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture under Code Section 83.
- (C) **Sale of Option Stock.** Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option as defined under Treas. Reg. Section 1.421-1(b).
- (D) **Other Amounts That Receive Special Tax Benefits.** Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts under Code Section 125).
- (E) **Other Similar Items.** Other items of remuneration which are similar to any of the items in Sections (iii)(A) through (D).

Compensation excludes any post-severance Compensation paid to a Participant.

**"Credits"** means the amounts credited to a Participant's Account to recognize the Elective Deferral Contributions for such Participant, pursuant to Section 4.1 of the Plan and Employer Contributions, if any, pursuant to Section 4.2 of the Plan.



**“Deferral Election”** means an agreement entered into between an Eligible Employee and the Employer, pursuant to which an Eligible Employee agrees to commence deferring Compensation under the Plan. All Deferral Elections must satisfy the requirements of Section 4.1 of this Plan.

**“Elective Deferral Credits”** means the amounts credited to a Participant’s Account to recognize the Participant’s Elective Deferral Contributions, pursuant to Section 4.1 of the Plan.

**“Eligible Deferred Compensation Plan”** means a deferred compensation plan of an Employer that meets the requirements of Code Section 457(b).

**“Eligible Employee”** means an Employee who has been designated by the Employer in writing as being eligible to participate in the Plan. To be an Eligible Employee, the Employee must be in (i) a select group of management or high compensated employees under Title I of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Employer’s particular situation or (ii) be an employee of a church or an organization associated with a church.

**“Employee”** means an individual employed by the Employer or any Affiliate as a common law employee who performs services for the Employer.

**“Employer”** means the Plan Sponsor or any Affiliate which is authorized by the Plan Sponsor to participate in and, in fact, does adopt this Plan. Any Employer that adopts this Plan must be an Eligible Employer as defined in Section 457(e)(1)(B) of the Code.

**“Employer Contribution Credits”** means the amounts credited to a Participant’s Account to recognize the Employer Contributions for such Participant pursuant to Section 4.2 of the Plan.

**“Includible Compensation”** means with respect to any calendar year, the amount of an Eligible Employee’s compensation from the Employer for the calendar year that is attributable to services rendered for the Employer as an Employee, to the extent provided for under Treasury Regulations Section 1.415(c)-2(d)(4) (or any successor regulations thereto).

**“Normal Retirement Age”** means the age specified in Section 3.02(b) of the Adoption Agreement; if no age is specified in the Adoption Agreement, a Participant’s Normal Retirement Age shall be age 65; provided, however, that if a Participant is employed after Normal Retirement Age, the Participant may designate in writing a later age that is not later than the date of the Participant’s Severance from Employment.

**“Participant”** means an Eligible Employee who has had a credit made to an Account pursuant to the terms of this Plan and who has a balance remaining in an Account under this Plan.

**“Plan”** means the unfunded plan established pursuant to the provisions of Section 457(b) of the Code as set forth herein, including the Adoption Agreement and any trust agreement, as adopted by the Plan Sponsor and as amended from time to time.

**“Plan Sponsor”** means the entity identified in Section 1.03 of the Adoption Agreement or any successor by merger, consolidation or otherwise.

**“Plan Year”** means the period identified in Section 1.02 of the Adoption Agreement.

**“Required Beginning Date”** means April 1 following the calendar year in which the later of the following dates occurs: (i) the date on which the Participant attains age 73 if Participant is born on or after January 1, 1951, or age 72 if Participant is born on or after July 1, 1949 and before January 1, 1951 (or age 70½ if born before July 1, 1949), or (ii) the date on which the Participant has a Severance from Employment or retires (except for a Participant who is a five percent (5%) owner, as defined in Code Section 416(i)(I), the Required Beginning Date shall be April 1 of the calendar year following the calendar year in which the Participant attains age 73 if Participant is born on or after January 1, 1951, or age 72 if Participant is born on or after July 1, 1949 and before January 1, 1951 (or age 70½ if born before July 1, 1949), without regard to the date of the Participant’s Severance from Employment or retirement).

**“Severance from Employment”** means the date on which a Participant has ceased to be an Employee of any Affiliate. A Severance from Employment shall not occur by reason of a vacation, sick leave, authorized leave of absence, or military absence. A Severance from Employment does not occur under circumstances where an Affiliate is merged or consolidated with another Affiliate. A Severance from Employment shall not occur if an Employee transfers to employment with an Affiliate or is reemployed by an Affiliate within 60 days of what otherwise would be a Severance from Employment. The Administrator shall have authority to determine whether an Employee has had a Severance from Employment; and such term shall be construed to comply with the requirements of Section 457(b) of the Code.

**“Unforeseeable Emergency”** means a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant’s spouse, the Participant’s Beneficiary, or the Participant’s dependent (as defined in Code Section 152, without regard to Code Section 152(b)(1), (b)(2) and (d)(1)(B); loss of the Participant’s property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

**“Valuation Date”** means each business day of the Plan Year that the New York Stock Exchange is open.

## **2.2. Gender**

References in this Plan to masculine or feminine pronouns shall, respectively, include references to feminine and masculine pronouns, unless the context clearly requires otherwise.

## **Article III - Plan Participation**

### **3.1. *Eligibility***

An Eligible Employee shall be eligible to become a Participant in this Plan. An Eligible Employee shall become a Participant in this Plan at the time that a Deferral of Compensation or an Employer Contribution is made for such Eligible Employee to this Plan in accordance with Article IV.

### **3.2. *Termination of Eligibility and Participation***

The Employer may determine that an Employee is no longer an Eligible Employee prior to the time the Employee incurs a Severance from Employment. In the event a Participant shall cease to be an Eligible Employee under the Plan, the Participant's Account shall continue to be invested and accounted for as provided in Article V.

## Article IV - Contributions and Limits

### 4.1. *Elective Deferrals of Compensation*

- (a) All Deferral Elections, and modifications or revocations thereof, shall be made in writing or electronically, in accordance with rules and procedures established by the Administrator and consistent with the rules of this Article IV.
- (b) All Deferral Elections shall be subject to the following rules:
  - (i) The Deferral Election shall authorize the Employer to reduce the Compensation of the Participant (as defined in Section 2.01 of the Adoption Agreement) for services rendered as an Employee. An Eligible Employee may elect to defer Compensation in any amount permitted by Section 3.01 of the Adoption Agreement. If so permitted in Section 3.01 of the Adoption Agreement, the Participant may defer different amounts for different types of Compensation as specified in Section 3.01 of the Adoption Agreement.
  - (ii) Notwithstanding any other provision of the Plan to the contrary, the amount to be deferred under any Deferral Election for any calendar year cannot exceed the Participant's Elective Deferral Limit. For purposes of this Section, the Eligible Employee's Elective Deferral Limit for a calendar year shall be equal to the limitations provided under Sections 4.3 and 4.4 of this Plan for such calendar year.

The Administrator shall calculate the Elective Deferral Limit of the Eligible Employee and, in its sole discretion, may restrict the amount of the Eligible Employee's Compensation reduction under his Deferral Election, as the Administrator believes is needed to assure that the limitations provided under Sections 4.3 and 4.4 of this Plan for a calendar year are not exceeded.

- (iii) The Deferral Election may specify the effective date for the reduction of the Participant's Compensation. If no effective date is specified, it shall be effective as of the first payroll date that is practicable for the Employer. Notwithstanding in either case, the effective date shall be subject to the following rules:
  - (A) The effective date cannot be any earlier than the date that is agreed to by the Employer.
  - (B) Except for a new Employee of the Employer, the effective date cannot be any earlier than the first date that Compensation will be paid to the Employee in the month following the date of the execution of the Deferral Election.
  - (C) For a new Employee of the Employer, the effective date may be within the first pay period of employment if the Participant completes and files a Deferral Election on or before the first day of his employment as an Employee.

- (c) A Deferral Election may be revised by filing a new Deferral Election with the Administrator. Any revised Deferral Election shall become effective only in accordance with the rules provided above in paragraph (b).
- (d) A Deferral Election shall be automatically revoked as of the date that a Participant incurs a Severance from Employment or otherwise ceases to be an Eligible Employee under this Plan. A Participant may revoke an existing Deferral Election by filing with the Administrator a notice of his election to revoke it. A revocation notice may specify an effective date that is at least 15 days after the date it is filed or such lesser number of days as is agreed to by the Employer. Once a Deferral Election has been revoked (for any reason), an Eligible Employee must execute a new Deferral Election to recommence deferrals of Compensation under the Plan.
- (e) To the extent the Administrator deems necessary, the Administrator shall restrict the amount of a Participant's salary reduction under his Deferral Election, to assure that his reduction in salary and corresponding credits to his Account do not exceed the limitations under Sections 4.3 and 4.4 of this Plan for the calendar year.

## **4.2. *Employer Contributions***

If elected by the Plan Sponsor in Section 4.01 of the Adoption Agreement, the Employer may, but shall not be required to, make a discretionary contribution to the Plan on behalf of any Participant in the Plan. The amount of any discretionary contribution made on behalf of a Participant shall be credited to the Participant's Account. All Employer Contribution Credits for a calendar year shall be made by not later than December 31 of the calendar year.

Employer Contribution Credits for each calendar year shall be subject to the limitations prescribed in Section 4.3 of this plan; if the amount that is required to be paid to this Plan as an Employer Contribution Credit would exceed such limits, the excess amount shall be in cash to the Eligible Employee.

## **4.3. *Basic Limit on Credits***

Except as provided in Section 4.4, the maximum amount of Credits contributed under Sections 4.1 and 4.2 that may be made to an Eligible Employee's Account in any calendar year shall not exceed the lesser of:

- (a) the Applicable Dollar Amount defined below, or
- (b) 100% of the Participant's Includible Compensation.

For purposes of this Section, the Applicable Dollar Amount is the dollar amount provided under Code Section 457(b)(2) and 457(e)(15) (as may be indexed annually).

#### **4.4. Normal Retirement Age Catch-Up Credits**

The provisions of this Section 4.4 shall be applicable if so elected in Section 3.02 of the Adoption Agreement; if no election is made in the Adoption Agreement, the provisions of this Section 4.4 shall be inapplicable.

If so elected, the provisions of this Section 4.4 shall apply in the three (3) calendar years that precede the calendar year that includes an Eligible Employee's Normal Retirement Age. In any such calendar year, an Eligible Employee may have Credits credited to his Account (either as Elective Contributions under a Deferral Election or as Employer Contributions under this Article IV), in an amount that does not exceed the lesser of:

- (a) twice the Applicable Dollar Amount described in Section 4.3(a), or
- (b) the sum of:
  - (i) the Applicable Dollar Amount described in Section 4.3(a), and
  - (ii) for each prior calendar year beginning after December 31, 1978 in which the Participant was an Eligible Employee under this Plan or another Eligible Deferred Compensation Plan of the Employer, the difference between:
    - (A) the maximum dollar amount that could have been deferred under Code Section 457(b)(2) for such year, and
    - (B) the amount actually deferred by the Participant during such year under an Eligible Deferred Compensation Plan of the Employer.
- (c) For purposes of clause (b)(ii) above, for calendar years prior to 2002, the maximum amount that a Participant could have elected to defer under Code Section 457(b)(2) shall be determined in accordance with the provisions of Code Section 457(c) as in effect during such years. Accordingly, the determination of the maximum amount that an Employee could defer under Code Section 457(b)(2) in any such year shall be subject to a reduction to account for any other elective deferrals that the Employee would have made during such calendar year under Code Section 403(b), Code Section 401(k), and any other elective deferral arrangements described in Code Section 457(c) during such years.

If a Participant in this Plan is eligible to have additional Contributions made under this Section during the calendar year and is also a Participant in another Eligible Deferred Compensation Plan of the Employer during the calendar year, the Employer shall limit the additional Contributions under this Section, and the amounts deferred under the other Eligible Deferred Compensation Plan, pursuant to the provisions of Code Section 457(b)(3), to a total amount that is within the applicable limits of Code Section 457(b)(3), as if this Plan and the other plan or plans were a single plan.

If the Eligible Employee has ever used the election provided under this Section, he may not elect to use it again by re-designating a different Normal Retirement Age, whether or not he used this catch-up deferral election in all three (3) Catch-Up Calendar Years before the year in which the Participant attains Normal Retirement Age.

If the Eligible Employee is a participant in another Eligible Deferred Compensation Plan during the calendar year, the Employer shall limit the amounts deferred under this Section of the Plan and the amounts deferred under the other Eligible Deferred Compensation Plan, pursuant to the provisions of Code Section 457(b)(3), to a total amount that is within the applicable limits of Code Section 457(b)(3).

#### **4.5. *Vesting in Employee and Employer Contributions***

A Participant, at all times, has a 100% nonforfeitable interest in an amount credited to his Account under this Article IV.

#### **4.6. *Excess Elective Deferrals***

- (a) If a Participant has Credits under this Plan for a calendar year that exceed the applicable limits of Sections 4.3 and 4.4 (without regard to any deferrals under other plans), the Plan Administrator shall repay to the Participant an amount equal to the excess Credits, adjusted for income or loss attributable to such excess Credits by not later than April 15 of the year following the year of the excess Credits. Repayment shall be made in accordance with the requirements of Treasury Regulations Section 1.457-4(e).
- (b) If a Participant has Credits under this Plan for a calendar year that are within the limits of Sections 4.3 and 4.4 of this Plan, but otherwise has elective deferrals for the calendar year that exceed the individual limitation imposed under Code Section 457(c) and Treasury Regulations Section 1.457-5, the Participant may request the Plan Administrator to refund all or part of his excess Credits under this Plan, not to exceed the amount of his excess elective deferrals for the calendar year under Code Section 457(c). Such request may be made by filing a written statement with the Plan Administrator. The written request shall specify the amount of such excess the Participant claims as allocable to the Plan. If the Participant timely files such a request, the Plan Administrator shall distribute to the Participant the amount of such excess, adjusted for income or loss attributable to such excess elective deferral as soon as is administratively practicable.

## **Article V - Accounts and Plan Funding**

### **5.1. *Accounts***

To determine the amounts payable to a Participant under this Plan, the Administrator shall establish a Deferred Compensation Account on behalf of a Participant. Credits to a Participant's Account shall be made pursuant to Articles IV and V. Adjustments may be made to a Participant's Account for earnings, interest, investment gains and losses, expenses, distribution and other charges, as provided in Section 5.3. As provided in Section 4.5, the amounts credited to the Account of a Participant shall not be subject to forfeiture and shall become payable to the Employee as provided in Article VI.

The Administrator shall establish such further accounting procedures for the purpose of making allocations, valuations and adjustments to the Account of a Participant as the Administrator deems advisable.

The Deferred Compensation Account maintained for purposes of this Plan shall merely constitute bookkeeping records of the Plan and the Employer; and shall not constitute any allocation whatsoever of any assets of the Employer or be deemed to create any trust or special deposit for a Participant with respect to any of the assets of the Employer.

### **5.2. *Unfunded Plan***

- (a) The obligation of the Employer under the Plan to pay to a Participant or his Beneficiary the amounts credited to a Participant's Account constitutes the unsecured promise of the Employer. No Participant or Beneficiary shall have any rights whatsoever in or with respect to any funds or other assets owned or held by the Employer. The rights of a Participant or Beneficiary under this Plan are solely those of a general unsecured creditor of the Employer. Accordingly, the maintenance of Accounts under this Plan shall be solely for Plan bookkeeping purposes and shall not be deemed to create any trust or other special relationship with a Plan Participant or Beneficiary.
- (b) Notwithstanding the provisions of paragraph (a), the Employer may establish or participate in one or more trusts (including group or collective trusts) or otherwise invest or segregate funds for purposes relating to this Plan. However, the assets of such trusts and the funds otherwise so invested or segregated, shall at all times remain the property of and subject to the claims of the general creditors of the Employer; and no Participant or Beneficiary shall have any rights whatsoever in or with respect to any such trust, insurance contract or other investment or fund, or the assets thereof, the rights of such person being solely those of an unsecured general creditor of the Employer.



### **5.3. *Adjustments of Deferred Compensation Accounts***

At the end of each Plan Year, and any Valuation Date, the Deferred Compensation Accounts of Participants shall be adjusted to reflect the investment gains or losses of the set-aside assets.

In addition, the Administrator shall establish procedures under which Participants may choose to have the adjustments to their Accounts made in accordance with investment selections made by the Participants that are based upon the investments of all or part of the set-aside assets. Participants shall be solely responsible for any gains or losses associated with their investment selections.

In the sole discretion of the Plan Sponsor, the Administrator may charge the Deferred Compensation Accounts of Participants for brokerage and asset management fees and expenses associated with any set aside assets. Such charges shall be made in accordance with investment selections made by Participants.

The Plan Sponsor, the Employer, the Board, and the Administrator shall not be responsible to any Participant with respect to the investment performance of any set aside assets of the Employer.

## Article VI - Benefits

### **6.1. *Distribution upon Severance from Employment (Other than on Account of Death)***

The balance credited to the Participant's Account shall become payable to the Participant if he has a Severance from Employment (other than on account of death).

- (a) **First Permissible Payout Date.** The first permissible payout date (the "First Permissible Payout Date") shall be the sixtieth (60<sup>th</sup>) day following the day on which a Participant incurs a Severance from Employment, unless a different date is selected in Section 5.01(a) of the Adoption Agreement. Unless a Participant makes an election described in Section 6.1(b) below, distribution of the Participant's Account shall be made as soon as administratively feasible on or after the First Permissible Payout Date but in no event later than the thirtieth (30<sup>th</sup>) day following the First Permissible Payout Date. The balance of a Participant's Account for distribution purposes shall be the balance of his Account determined under Section 5.3 as of the Valuation Date on or about the date of distribution, as adjusted for deferrals, distributions, earnings, investment gain or loss, and fees and expenses.
- (b) **Election to Defer Payment.** By the First Permissible Payout Date, a Participant, in accordance with rules and procedures established by the Administrator, may elect to have his Account paid on a specified date that is at least thirty (30) days after the First Permissible Payout Date. Distribution of the Participant's Account shall be made as soon as administratively feasible on or after the date specified by the Participant but in no event later than the thirtieth (30<sup>th</sup>) day following such date. The balance of a Participant's Account for distribution purposes shall be the balance of his Account determined under Section 5.3 as of the Valuation Date on or about the date of distribution, as adjusted for deferrals, distributions, earnings, investment gain or loss, and fees and expenses.
- (c) **Special Additional Deferral.** If so permitted in Section 5.01(b) of the Adoption Agreement, a Participant who has elected to defer distribution of his Account pursuant to Section 6.1(b) above, may make a one time, irrevocable election to further defer distribution of his Account to specified date in the future that is after the date specified by the Participant in Section 6.1(b) above. Any such election shall be made after the First Permissible Payout Date but at least thirty (30) days prior to the date specified by the Participant in Section 6.1(b) and shall be made in accordance with rules and procedures established by the Administrator. Distribution of the Participant's Account shall be made as soon as administratively feasible on or after the date specified by the Participant but in no event later than the thirtieth (30<sup>th</sup>) day following the date specified by the Participant pursuant to this Section 6.1(c). The balance of a Participant's Account for distribution purposes shall be the balance of his Account determined under Section 5.3 as of the Valuation Date on or about the date of distribution, as adjusted for deferrals, distributions, earnings, investment gain or loss, and fees and expenses.

## **6.2. *Method of Payment***

If a Participant makes an election pursuant to Section 6.1(b) or Section 6.1(c), the amount payable with respect to a particular Account shall be paid to the Participant in a form elected by a Participant as permitted by Section 5.01(c) of the Adoption Agreement. If the Participant is not permitted to elect a form of payment other than a single lump sum, the Participant's Account shall be paid in a single lump sum cash payment

Notwithstanding the foregoing, the Participant's Account shall be subject to the minimum distribution rules restrictions of Section 6.4.

If the Participant is permitted to elect a form of payment pursuant to Section 5.01(c) of the Adoption Agreement, the Participant shall elect the method of payment by filing a written or an electronic notification to the Administrator of his election in accordance with the timing rules specified in Subsection 6.1(b) or 6.1(c). If the Participant does not file an election regarding the form of payment, payment shall be made in a lump sum.

If a Participant does elect installment payments, the amount payable in each installment shall be equal to the Participant's Account Balance divided by the number of remaining payments.

## **6.3. *Distributions upon Death***

Upon the death of a Participant before the Commencement Date for distribution of his Account, any amount remaining in his Account shall be distributable to his Beneficiary. Payment to his Beneficiary shall be made in a single lump sum on or shortly after the sixtieth (60<sup>th</sup>) day following the date that the Administrator receives written notice of the Employee's death.

The following rules shall apply for purposes of designating Beneficiaries under this Plan and determining the appropriate payees for payments after the death of the Employee:

- (a) Any individual, partnership, corporation, trust, estate, or other entity may be designated as a Beneficiary. If there is no designated Beneficiary who survives the Participant, then the balance in his Account shall be paid to his estate.
- (b) All designations of a Beneficiary shall be made by a Participant in writing, signed by the Participant, and filed with the Administrator. The Participant may change his designation of Beneficiary at any time. To change his Beneficiary, the Participant must complete a new written Beneficiary designation form and file it with the Administrator prior to the death of the Employee. No designation of Beneficiary will be recognized under this Plan unless it is filed with the Administrator prior to the death of the Participant.
- (c) If an individual designated by the Participant as his Beneficiary is the spouse of the Participant at the time of such designation or at any time thereafter, and if the Participant and spouse are legally divorced or their marriage is legally dissolved or annulled, unless the divorce decree or a similar court order directs otherwise, the spouse of the Participant shall cease to be the Beneficiary and shall be treated as if the former spouse were deceased, unless and until such time as the Participant re-designates such person as a new Beneficiary.

- (d) If the Participant is entitled to a lump sum payment and dies after the Commencement Date for the payment but prior to the date of actual payment, the amount credited to the Participant's Account shall be distributable to his Beneficiary. Payment to his Beneficiary shall be made in a single lump sum, regardless of the form of payment elected by the Participant, on or shortly after the sixtieth (60<sup>th</sup>) day following the date that the Administrator receives written notice of the Employee's death.

#### **6.4. Minimum Distribution Rules**

The provisions of this Section provide rules for the calculation and payment of minimum distributions from the Plan pursuant to the minimum distribution requirements of Code Section 401(a)(9). Accordingly, the terms of this Section shall be applied to require at least the minimum distributions described herein, notwithstanding any provisions of the Plan to the contrary.

A Participant who has a Required Beginning Date shall be paid minimum distributions from the Plan for each Plan Year beginning with the later of (i) the Plan year he attains age 73 if Participant is born on or after January 1, 1951, or age 72 if Participant is born on or after July 1, 1949 and before January 1, 1951 (or age 70½ if born before July 1, 1949) (age 70½ if born before July 1, 1949) or (ii) the Plan year in which he incurs a Severance from Employment or retires (the "first distribution calendar year"). For the age 73 (72, or 70½ as appropriate) calendar year and for the first distribution calendar year thereafter, a minimum distribution shall be made to the Participant during such calendar year from the Plan at least equal to the amount determined below.

The minimum distribution required by this Section shall at least be equal to an amount equal to:

- (a) the Participant's Account balance under the Plan on December 31 of the preceding calendar year (including any credits thereto for the calendar year), divided by
- (b) the minimum distribution divisor provided in Treasury Regulations Section 1.401(a)(9)-5, life based on the Participant's birthday in the applicable distribution year.

For purposes of this Section, the following rules shall apply when determining the minimum distribution:

- (a) The minimum distribution to be made to a Participant in his first distribution calendar year may be delayed until no later than his Required Beginning Date.
- (b) If pursuant to paragraph (a) above, all or part of a minimum distribution is delayed until after December 31 of the first distribution calendar year, for the calendar year following the first distribution calendar year, the value of the Participant's Account balance under the Plan on December 31 of the preceding calendar year shall be reduced by the amount of such delayed distribution.

In the event that a Participant dies before the Participant's Required Beginning Date, and distribution of the Participant's beneficial interest is to be made in a single sum, such distribution must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

To the extent any of the foregoing terms of this Section do not comply with the requirements of Code Section 401(a)(9) and the Treasury Regulations thereunder, minimum distributions from the Plan shall be administered in accordance with such provisions.

#### **6.5. *Distributions in the Event of an Unforeseeable Emergency***

If so elected in Section 6.01 of the Adoption Agreement, in the event of an Unforeseeable Emergency, a Participant may request that the Administrator pay to the Participant all or a portion of the Participant's Account. Such a request shall be treated as a request for a revocation of deferrals under the Participation Agreement. If the application for payment is approved by the Administrator, payment shall be made as soon as administratively possible following such approval. Payment shall be limited strictly to that amount reasonably necessary to meet the situation constituting the Unforeseeable Emergency (taking into account the amount of any income tax withholding or other income tax liability resulting from the distribution). Payments may not be made to the extent that an Unforeseeable Emergency is or may be relieved through (i) reimbursement or compensation by insurance or otherwise, (ii) by liquidation of the Participant's assets (to the extent such liquidation does not itself cause severe financial hardship), or (iii) by cessation of deferrals under the Plan. Any remaining amounts in the Participant's Account shall be paid in accordance with the distribution provisions of this Article VI.

## **Article VII - Plan-to-Plan Transfers**

### **7.1. *Applicability***

If so elected in Section 7.01 of the Adoption Agreement, the provisions of this Article VIII shall be applicable with respect to Plan-to-Plan Transfers as set forth herein.

### **7.2. *Transfers to the Plan***

Subject to the requirements of Section 457(e)(10) of the Code, and procedures established by the Administrator, a transfer may be accepted from a tax-exempt Eligible 457(b) Plan if such transfer complies with the following requirements:

- (a) The transferor tax-exempt Eligible 457(b) Plan must provide for transfers;
- (b) The Participant or Beneficiary whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at least equal to the amount deferred with respect to the Participant or Beneficiary immediately before the transfer;
- (c) In the case of a transfer for a Participant, the Participant must have had a Severance from Employment with the transferring employer and must be performing services for the entity maintaining the receiving plan.

The Administrator may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code and to assure that transfers are provided for under such plan. The Administrator 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.

Such amount shall be held, accounted for, administered and otherwise treated in the same manner as if the Participant had deferred Compensation under this Plan. Except as otherwise specifically provided in this Plan, such transferred amount shall be subject to all provisions of this Plan applicable to deferrals made hereunder.

The transferred amount shall be subject to the constructive receipt rules under Section 457(b) of the Code as if the elections made by the Participant or Beneficiary under the transferor plan had been made under the Plan.

### **7.3.     *Transfers from the Plan***

Subject to Section 457(e)(10) of the Code, and the procedures established by the Administrator, an Account may be transferred to another eligible deferred compensation plan if such transfer complies with the following requirements:

- (a)     The transferee tax- exempt Eligible 457(b) Plan must provide for transfers;
- (b)     The Participant or Beneficiary whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at least equal to the amount deferred with respect to the Participant or Beneficiary immediately after the transfer;
- (c)     In the case of a transfer for a Participant, the Participant must have had a Severance from Employment with the Employer and must be performing services for the transferee employer.

No transfer shall occur unless the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the participant has been discharged and assumed by the other employer.

The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code and to assure that transfers are provided for under such plan.

### **7.4.     *Administrative Rules***

Subject to applicable law, the Administrator shall prescribe such rules and procedures concerning this Article VII hereof with respect to plan-to plan transfers as the Administrator in its sole judgment deems desirable for the orderly administration of the Plan.

## **Article VIII - Administrative Provisions**

### **8.1. *Powers and Responsibilities of the Administrator***

The Administrator has the full power and the full responsibility to administer the Plan in all of its details; subject, however, to the applicable requirements of the Code and the Employee Retirement Income Security Act of 1974, as amended. The Administrator's powers and responsibilities include, but are not limited to, the following:

- (a) to determine the rights of eligibility of an Eligible Employee to participate in the Plan, the value of a Participant's Account and the nonforfeitable percentage of each Participant's Account;
- (b) to adopt rules of procedure and regulations necessary for the proper and efficient administration of the Plan provided the rules are not inconsistent with the terms of the Plan;
- (c) to construe and enforce the terms of the Plan and the rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation. If the terms of the Plan are unclear, the Administrator may interpret the Plan, provided such interpretation is consistent with the provisions of Section 457(b) of the Code and is performed in a uniform and nondiscriminatory manner;
- (d) to compute the amount of benefits which will be payable to any Participant, former Participant or Beneficiary in accordance with the provisions of the Plan;
- (e) to determine the person or persons to whom such benefits will be paid;
- (f) to authorize the payment of benefits;
- (g) to make correction and recover the overpayment of any benefits;
- (h) to review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;
- (i) to furnish the Employer with information which the Employer may require for tax or other purposes;
- (j) to engage the service of agents whom it may deem advisable to assist it with the performance of its duties;
- (k) to establish procedures, in its sole discretion, to assess each Participant's and Beneficiaries' Account any administrative fees;
- (l) to retain agents, counsel, actuaries, accountants or any other person or persons which it deems necessary or desirable in order to provide for the proper administration of the Plan;



- (m) to purchase goods and services and otherwise to incur expenses which it deems necessary or desirable in order to properly perform its duties hereunder; and
- (n) by written instrument to allocate and delegate its responsibilities, including the formation of any committee it deems necessary to administer the Plan.

## **8.2. Indemnification**

To the extent permitted by law, any person or persons serving as the Administrator shall be free from all liability (individual, joint or several) for personal acts, omissions and conduct, and for the acts, omissions and conduct of duly constituted agents, in the administration of the Plan. To the extent permitted by law, the Employer shall indemnify and save any such person or persons harmless from the effects and consequences of all acts, omissions and conduct in administering the Plan.

## **8.3. Benefit Claims; Appeals**

- (a) Claims Procedure. If any person believes he or she is being denied any rights or benefits under the Plan, such person may file a claim in writing with the Administrator. If any such claim is wholly or partially denied, the Administrator will notify such person of its decision in writing. Such notification will contain (i) specific reasons for the denial, (ii) specific reference to pertinent Plan provisions, (iii) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary, and (iv) a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the person's right to bring a civil action following an adverse decision on review. If the claim involves a Disability, the denial must also include the standards that governed the decision, including the basis for disagreeing with any health care professionals, vocational professionals or the Social Security Administration as well as an explanation of the scientific or clinical judgement underlying the denial. Such notification will be given within 90 days (45 days in the case of a claim regarding Disability) after the claim is received by the Administrator. The Administrator may extend the period for providing the notification by 90 days (30 days in the case of a claim regarding Disability, which may be extended an additional 30 days) if special circumstances require an extension of time for processing the claim and if written notice of such extension and circumstance is given to such person within the initial 90 day period (45 day period in the case of a claim regarding Disability). If such notification is not given within such period, the claim will be considered denied as of the last day of such period and such person may request a review of his or her claim.

- (b) Review Procedure. Within 60 days (180 days in the case of a claim regarding Disability) after the date on which a person receives a written notification of denial of claim (or, if written notification is not provided, within 60 days (180 days in the case of a claim regarding Disability) of the date denial is considered to have occurred), such person (or his or her duly authorized representative) may (i) file a written request with the Administrator for a review of his or her denied claim and of pertinent documents and (ii) submit written issues and comments to the Administrator. The Administrator will notify such person of its decision in writing. Such notification will be written in a manner calculated to be understood by such person and will contain specific reasons for the decision as well as specific references to pertinent Plan provisions. The notification will explain that the person is entitled to receive, upon request and free of charge, reasonable access to and copies of all pertinent documents and has the right to bring a civil action following an adverse decision on review. The decision on review will be made within 60 days (45 days in the case of a claim regarding Disability). The Administrator may extend the period for making the decision on review by 60 days (45 days in the case of a claim regarding Disability) if special circumstances require an extension of time for processing the request such as an election by the Administrator to hold a hearing, and if written notice of such extension and circumstances is given to such person within the initial 60-day period (45 days in the case of a claim regarding Disability). If the decision on review is not made within such period, the claim will be considered denied.

If the claim is regarding Disability, and the determination of Disability has not been made by the Social Security Administration, the Railroad Retirement Board, or under the Plan Sponsor's long-term disability plan, the person may, upon written request and free of charge, also receive the identification of medical or vocational experts whose advice was obtained in connection with the denial of a claim regarding Disability, even if the advice was not relied upon.

Before issuing any decision with respect to a claim involving Disability, the Administrator will provide to the person, free of charge, the following information as soon as possible and sufficiently in advance of the date on which the response is required to be provided to the person to allow the person a reasonable opportunity to respond prior to the due date of the response:

- (i) Any new or additional evidence considered, relied upon, or generated by the Administrator or other person making the decision; and
  - (ii) A new or addition rationale if the decision will be based on that rationale.
- (c) Exhaustion of Claims Procedures and Right to Bring Legal Claim. No action at law or equity shall be brought more than one year after the Administrator's affirmation of a denial of a claim, or, if earlier, more than four years after the facts or events giving rising to the claimant's allegation(s) or claim(s) first occurred.

#### **8.4.     *Electronic Communications***

If a provision of this Plan or applicable law requires that a Participant, spouse, surviving spouse, Beneficiary or other person either (i) receive a written notice or other written communication, or (ii) make an election in writing, the Plan Administrator, the Employer or other person shall be permitted to use an electronic medium to provide such notice or other communication or to receive such election form, to the extent permitted by, and in accordance with, the requirements of Treasury Regulations Section 1.401(a)-21 and other applicable law.

## **Article IX - Miscellaneous**

### **9.1. *Amendment and Termination***

The Plan Sponsor may amend, modify, or terminate this Plan at any time, and from time to time, without the consent of any person, including but not limited to, Participants and Beneficiaries under the Plan. Upon a termination of this Plan, the Accounts of Participants shall become payable to the Participants within 60 days of the termination date. Amendments to the Plan shall be approved or authorized by the Board; and all such amendments shall be made in writing and signed by an authorized member of the Board.

### **9.2. *No Right of Employment***

Nothing contained herein shall be deemed to give a Participant the right to be retained in the service or employment of the Employer or to interfere with the rights of the Employer to discharge him at any time or to create any rights in the Plan or obligation on the part of the Employer except as expressly set forth herein.

### **9.3. *Taxes***

Income, employment, and any other applicable taxes shall be withheld from any distribution hereunder to the extent that the Administrator believes is required by law.

In addition, any applicable employment or other payroll taxes that are a liability of a Participant shall be deducted from the amounts to be credited to his Account under the terms of this Plan, or deducted from the amounts otherwise credited to his Account, at the time such taxes are due, irrespective of whether the Employee has terminated employment or otherwise become entitled to a distribution under this Plan; provided, however, that no such deduction from the Account or the amounts creditable thereto shall be made if the applicable taxes are withheld from other compensation payable to the Participant.

It is the intention of the Employer that amounts payable to a Participant or a Beneficiary under this Plan shall not be included in the gross income of the Participant or Beneficiary until such time as payments are made under the provisions of this Plan. However, neither the Plan Sponsor, the Employer, nor the Board, nor the Administrator, guarantee any tax consequences associated with this Plan.

#### **9.4. *Non-Alienation of Benefits***

Except as provided below, no benefits under this Plan shall at any time be subject in any manner to alienation or encumbrance. If a Participant or Beneficiary shall attempt to, or shall, alienate or in any way encumber his benefits under this Plan, or any part thereof, or if by reason of his bankruptcy or other event happening at any time any such benefits would otherwise be received by anyone else or would not be enjoyed by him, his interest in all such benefits shall automatically terminate and the same shall be held or applied to or for the benefit of such person, his spouse, children, or other dependents as the Administrator may select.

Notwithstanding the foregoing, all or part of a Participant's Account shall be paid to an alternate payee or payees pursuant to a "Qualified Domestic Relations Order" ("QDRO"). For purposes of this Plan, an order will be considered a QDRO only if it meets all of the following requirements:

- (a) The order is a domestic relations order within the meaning of Code Section 414(p)(1)(B).
- (b) The order assigns to the alternate payee or payees all or part of the payments that are due to a Participant under this Plan.
- (c) The order specifies the name and address of the alternate payee.

An order may require that payment be made to the alternate payee or payees prior to the date that of a Participant's Severance from Employment or death.

Notwithstanding the foregoing, no payment shall be made hereunder to an alternate payee unless and until the alternate payee provides to the Administrator the alternate payee's social security number and any other information the Administrator may reasonably require.

#### **9.5. *Payment of Benefits to Others***

If a Participant or any Beneficiary to whom a benefit is payable is unable to care for his affairs because of illness or accident, any payment due (unless prior claim therefor shall have been made by a duly qualified guardian or other legal representative) may be paid to the spouse, parent, brother, or sister, or any other individual deemed by the Administrator to be maintaining or responsible for the maintenance of such person. Any payment made in accordance with the provisions of this Section shall be a complete discharge of any liability of the Employer with respect to the benefit so paid.

#### **9.6. *Claims of Other Persons***

The provisions of this Plan shall in no event be construed as giving any person, firm or corporation any legal or equitable right against the Plan Sponsor, an Affiliate, or their officers, employees, trustees or directors, except any such rights as are specifically provided for in this Plan or are hereafter created in accordance with the terms and provisions of this Plan.

**9.7. *Severability***

The invalidity or unenforceability of any particular provision of this Plan shall not affect any other provision hereof, and this Plan shall be construed in all respects as if such invalid or unenforceable provision were omitted therefrom.

**9.8. *Governing Law***

This agreement shall be governed and construed by the laws of the state specified in Section 9.01 of the Adoption Agreement to the extent that federal law does not supersede such state law.

**9.9. *Captions***

Captions are for reference only and do not limit or comment upon the text of a section or article.

**9.10. *Successors***

This Plan shall be binding on all Participants, Beneficiaries, and anyone claiming through any of them.