

KENTUCKY EMPLOYEES'
457 DEFERRED COMPENSATION PLAN
(As Amended and Restated Effective January 1, 2004)

The Kentucky Employees' 457 Deferred Compensation Plan (the "Plan") was originally adopted as of June 21, 1974, and last amended and restated effective January 1, 1998, further amended by Amendments No. 1-3, all effective January 1, 2002. The Board of Trustees again amends and restates the Plan in the form and manner contained herein, effective January 1, 2004.

The Plan consists of the provisions set forth in this document and is applicable to each Eligible Employee and Independent Contractor who elects to participate in the Plan. The Plan is effective as to each such Eligible Employee or Independent Contractor upon the date he becomes a Participant by signing and filing the Participation Agreement referred to herein with the Administrator or its designee. It is intended that the Plan qualify as an eligible state deferred compensation plan within the meaning of Section 457 of the Code.

ARTICLE I

Definitions

- 1.01. **ACTIVE PARTICIPANT** means an Eligible Employee or Independent Contractor who has entered into a Participation Agreement with a Participating Employer and has not terminated the deferral of Compensation under the Participation Agreement.
- 1.02. **ADMINISTRATOR** means the Authority.
- 1.03. **AGE 50 CATCH-UP AMOUNT** means the Annual Deferral for a Participant for a taxable year permitted under Code Section 414(v) and elected in accordance with Section 2.06.
- 1.04. **AMOUNTS DEFERRED** means the total Annual Deferrals under Section 2.02, in current and prior years, adjusted for gain or loss.
- 1.05. **ANNUAL DEFERRALS** means, with respect to a taxable year, the amount of compensation deferred under Section 2.02.
- 1.06. **AUTHORITY** means the Kentucky Public Employees' Deferred Compensation Authority. Pursuant to Executive Order No. 94-1235 of the Governor of Kentucky, dated November 29, 1994, Relating to the Reorganization of the Kentucky Public Employees Deferred Compensation System (the "Executive Order"), the Kentucky State Public Employees Deferred Compensation System was renamed the Authority. In addition, pursuant to the Executive Order, the Authority shall be governed by a Board of Directors (hereinafter referred to as the "Board of Trustees"), and the Trustee shall appoint an executive director of the Authority, who shall serve at the pleasure of the Trustee.
- 1.07. **BENEFICIARY** means the person or entity properly designated under Section 4.02 by a Participant to receive the benefits, if any, payable upon the Participant's death following proper notice of death to the Administrator.

1.08. CODE means the Internal Revenue Code of 1986, as amended.

1.09. DEFERRED ACCOUNT means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, any transfers for the Participant's benefit credited to a Participant's Transfer Account, any distribution made to the Participant or the Participant's Beneficiary, and any loans recorded in a Participant's Loan Account. If a Participant has more than one Beneficiary at the time of the Participant's death and payments are made on a periodic basis, then a separate Deferred Account shall be maintained for each Beneficiary. The Account Balance includes any account established by plan-to-plan transfers made to a Participant under Section 3.07, and an account established for a Beneficiary after a Participant's death.

1.10. ELIGIBLE EMPLOYEE means any individual who performs services for a Participating Employer who is eligible to participate under KRS 18A.250. Individuals who do not perform services for a Participating Employer may not defer Compensation under the Plan.

1.11. EMPLOYER means (i) the Sponsoring Employer, its agencies, departments, subdivisions or instrumentalities, or any combination of the foregoing; (ii) a Public Employer; and (iii) a School Employer, for whom services are performed by an Active Participant or Independent Contractor. The performance of services as an Independent Contractor for a Participating Employer is treated as the performance of services for an Employer.

1.12. INACTIVE PARTICIPANT means any formerly Active Participant who is not currently having Compensation deferred but who retains a Deferred Account.

1.13. INCLUDIBLE COMPENSATION or COMPENSATION means, with respect to a taxable year, the term "participant's compensation" pursuant to Code Section 415(c)(3) for services performed for an Employer that is includible in the Employee's gross income, and for purposes of this Section, Includible Compensation shall include back pay, accumulated sick pay, accumulated annual leave, and compensatory time which is payable to a Participant by his Employer. Provided, however, Includible Compensation shall not include (1) any bonus payable or sick leave cash-out by an Employer other than at the time of a Participant's Severance from Employment; and (2) paid time off, severance payable or other nonroutine forms of Compensation payable to a Participant, excluding back pay awards.

1.14. INDEPENDENT CONTRACTOR means any individual receiving cash compensation from a Participating Employer for whom services are rendered pursuant to one or more written or oral contracts, if such individual is not an employee.

1.15. INVESTMENT OPTION means any fixed contract fund, mutual or money market funds or other investment options as may be designated by the Trustee from time to time comprising the Trust Fund.

1.16. JOINDER AGREEMENT means the agreement prescribed by the Administrator by which a Public Employer adopts the Plan and Trust as provided in Article VII.

1.17. LOAN ACCOUNT means the separate account established and maintained on behalf of a Participant to reflect his interest in the Trust Fund attributable to his repayment of his Plan loan.

1.18. NORMAL RETIREMENT AGE means (i) the age elected by the Participant for purposes of making Special Catch-up Contributions under Section 2.06(b), or (ii) if no such election is made, the later of age 70-1/2 or the age at which the Participant has a Severance from Employment. Normal Retirement Age shall be any age that is on or after the earlier of age 65 or the age at which Participants have the right, under the Participant's basic defined benefit plan, to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. In the absence of both an applicable defined benefit plan for a Participant and the Participant's election of Normal Retirement Age, Normal Retirement Age shall be age 65. Qualified police and firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code) may designate a Normal Retirement Age that is between age 40 and 70-1/2.

1.19. PARTICIPANT means any Active Participant or Inactive Participant.

1.20. PARTICIPATING EMPLOYER means all of the following: (i) the Sponsoring Employer, its agencies, departments, subdivisions or instrumentalities, or any combination of the foregoing; (ii) a School Employer; and (iii) a Public Employer which adopts this Plan pursuant to Article VII, whose Eligible Employees and Independent Contractors make Annual Deferrals to the Plan and which shall be subject to and bound by the terms and provisions of this Plan.

1.21. PARTICIPATION AGREEMENT means the form prescribed by the Administrator (or such paperless media as approved by the Administrator) which an Eligible Employee or Independent Contractor completes to enroll and participate in the Plan and to make Annual Deferrals to the Plan.

1.22. PLAN YEAR means the 12-month period beginning on the first day of January and ending on the last day of the immediately following December.

1.23. PUBLIC EMPLOYER means a Kentucky city, county, urban county government, political subdivision or their departments, agencies, instrumentalities, governmental units or any combination of the foregoing, for which services are performed by a Participant or Independent Contractor.

1.24. SCHOOL EMPLOYER means the Sponsoring Employer's public school districts and systems and universities for which services are performed by a Participant or Independent Contractor.

1.25. SEVERANCE FROM EMPLOYMENT means, solely for the purposes of this Plan and without effect for any other employee benefit of a Participant, severance from employment of a Participant with his Employer or any Participating Employer on account of the Participant's death, retirement, or other severance from employment reasonably determined by a Participant's Employer. An Independent Contractor is considered to have a severance from employment with his Employer

upon the expiration of the contract (or, in the case of more than one contract, all such contracts expire), under which services are performed for an Employer if the expiration constitutes a good faith and complete termination of the contractual relationship.

1.26. **SPECIAL CATCH-UP AMOUNT** means the Annual Deferral for a Participant for a taxable year permitted under Code Section 457(b)(3) and elected in accordance with Section 2.06 to the extent the amount of the Annual Deferral for the Participant for the taxable year is permitted to exceed the plan ceiling applicable under Code Section 457(b)(2).

1.27. **SPONSORING EMPLOYER** means the Commonwealth of Kentucky.

1.28. **TRUST** means the Commonwealth of Kentucky Employees' 457 Deferred Compensation Trust, as it may be amended from time to time.

1.29. **TRUST FUND** means all cash, securities and other property held by the Trustee as Annual Deferrals and all securities or other property purchased or acquired therewith or therefrom, together with any increase, accretion, or accumulation thereon, and any income therefrom, less distributions, payments or expenditures as authorized pursuant to the terms of the Plan and Trust.

1.30. **TRUSTEE** means the Board of Trustees of the Plan.

1.31. **UNFORESEEABLE EMERGENCY** means severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant's spouse or the Participant's dependent (as defined in Section 152(a) of the Code, and for taxable years beginning on or after January 1, 2005, without regard to Section 152(b)(1), (b)(2), and (d)(1)(B) of the Code), 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, for example, as a result of a natural disaster), or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant; including, for example: (1) payment of funeral expenses of a spouse or dependent (as defined above); (2) imminent foreclosure of or eviction from the Participant's primary residence; and (3) medical expenses such as non-refundable deductibles and prescription drug medication. Foreseeable personal expenditures normally budgetable, such as a down payment on the Participant's primary residence, the purchase or repair of an automobile, college or other education expenses, etc., will not constitute an Unforeseeable Emergency.

1.32. **VALUATION DATE** means each business day of the Plan Year on which markets of publicly-traded securities are open.

ARTICLE II

Election to Defer Compensation

2.01. Effective Date of Election.

(a) Except as provided in subsection (b) below, an Eligible Employee's or Independent Contractor's Includible Compensation will be deferred as soon as practical after his execution of a Participation Agreement; provided that Includible Compensation may be deferred for any calendar month only if a Participation Agreement has been entered into before the first day of the month in which the Includible Compensation is paid or made available.

(b) This Section shall be effective July 1, 2005.

(i) Annual Deferrals of Special Compensation (defined below) may be made for former employees and employees on qualified military leave only if a Participation Agreement providing for the deferral is entered into before the beginning of the month in which the amounts of Special Compensation are paid or otherwise made available.

(ii) For purposes of this Section, Special Compensation shall mean (A) payments that, absent a severance from employment, would have been paid to the employee while the employee continued in employment with his Employer and are regular compensation for services during the employee's regular working hours, compensation for services outside the employee's regular working hours (such as overtime, compensatory time, or shift differential) or other similar compensation and amounts are paid within 2-½ months following severance from employment; (B) payments for accrued bona fide sick, vacation, or other leave, but only if the employee would have been able to use the leave if employment had continued and amounts are paid within 2-½ months following severance from employment; and (C) compensation relating to qualified military service under Code Section 414(u).

2.02. Deferral Election. Upon execution of the Participation Agreement, the Participant shall participate in this Plan and consent to his Participating Employer deferring the amount or rate specified in the Participation Agreement from the Participant's Includible Compensation and contributing such amount to the Trust Fund for such pay periods as described in the Participation Agreement. No minimum Annual Deferral is required of a Participant. The Participant agrees to be bound by the terms of the Plan and the provisions of the contracts under such Investment Options designated by him under Section 3.02 to the extent that such provisions are not in conflict with the Plan. Notwithstanding anything under this Section 2.02 to the contrary, a Participant who receives a withdrawal under Section 4.03 of this Plan, or under Section 6.9 of the Commonwealth of Kentucky Employees' 401(k) Deferred Compensation Plan ("401(k) Plan") shall not be entitled to defer any amounts of Includible Compensation under the Plan until the first day of the month which is at least six full months after receipt of the withdrawal.

2.03. Participant Directed Changes.

(a) The election of an Eligible Employee or Independent Contractor to participate under the Plan is irrevocable as to all amounts actually deferred under the Participation Agreement. The Participant may, by such written forms or paperless media as the Administrator may prescribe, do any of the following: (i) change the specification of any Investment Options as to amounts to be deferred in the future or with respect to Exchanges (defined below); (ii) discontinue deferrals to the Plan; (iii) change the amount or rate of Includible Compensation to be deferred; or (iv) change the payment option selected for the payment of benefits if payment of benefits at any time.

(b) Except for changes to a Participant's Investment Option(s), such changes as provided in Section 2.03(a) shall be effective as soon as administratively practicable, but not earlier than the first day of the following calendar month. Any such Participant directed changes may be subject to a service charge determined by the Administrator and assessed against a Participant's Deferred Account.

2.04. Exchanges. A Participant (or Beneficiary if the Participant has died) may change the designation of an Investment Option on a written form or by paperless media provided by the Administrator or such other manner as the Administrator permits, an "Exchange". Any such Exchange shall be effective prospectively only and shall be subject to the provisions of such Investment Option relating to Exchanges; in addition, exchanges shall be made subject to applicable exchange or trading restrictions adopted by the Trustee or imposed by the Investment Options. In the event that any such provision in any Investment Option restricts or penalizes Exchanges in excess of a stated dollar amount or otherwise, the Administrator shall either limit the permitted Exchanges by notice to each Participant seeking to make any such Exchange or allocate the total restrictions or penalties incurred during a Plan Year in such manner as the Administrator determines. Any Exchanges may be subject to a service charge determined by the Administrator and assessed against a Participant's Deferred Account.

2.05. Resumption of Participation.

(a) A Participant who wishes to start his Annual Deferrals in the Plan after having discontinued deferrals for any reason may subsequently recommence Annual Deferrals and become an Active Participant by following the procedure set forth in Section 2.01.

(b) If a Participant has a Severance from Employment and is subsequently re-employed by a Participating Employer prior to commencement of fixed period or life expectancy payouts ("Periodic Payments"), then the Participant's right to receive a benefit payment shall be suspended until the Participant has a Severance from Employment following his re-employment. However, if a Participant has a Severance from Employment and is subsequently re-employed by a Participating Employer and Periodic Payments have commenced, then the Participant may continue to receive Plan benefits subsequent to re-employment; under such circumstances, the re-employed Participant may not make Annual Deferrals. Any such Participant receiving such Periodic Payments may elect to discontinue Periodic Payments and initiate Annual Deferrals at such time as permitted by the Administrator.

2.06. Maximum Deferrals.

(a) Except as provided in subsection (b), the Annual Deferral amount (the “plan ceiling”) for any taxable year beginning on or after January 1, 2002 shall not exceed the lesser of:

(i) The applicable dollar amount specified in Code Section 457(e)(15): \$11,000 for 2002; \$12,000 for 2003; \$13,000 for 2004; \$14,000 for 2005; and \$15,000 for 2006 and thereafter. After 2006, the \$15,000 amount shall be adjusted for cost-of-living in accordance with income tax regulations.

(ii) 100% of a Participant’s Includible Compensation for the taxable year.

(b) (1) Special 457 Catch-Up Limitation. If the applicable year is one of a Participant’s last three calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this section exceeds the amount computed under Sections 2.06(a) and (c), then the Annual Deferral Limit under this Section shall be the lesser of:

(i) an amount equal to two times the Section 2.06(a) applicable dollar amount for such year; or

(ii) the sum of:

(I) an amount equal to (A) the aggregate Section 2.06(a) limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(II) an amount equal to (A) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 2.06(b) and (c)), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

(2) Pre-Participation Years. In applying Section 2.06(b)(1), a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year, and (ii) Compensation deferred, if any, under the Plan during the year was subject to the basic annual limitation described in Section 2.06(a) or any other plan ceiling required by Code Section 457(b).

(3) Pre-2002 Coordination Years. For purposes of Section 2.06(b)(1)(ii)(II)(B), “contributions to Pre-2002 Coordination Plans” means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is

allowed because of a contribution to an organization described in Code Section 501(c)(18), including plans, arrangements or accounts maintained by an Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Code Section 2.06(b)(1)(ii)(II)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code Section 457(b)(2) for that year.

(4) Disregard Excess Deferral. For purposes of Sections 2.06(a), (b), and (c), an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent excess deferrals under the plan are distributed, as described in Section 5.10. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

(c) (1) Beginning January 1, 2002, Participants may make Age 50 Catch-up Amounts in accordance with Code Section 414(v) which contributions shall be in addition to Annual Deferrals under Section 2.06(a). The maximum amount of Age 50 Catch-up Amounts for a Participant for a taxable year shall be: \$1,000 for 2002; \$2,000 for 2003; \$3,000 for 2004; \$4,000 for 2005; and \$5,000 for 2006 and thereafter. After 2006, the \$5,000 amount shall be adjusted for cost-of-living.

(2) In no event may a Participant make both a Special Catch-up Amount and Age 50 Catch-up Amount in the same taxable year. A Participant who is eligible for Age 50 Catch-up for a year and for when the year is also one of the Participant's last three taxable years ending before the Participant attains Normal Retirement Age is eligible for the larger of --

(A) the plan ceiling under Section 2.06(a) and 2.06(c) (disregarding the Special Catch-up Amount); or

(B) the plan ceiling under Section 2.06(a) and (b)(1), the Special Catch-up Amount (disregarding Age 50 Catch-up Amount).

2.07. Protection of Persons who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with his Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with his 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 right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

ARTICLE III

Accounts and Reports

3.01. Establishment of Deferred Accounts.

(a) The Administrator shall establish a Deferred Account for each Participant to which shall be credited or charged, as the case may be, a Participant's Annual Deferrals under the Plan (or amounts transferred to the Plan from another plan under Section 3.07) and any increase or decrease in the Investment Options specified in the Participation Agreement or any amendment thereto. All amounts representing Amounts Deferred shall be held in Trust as part of the Trust Fund. All Investment Options offered under this Plan must be offered by persons, companies, or entities authorized and duly licensed by the Commonwealth of Kentucky and applicable federal agencies regulating such investments to do business in the Commonwealth of Kentucky. Benefits payable and the Deferred Account determined by reference to Investment Options specified by a Participant shall be measured by Investment Options beginning as of the date set by the Administrator.

(b) For convenience and to facilitate an orderly administration of the Plan, the Administrator shall maintain all records with respect to each Participant's Amounts Deferred. All interest, dividends, charges for premiums and administrative expenses, and changes in value applicable to each Participant's Amounts Deferred shall be credited or charged to the account as they occur. All reports to the Participant shall be based on fair market value as of the reporting date. A Participating Employer shall not be responsible for any decrease in value of a Participant's Deferred Account resulting from capital or market changes or any other changes occurring in the Investment Option of the Participant's Deferred Account. The Administrator may assess reasonable service charges against all or any portion of the Deferred Accounts to defray costs associated with the implementation and administration of the Plan, provided such charges shall be imposed at such time and in such manner as approved by the Trustee.

3.02. Investment Options. Participants may select any of the Investment Options by which the amount of their Amounts Deferred shall be determined.

3.03. Funding of Deferred Accounts. Upon receipt of Annual Deferrals by the Trustee, the Participant's Deferred Account shall be funded with such Annual Deferrals to the Trust, and a statement shall be furnished at least annually and within ninety (90) days after the end of each calendar year. Amounts Deferred shall be contributed to the Trust within fifteen (15) business days following the end of the month in which the amount would otherwise have been paid to the Participant.

3.04. Reports. Within ninety (90) days after the end of the Plan Year, the Administrator shall file with the Sponsoring Employer upon request a written report of the assets of the Plan, a schedule of all receipts and disbursements, and a report of all material transactions of the Plan during such year.

3.05. Inspection of Records. The Administrator's records shall be open to inspection during normal business hours by a Participating Employer or any Participant, or their designated

representatives, provided that this Section does not provide authority for a Participant or his representatives to inspect the individual records of other Participants or Beneficiaries.

3.06. Correction of Inadvertent Error. Notwithstanding any other provision of this Plan, if either (1) the Deferred Account of any Participant is inadvertently credited or charged with an incorrect amount for any Plan Year, or (2) a Participant is inadvertently excluded from participation in any Plan Year and his Employer fails to defer amounts that such Participant timely and properly elected to defer, then the Administrator shall correct such error(s) as soon as is administratively feasible after the discovery of the error in such manner as determined by the Administrator.

3.07. Acceptance of Transfer from Other Plans.

(a) A Participant may make a written request to the Administrator that he be entitled to cause to be transferred to the Plan an amount in cash ("Transfer Amount") to which such Participant is entitled under an eligible Code Section 457(b) governmental plan ("Eligible Governmental Plan") if the following conditions are met:

- (i) the transferor plan provides for transfers;
- (ii) the Participant or Beneficiary whose amounts deferred are being transferred will have a Deferred Account immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer;
- (iii) in the case of a transfer for a Participant, the Participant has had a Severance from Employment with the transferring employer and is performing services for an Employer (or, for a transfer out of the Plan pursuant to Section 4.05, the entity maintaining the receiving plan); and
- (iv) the Participant's account under the Eligible Governmental Plan shall not include an eligible rollover distribution account for transfer to the Plan.

Such written request shall contain information concerning the evidence satisfactory to the Administrator that the transferring plan constitutes an Eligible Governmental Plan. The Administrator, in its sole discretion, shall determine whether or not the Participant shall be entitled to cause a Transfer Amount to be made. The Administrator shall establish and maintain a Deferred Account on behalf of each Participant who causes a Transfer Amount to be made.

(b) Upon approval by the Administrator, the Plan shall accept all plan assets from another Eligible Governmental Plan upon plan merger if the following conditions are met --

- (i) the transferring governmental plan is within the Commonwealth of Kentucky;
- (ii) all of the assets of the transferor plan are transferred to this Plan;

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

(iv) the Participants or Beneficiaries whose amounts deferred are being transferred shall not be eligible for additional Annual Deferrals in this Plan unless they are performing services for an Employer (or for a transfer out of the Plan pursuant to Section 4.05, the entity maintaining the receiving plan).

(c) Upon approval of the Administrator, the Plan shall accept amounts deferred from another Eligible Governmental Plan if the following conditions are met:

(i) the transfer is from an Eligible Governmental Plan of the Participant's Employer;

(ii) the transferor plan provides for transfers;

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

(iv) the Participant or Beneficiary whose amounts deferred are being transferred is not eligible for additional Annual Deferrals under this Plan unless the Participant or Beneficiary is performing services for an Employer (or for a transfer out of the Plan pursuant to Section 4.05, the entity maintaining the receiving plan).

(d) Any amount transferred pursuant to this Section shall be credited to the Participant's Transfer Account and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Section 2.06.

3.08. Provisions of Plan and Trust Binding on Participants. Upon becoming a Participant, a Participant shall be bound then and thereafter by (i) the provisions of his Participation Agreement, (ii) the terms of the Plan and the Trust, including all amendments thereto, and (iii) if applicable, the Joinder Agreement of his Participating Employer.

ARTICLE IV

Benefits

4.01. Payment of Benefits.

(a) Benefits shall be paid in accordance with this Article, and benefits shall not be paid to a Participant or Beneficiary before the Participant has a Severance from Employment or when the

Participant attains age 70-1/2, if earlier. Additionally, the time for commencement and form of benefit payment shall not be inconsistent with the applicable requirements of Section 457(d) of the Code. Benefits payable to the Participant shall be equal to the value of his Deferred Account as determined as of the preceding Valuation Date. A Participant shall be paid as soon as administratively practicable following the acceptance by the Administrator of the Participant's withdrawal request and receipt by the Trust of the Participant's final Annual Deferrals to the Plan. For distribution calendar years beginning on or after January 1, 2004, the Participant's required beginning date shall be the April 1 of the year following the Participant's attainment of age 70-1/2.

(b) A Participant shall elect his payment option pursuant to which benefits will be paid from the following benefit options:

- (i) a total lump sum;
- (ii) partial lump sum;
- (iii) periodic payments based on the life expectancy of the Participant;
- (iv) periodic payments over a specified period of time;

(v) Eligible Rollover Distribution to an Eligible Retirement Plan pursuant to subsection (c) below; and

(vi) any other form approved by the Administrator and not inconsistent with the provisions of the Plan and Sections 401(a)(9) and 457 of the Code.

(c) A Participant shall be entitled to make an Eligible Rollover Distribution of his Deferred Account to an Eligible Retirement Plan, if entitled pursuant to Section 4.01(a), in accordance with the following:

(1) For purposes of the direct rollover provisions in Section 4.01(b)(v) of the Plan, an Eligible Retirement Plan shall mean: (i) an individual retirement account described in Code Section 408(a); (ii) an individual retirement annuity described in Code Section 408(b), other than an endowment contract; (iii) a qualified trust defined under Code Section 402(c)(8)(A); (iv) an annuity plan described in Code Section 403(a); (v) an annuity contract described in Code Section 403(b); and (vi) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

(2) Eligible Rollover Distribution shall mean any distribution of all or any portion of the balance to the credit of a Participant, excluding (i) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made (I) for the life (or life expectancy) of the Participant or joint lives (or joint life expectancies) of the Participant and his Beneficiary, or (II) for a specified period of 10 years or more; (ii) minimum distributions required under Section 401(a)(9) of the Code; (iii) any portion of a distribution that is not includible in gross

income; (iv) Participant loans that are deemed distributions; (v) any distribution which is made upon hardship of the Participant; and (vi) similar items designated by the Commissioner of Internal Revenue in revenue rulings, notices, and other guidance of general applicability.

(d) No benefit payment option shall be provided which fails to comply with the following subparagraphs (A) and (B):

(A) All distributions required under this Section 4.01(d)(A) will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

(1) Time and Manner of Distribution.

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

(b) Death of Participant Before Distributions Begin. For Beneficiary payments commencing on or after January 1, 2002, if the Participant dies before distributions begin, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the date of the Participant's death. If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to either the Participant or the surviving spouse begin, this Section 4.01(d)(A)(1)(b) shall apply as if the surviving spouse were the Participant.

(c) Forms of Distributions. As of the first distribution calendar year, distributions will be made in accordance with Sections 4.01(d)(A)(2) and (3).

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

(a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(i) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 4.01(d)(A)(2)(b) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(3) Required Minimum Distributions After Participant's Death.

(a) Death On or After Date Distributions Begin.

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

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

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

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

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

(b) 5-Year Rule. For Beneficiary payments commencing on or after January 1, 2002, and notwithstanding any provision of this Section 4.01(d)(A)(3) to the contrary, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the date of the Participant's death.

(4) Definitions.

(a) Designated Beneficiary. The individual who is designated as the beneficiary under Section 4.02 of the Plan and is the designated beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 4.01(d)(A)(1)(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(c) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d) Participant's Deferred Account. The Deferred Account as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated to the Deferred Account as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The Deferred Account for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(B) No benefit options shall be provided which are not permitted under the Administrator's policy with respect to minimum number and amounts of payments in conformance with the requirements of Code Section 457(d). All benefit payments shall be made in cash.

(e) A Participant shall receive a distribution of the total amount payable to the Participant under the Plan if the following requirements are met:

(A) the total amount payable to the Participant under the Plan does not exceed \$5,000 (or the dollar limit under Section 411(a)(11) of the Code, if greater),

(B) the Participant has not previously received a distribution pursuant to this Section,

(C) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the distribution, and

(D) the Participant elects to receive the distribution.

(f) If the requirements of Section 4.01(e)(B) and (C) are met and the amount in subsection (A) does not exceed \$500, then the Plan shall distribute the Deferred Account to the Participant or Beneficiary (without their consent) at such time as determined by the Administrator, notwithstanding subsection (D) above or the Participant's employment status.

4.02. Designated Beneficiary.

(a) A Participant shall have the right to file with the Administrator a written Beneficiary Designation Form (or a change to such form) designating a Beneficiary(ies) or Contingent Beneficiary(ies) who shall receive the Participant's benefits payable under this Plan, provided that written notice of the Participant's death is received by the Administrator. The form for this purpose shall be provided by the Administrator and will have no effect until it is signed, filed with the Administrator by the Participant and accepted by the Administrator. The last effective Beneficiary Designation Form shall supersede all prior designations made by a Participant. If a benefit becomes payable upon the death of a Participant and no beneficiary has been properly designated, or if a designated beneficiary shall have predeceased the Participant and there are no surviving Primary or Contingent Beneficiaries identified on the Participant's Beneficiary Designation Form, then the Participant shall be deemed to have designated the following beneficiaries (if living at the time of the death of the Participant in the following order of priority:

- (i) the spouse of the Participant;
- (ii) the children, including adopted children, of the Participant, in equal shares,
- (iii) the parents of the Participant, in equal shares, and
- (iv) the Participant's estate.

(b) Payment of Plan benefits to Beneficiaries shall be made in accordance with Section 4.01(b), except that in the event a Beneficiary dies prior to final distribution of all Plan benefits, then the Administrator shall pay a single sum representing the final distribution to the Beneficiary's estate as soon as administratively practicable following death. A Beneficiary shall not be permitted to designate any person or entity to receive Plan benefits in the event a Beneficiary dies before complete distribution of a Participant's Deferred Account has been made to such Beneficiary. The Administrator shall have no obligation, or become liable to anyone, for payment of a Participant's Deferred Account until and unless the Administrator receives written notice of a Participant's death.

4.03. Unforeseeable Emergency Withdrawal.

(a) Notwithstanding any other provision herein, in the event of an Unforeseeable Emergency, a Participant may request the Administrator to pay benefits to him prior to Severance from Employment or age 70-1/2. If the application for payment is approved by the Administrator, a lump sum payment shall be effected as soon as administratively practicable following such

approval. Benefits to be paid shall be limited strictly to the amount reasonably necessary to meet the Unforeseeable Emergency (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution) to the extent such Unforeseeable Emergency cannot be relieved:

- (1) through reimbursement or compensation by insurance or otherwise;
- (2) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause financial hardship;
- (3) by cessation of deferrals under the Plan; or
- (4) by borrowing a portion or all of a Participant's Deferred Account pursuant to Plan Section 4.06 and Section 6.10 of the 401(k) Plan.

(b) The decision of the Administrator concerning payment of benefits under this Section shall be final. Any remaining benefits shall be paid in accordance with Section 4.01.

4.04. Elections by Beneficiary. Beneficiaries shall have the election rights provided in Section 4.01(b) after the Participant's death and prior to the date on which benefits are first paid -- subject to compliance with applicable law and regulation and Section 4.01(d)(B). In no event shall any option be made available to a Beneficiary which (a) is in conflict with the requirements of Section 4.01(b) of the Plan, or (b) is not provided for on a benefit payment option election form.

4.05. Transfer of Benefit to Another Plan. Notwithstanding any provision in the Plan, and upon approval of the Administrator, the Trustee shall, at the written direction of the Participant, transfer an amount in cash representing the value of the Deferred Account of such Participant to another Eligible Governmental Plan in accordance with the transfer rules of Section 3.07 treating this Plan as the transferor plan.

4.06. Loans.

(a) Availability. The Plan shall permit the making of loans by uniform application of this Section and the Plan's loan administrative procedures. Upon application by a Participant, such Participant may direct the Trustee to make a loan or loans to such Participant upon the following terms and conditions and Plan loan procedures. The minimum amount for a loan is \$1,000.

(b) Maximum Loan Amount. No loan to a Participant hereunder may exceed the lesser of:

(i) \$50,000, reduced by the greater of (I) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made, or (II) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period), or

(ii) One-half of the value of the Participant's vested Deferred Account (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this section, any loan from any other plan maintained by an Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan under this section to exceed the amount that would otherwise be permitted in the absence of this paragraph.

(c) Terms of Loan. All such loans shall be considered investments of the Participant's Deferred Account and accounted for in a separate Loan Account. Each Participant to whom a loan is made shall execute a legally enforceable agreement (set forth in writing, or in such other form as may be approved by the Commissioner of the Internal Revenue Service) accepted by the Administrator for such loan. The terms of the loan shall:

(i) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the borrower is on a bona fide unpaid leave of absence for a period not to exceed one year for leaves other than qualified military leave within the meaning of Code Section 414(u) or for the duration of a leave which is due to qualified military service;

(ii) require that the loan shall be repaid within five years; and

(iii) provide for interest at a rate equal to one percentage point above the prime rate as published in the Wall Street Journal on the first business day of the calendar quarter in which the loan is approved by the Administrator.

(d) Security for Loan; Default.

(i) Security. Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.

(ii) Default. In the event that a Participant fails to make a loan payment under this section within ninety (90) days after the date such payment is due, a default on the loan shall occur. In the event of such default, (I) all remaining payments on the loan shall be immediately due and payable; and, (II) the Participant shall be permanently ineligible for any future loans from the Plan. In the case of default on a loan to a Participant, the Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan on the date of Severance from Employment. In addition, the Administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the Deferred Account of the Participant.

(iii) On Death. Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his estate shall be

his Beneficiary as to the portion of his interest in the Plan invested in such loan with the Beneficiary(ies) as to the remainder of his interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan.

(e) Repayment. The Participant shall be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing his Employer to make payroll deductions from his Compensation as long as the Participant is an Employee and to transfer such payroll deduction amounts to the Trustee in payment of such loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed; provided, however, a Participant may prepay the entire outstanding balance of his loan at any time (but may not make a partial prepayment); provided, further, that if any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence or is no longer employed by an Employer (that has consented to make payroll deductions for this purpose) or the Participant's paycheck is insufficient for any other reason, the Participant shall pay directly to the Plan the full amount that would have been deducted from the Participant's paycheck with such payment to be made by the last business day of the calendar month in which the amount would have been deducted. In addition to repayment by payroll deduction, a Participant may repay his loan by making monthly payments.

4.07. Transfers to Purchase Service Credit.

(a) A Participant may, prior to Severance from Employment, elect to transfer all or a portion of his Deferred Account (excluding his Loan Account) to a defined benefit governmental plan (as defined in Section 414(d) of the Code) (the "Transferee Plan") for:

(A) the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such Transferee Plan; or

(B) a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3), relating to repayment of prior cash-outs.

(b) The Trustee shall transfer such amount to the trust of the Transferee Plan, which shall hold such transferred amount in trust in accordance with the terms and conditions of such Transferee Plan.

(c) Participant elections made pursuant to this Section shall be made in accordance with forms approved by the Administrator and subject to the acceptance of the Administrator.

4.08. Discharge Upon Transfer. Upon the transfer of assets under Section 4.05 or 4.07, the Plan's liability to pay benefits to the Participant under this Plan shall be discharged to the extent of the amount so transferred for the Participant. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with Section 4.05 or 4.07, as applicable (for example, to confirm that the receiving plan is a qualifying recipient plan and to assure

that the transfer is permitted under the receiving plan), or to effectuate the transfer pursuant to Section 1.457-10(b) of the Income Tax Regulations.

ARTICLE V

Administration of Plan

5.01. Plan Amendments. The Authority may at any time amend, modify, or terminate this Plan with or without the consent of any Participant (or any Beneficiary thereof), provided:

(a) No amendments shall deprive the Participant of any of the benefits to which he is entitled under this Plan with respect to Amounts Deferred credited to his Deferred Account prior to the effective date of the amendment; and

(b) Notice of any amendments shall be given to Participants and Beneficiaries in such manner and such time and place(s) as determined by the Administrator.

5.02. Plan Voluntary and Companies Not Parties to Plan. The Plan and Trust are entirely voluntary on the part of the Sponsoring Employer. The Sponsoring Employer does not guarantee or promise to pay or cause to be paid any benefit provided by the Plan, and each Participant, Beneficiary or any other person who may claim the right to any payment or benefit under the Plan shall be entitled to look only to the Trust Fund for such payment or benefit and shall not have any right, claim or demand thereof against any Employer. The issuers of any policies, contracts, or any other investment alternatives pursuant to an Investment Option designated by the Participant are not parties to this Plan, and such issuers shall have no responsibility or accountability to the Participant or his Beneficiary with regard to the administration of the Plan.

5.03. Plan Not a Contract of Employment. This Plan shall not be deemed to constitute a contract or amend any existing contract between a Participant and his Employer or to be a consideration or inducement for the employment of any Participant or Eligible Employee. Nothing contained in the Plan shall be deemed to give any Participant or Eligible Employee the right to be retained in the service of his Employer (or, in the case of an Independent Contractor, in a current agreement with an Employer) nor to interfere with the right of any Employer to discharge any Participant or Eligible Employee at any time regardless of the effect which such discharge may have upon him as a Participant or Employee.

5.04. Tax Effects. The Sponsoring Employer and the Administrator, with respect to the taxation of Amounts Deferred under the Plan, including without limitation, any federal, state, income, payroll, personal property, or other tax, do not represent or guarantee that any particular tax consequence will occur because of the Participant's participation in this Plan. The Participant should consult with his own tax adviser regarding all questions of federal or state income, payroll, personal property, or other tax consequences arising from participation in this Plan. In the event the Internal Revenue Service ever determines that any portion of a Deferred Account is taxable, such Deferred Account (or any portions thereof) shall be distributed to the Participant in such manner and amount as determined by the Administrator.

5.05. Appointment of Agents. The Administrator shall have the power to appoint agents to act for it in the administration of this Plan. The Administrator may employ such counsel, accountants and other agents (such as data processing advisors, Plan coordinator, etc.) as it shall deem advisable. Participating Employers shall indemnify and hold harmless, such counsel, accountants and agents against expenses (including attorneys' fees), claims, fines, judgments, taxes, causes of action or liability and amounts paid in settlement, actually and reasonably incurred in connection with the performance of their duties, unless such expense, claim, fine, judgment, taxes, cause of action, liability or amount arose from his negligence, fraud or willful breach of his responsibilities under the Plan or applicable law.

5.06. Non-Alienation.

(a) The rights of a Participant under this Plan shall not be subject to the rights of creditors of the Participant or any Beneficiary, and shall be exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of creditors or other third persons. Neither the Participant nor his Beneficiary nor any other designee shall have any right to commute, pledge, encumber, assign, transfer, or otherwise convey the right to receive any payments hereunder which payments and rights thereto are expressly declared to be nonassignable and nontransferable. The right of any Participant or Beneficiary to exercise any power shall be personal and shall not be exercisable by any guardian, trustee in bankruptcy, court of law, or other person or entity seeking to act in the name of or by the right of the Participant or Beneficiary.

(b) Notwithstanding Section 5.06(a), the Administrator may pay from a Participant's or Beneficiary's Deferred Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

5.07. Gender: Singular and Plural. Whenever used herein, the masculine gender shall include the feminine, and the singular shall include the plural unless the context of the Plan clearly requires a different construction.

5.08. Unclaimed Benefits. Any benefit payable to or on behalf of a Participant or Beneficiary which is not claimed shall be maintained in the Participant's Deferred Account and invested according to the Participant's last investment directive. Reasonable expenses incurred in the attempt to locate such Participant or Beneficiary in excess of expenses ordinarily incurred in locating Participants or Beneficiaries (as determined by the Administrator) may be charged against the Deferred Account of such Participant or Beneficiary. If the Participant or Beneficiary with respect to which such Deferred Account cannot be located after a reasonable attempt at the time of the termination of the Plan, the ultimate disposition thereof shall be in accordance with the rules and regulations of the Secretary of Treasury then in existence. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or Administrator's records; (b) notification sent to the Social Security Administration or Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans); and (c) the payee has not responded within six months.

5.09. Distributions to Incompetents or Minors. In making any distribution to or for the benefit of any minor or incompetent Beneficiary, or incompetent Participant, the Administrator may, but need not, direct the Trustee to make such distribution to a legal or natural guardian or other relative of such minor or court appointed individual or committee of any incompetent, or to any adult with whom such person temporarily or permanently resides; and any such guardian, individual, committee, relative or other person shall have full authority and discretion to expend such distribution for the use and benefit of such person. The receipt of a benefit by such guardian, individual, committee or relative or other person shall be a complete discharge to the Trustee, Administrator and any Participating Employer without any responsibility on their part to see to the application thereof.

5.10. Return of Deferrals.

(a) Excess deferrals resulting from a failure of the Plan to apply the limits of Section 2.06 to Amounts Deferred, or the Amount Deferred on behalf of a Participant for any calendar year which exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, shall be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Plan determines that the amount is an excess deferral.

(b) Anything in this Section 5.10 to the contrary notwithstanding, no earnings on Annual Deferrals shall be returned to any Participating Employer, and losses on Annual Deferrals shall reduce the amount to be returned.

5.11. Duties of Administrator. The Sponsoring Employer, or its authorized agent, the Administrator, shall be authorized to construe the Plan and to resolve any ambiguity in the Plan; provided that such decision shall be uniformly applied to all Participants and Beneficiaries similarly situated. Any discretionary acts taken under the Plan and Trust by the Administrator, Sponsoring Employer, or Trustee shall be uniform and applicable to all similarly situated Participants and Beneficiaries. Any decision, determination, or other action or non-action of the Administrator shall be final and binding on all persons having or claiming any interest under the Plan, and such may be reviewed only for arbitrary and capricious abuse of the wide discretion granted to the Administrator by the Plan. The Administrator, in addition to the duties otherwise provided for in this Plan and the Trust, shall:

(a) Construe the Plan and Trust.

(b) Determine all questions affecting the eligibility of an individual to participate herein.

(c) Determine all questions affecting the amount of any benefit payable hereunder to any Participant or Beneficiary.

(d) Ascertain the persons to whom any death or other benefit shall be payable under the provisions hereof.

(e) Make final and binding determinations in connection with any questions or fact which may arise under the operation of the Plan.

(f) Make such rules and administrative procedures with reference to the operation of the Plan as it may deem necessary or advisable, provided, that such rules and administrative procedures shall not be inconsistent with the express terms of the Plan or Trust.

(g) Prescribe procedures and adopt forms (and paperless media or other means) to be used by Participants and Beneficiaries in filing applications for benefits and in making elections under the Plan.

5.12. Plan Distributions. The Administrator shall authorize and direct all distributions of Plan benefits from the Trust Fund to Participants and Beneficiaries who qualify therefor hereunder. Such authorization shall be in writing and shall specify the name of the Participant or Beneficiary, his address, his Social Security number, the benefit to be distributed and the time and form of distribution.

5.13. Payment of Expenses of Administrator. The reasonable costs and expenses incurred by the Administrator in the performance of its duties hereunder, including, without limitation, reasonable fees for legal, accounting and other services rendered, shall be paid by the Trustee from the Trust Fund.

5.14. Administrator and Trustee to be Furnished Information Concerning Employees. Each Participating Employer shall, from time to time, make available to the Administrator such information with respect to its employees, their dates of employment, their compensation and other matters as may be necessary or desirable in connection with the performance by the Administrator of its duties with respect to the Plan.

5.15. Participant Interests Limited to Benefits Actually Accrued. No Participant shall have any legal right, title or interest in the Trust Fund, or any of its assets, except in the event and to the extent that a benefit may actually accrue to him hereunder, and the same limitations shall be applicable with respect to benefits upon death of a Participant which may be distributable to a Beneficiary.

ARTICLE VI

Funding of Benefits

6.01. Restatement of Trust. The Trust was last restated as of February 28, 1992, and the Sponsoring Employer has amended the Trust effective January 1, 1997. The Authority has entered into the Trust with the Trustee for the purpose of providing a trust to invest and hold Annual Deferrals, and the income and gains thereon, in order to provide the funds which will be used to provide benefits under the Plan. Amounts held in Trust shall be includible in the gross income of Participants and Beneficiaries only to the extent, and at the time, provided under Code Section 457.

6.02. No Diversion of Trust Fund. No part of the Trust Fund shall be used for, or diverted to purposes other than for, the exclusive benefit of Participants and their Beneficiaries, or for the payment of the expenses of the Plan and Trust. No person or entity shall have any interest in, or right to, the Trust Fund or any part thereof, except as specifically provided for in this Plan or the Trust.

6.03. Trust Part of Plan. The Trust shall be deemed to form a part of the Plan, and all rights of Participants or others under this Plan shall be subject to the provisions of the Trust.

6.04. Trustee Powers. The Trustee shall have the power to hold, invest, and reinvest Trust Funds, all as set forth in the Trust.

6.05. No Guarantee of Losses in Trust Fund. Neither the Sponsoring Employer, Trustee, Administrator, nor any Participating Employer guarantee the assets of the Trust Fund from loss or depreciation.

ARTICLE VII

Public Employers

7.01. Addition of Plan and Trust by Employer. Any Public Employer may adopt the Plan and Trust and become a Participating Employer hereunder by executing a Joinder Agreement as approved by the Administrator. Such Public Employer shall become a Participating Employer hereunder as of the effective date provided in the Joinder Agreement and shall thereby become subject to the terms and provisions of the Plan and Trust.

7.02. Withdrawal From Plan and Trust by Public Employer. A Public Employer requesting to withdraw from the Plan and Trust shall deliver to the Administrator a resolution or action of its governing body which authorizes its withdrawal as a Participating Employer and its termination of the Joinder Agreement. Notice of such withdrawal must be received by the Administrator six (6) months prior to its effective date unless such notice period is waived in writing by the Administrator. The Sponsoring Employer may at any time, in its discretion, determine that a Participating Employer shall no longer participate in the Plan and may direct that the Participating Employer withdraw from the Plan. The Administrator shall determine the effective date of any withdrawal under this Section.

ARTICLE VIII

Additional Provisions

8.01. Remedies; Standard of Care. The Participant specifically agrees not to seek recovery against the Sponsoring Employer, any Participating Employer, the Administrator, or any other employee, contractee, or agent of an Employer or the Administrator for any loss sustained by the Participant or his Beneficiary for the nonperformance of their duties, negligence, or any other misconduct of the above-named persons, except that this section shall not excuse any fraud or a wrongful taking by such entities or persons. The Participant specifically understands and acknowledges that his Deferred Account will be charged with any investment loss or other loss arising from the use of his

Investment Option specification and that such loss will reduce the benefits payable to him under this Plan.

8.02. Suspension of Payment in Event of Dispute. If for any reason the Administrator cannot determine to its reasonable satisfaction the payment, amount, timing, or recipient of a benefit, then it may suspend payment of any amount until it is satisfied as to the validity of the payment, amount, timing, or recipient. In addition, the Administrator may file suit in any court of competent jurisdiction or take such action as it shall consider appropriate for a legal determination of the payment, amount, timing, or recipient of such benefits. The Sponsoring Employer, Trustee, and Administrator shall comply with any final order of the court in any such suit, and the Participant, for himself and his Beneficiary, consents to be bound thereby insofar as it affects the benefits payable under this Plan or the method or manner of payment.

8.03. Indemnification. The Sponsoring Employer and its agents, including the Administrator, are hereby held harmless from all court costs and all claims for attorneys' fees arising from any action brought by any person under this Plan or to enforce rights under this Plan, including any amendments hereof. Any amounts so applied shall be treated as a general and administrative expense of the Plan.

8.04. Administrator Participation in Litigation. The Administrator shall not be required to participate in any litigation concerning the Plan or Trust except upon written demand from the Sponsoring Employer or the Board. The Administrator may compromise, adjust, or effect settlement of litigation when specifically instructed to do so by the Sponsoring Employer or Board.

8.05. Governing Law. The laws of the Commonwealth of Kentucky shall apply in determining the construction and validity of this Plan. The Plan is intended to be an eligible deferred compensation plan under Section 457 of the Code, and the Plan shall be interpreted and construed, whenever possible, to comply with the applicable terms of the Code and regulations and rulings issued thereunder.

8.06. Entire Agreement; Successors. This Plan and any properly adopted amendment shall constitute the total agreement between the Sponsoring Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by any Participant. This Plan and any properly adopted amendment shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assignees and on all beneficiaries of the Participant.

8.07. Veterans' Rights.

(a) Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

(b) Any Loan repayments will be suspended under this Plan as permitted under Code Section 414(u).

ARTICLE IX

Termination of Plan and Trust

9.01. Events Causing Termination of Plan. Upon the adoption of an appropriate resolution by the Sponsoring Employer authorizing its termination, the Plan, subject to the procedures contained in Section 9.02 shall be terminated.


9.02. Procedure Upon Termination. Upon the termination of the Plan under Section 9.01, the Plan and Trust shall be continued until such time as all Deferred Accounts have been fully distributed, at which time the Plan and Trust shall terminate. Until such time as the Sponsoring Employer determines that the Trust shall be terminated, the Administrator shall distribute benefits comprising Participant and Beneficiary Deferred Accounts in accordance with the terms of the Plan. Upon determination by the Sponsoring Employer that the Trust shall terminate, the Trustee shall forthwith proceed to liquidate the assets of the Trust Fund, using the proceeds thereof as follows:

(a) First, to pay any due and accrued expenses and liabilities (excluding Plan benefits) of the Trust Fund and any expenses involved in the termination of the Plan and Trust, to the extent not paid by the Employers.

(b) Second, to distribute to the Participants or their Beneficiaries, if applicable, the amount of their benefits in the Trust Fund in a total lump sum.

IN WITNESS WHEREOF, the Board of Trustees of the Kentucky Employees' 457 Deferred Compensation Plan have caused this Plan to be executed by its duly authorized representative this 19th day of AUGUST, 2005.

COMMONWEALTH OF KENTUCKY, BY BOARD
OF TRUSTEES OF KENTUCKY PUBLIC
EMPLOYEES' DEFERRED COMPENSATION
AUTHORITY

By:  8-19-05

Title: Edgar C. Ross, Chairman

AMENDMENT NO. 2
COMMONWEALTH OF KENTUCKY
EMPLOYEES' DEFERRED COMPENSATION TRUST

THIS AMENDMENT NO. 2 to the Commonwealth of Kentucky Employees' Deferred Compensation Trust (the "Trust"), which was last amended and restated effective February 28, 1992, and amended by that certain Amendment No. 1, dated May 20, 1997, entered into by and between the Commonwealth of Kentucky (the "Employer") and the Board of Trustees of the Kentucky Public Employees' Deferred Compensation Authority (the "Trustee"), further amends and modifies the Trust pursuant to the right reserved in Section 6.4 of the Trust, as follows:

A.

Section 5.3, Trust Conditioned on Favorable Tax Ruling, Etc., shall be amended by deletion of the phrase "or made available, whichever occurs first" on line nine.

B.

The effective date of this Amendment No. 2 to the Trust shall be January 1, 2002.

C.

Except as specifically amended above, the Trust shall remain unchanged and as amended herein, shall continue in full force and effect.

IN WITNESS WHEREOF, the Employer has caused this Amendment No. 2 to the Trust to be executed.

COMMONWEALTH OF KENTUCKY, by
BOARD OF TRUSTEES, KENTUCKY PUBLIC
EMPLOYEES' DEFERRED COMPENSATION
AUTHORITY

By: 

Title: Edgar C. Ross, Chairman

Date: 8-19-05

AMENDMENT NO. 3

KENTUCKY EMPLOYEES' 457 DEFERRED COMPENSATION PLAN

This Amendment No. 3 (the "Amendment") to the Kentucky Employees' 457 Deferred Compensation Plan (the "Plan"), which was originally adopted as of June 21, 1974, and last amended and restated effective January 1, 2004, as amended by Amendments No. 1 and No. 2, further amends and modifies the Plan pursuant to Section 5.01 as follows:

A. Effective January 1, 2009, Section 3.02, Investment Options, shall be amended by the addition of the following:

In the absence of a Participant's (or Beneficiary's) direction of investment, the Participant's Accounts shall be invested in accordance with any applicable default investment procedures adopted by the Trustee.

B. Section 4.02, Designated Beneficiary, shall be amended by (1) amendment to the last sentence of 4.02(a) which shall read as follows; and (2) the addition of subsection (c) as follows:

Effective for written notice of death received by the Administrator on or after January 1, 2009, if a benefit becomes payable upon the death of a Participant and no beneficiary has been properly designated, or if a designated beneficiary shall have predeceased the Participant and there are no surviving primary or contingent Beneficiaries identified on the Participant's Beneficiary Designation Form, then the Participant shall be deemed to have designated the following Beneficiaries (if living at the time of the death of the Participant) in the following order of priority:

- (i) the spouse of the Participant; and,
- (ii) if no surviving spouse, the Participant's estate.

(c) Nonspouse Beneficiaries. Effective January 1, 2009, direct trustee-to-trustee transfers from the Plan by nonspouse beneficiaries are permitted in accordance with Section 829 of the Pension Protection Act of 2006, Notice 2007-7 and guidance related thereto.

C. Capitalized terms not otherwise defined herein shall have such meaning as provided under the Plan.

D. Except as provided in this Amendment, the terms and conditions of the Plan shall remain in full force and effect.

IN WITNESS WHEREOF, the Board of Trustees of the Kentucky Public Employees' Deferred Compensation Authority has caused this Amendment to be executed by its duly authorized representative this 19th day of November, 2008.

COMMONWEALTH OF KENTUCKY, by
BOARD OF TRUSTEES, KENTUCKY PUBLIC
EMPLOYEES' DEFERRED COMPENSATION
AUTHORITY

By:  _____

Title: Edgar C. Ross, Chairman

18A.250 Deferred compensation system.

- (1) The authority shall establish and maintain a deferred compensation plan for the employees of the State of Kentucky. Participation in such plan shall be by agreement between such employees and the authority and shall provide for the deferral of such amount of compensation as requested by the employee. Participating employees must authorize that such deductions be made from their wages for the purpose of participation in such program. Amounts so deducted shall be deposited in the State Treasury to the credit of the trust fund.
- (2) The board is directed to develop and obtain, for the benefit of employees, a qualified employee plan that includes a qualified cash or deferred arrangement as described in Section 401(K)(2) of the Internal Revenue Code. The board is directed to develop a program for participants to borrow from their account or accounts in the plan. The plan shall be in addition to other plans offered by the board, and shall be offered to employees upon receipt of appropriate approval of the Internal Revenue Service or on January 1, 1985, whichever occurs later.
- (3) Notwithstanding the provisions of KRS 337.060, agreements to participate and plan elections made by employees pursuant to subsections (1) and (2) of this section may be made in writing or by electronic record, signature, or contract as determined by the authority and in accordance with the provisions of KRS 369.101 to 369.120. Agreements and elections, including but not limited to hardship withdrawal applications, loan applications, beneficiary designations, and withdrawal requests made by participating employees under the plan, shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 122, sec. 2, effective July 15, 2010. -- Amended 1998 Ky. Acts ch. 154, sec. 51, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 483, sec. 6, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 154, sec. 2, effective July 15, 1988. -- Amended 1984 Ky. Acts ch. 234, sec. 1, effective July 13, 1984. -- Repealed, reenacted, and amended as KRS 18A.250, 1982 Ky. Acts ch. 448, sec. 50, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 352, sec. 1. -- Created 1974 Ky. Acts ch. 143, sec. 6.

Formerly codified as KRS 18.550.