

**THE STATE OF MONTANA  
PUBLIC EMPLOYEE DEFERRED COMPENSATION PLAN**

**MONTANA PUBLIC EMPLOYEES' RETIREMENT BOARD**

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**Effective July 1, 2025**

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## **THE STATE OF MONTANA PUBLIC EMPLOYEE DEFERRED COMPENSATION PLAN**

**WHEREAS**, The Montana Public Employees Retirement Board (“Board”) on behalf of the State established the State of Montana Deferred Compensation Plan (“Plan”) pursuant to Internal Revenue Code (“Code”) Section 457(b) and Title 19, Chapter 50, MCA, to provide eligible employees the opportunity to supplement their retirement benefits through voluntary contributions. The Plan was established on February 1, 1990, amended from time to time, and last restated effective February 9, 2023.

**NOW, THEREFORE**, effective July 1, 2025 and subject to the dates set forth above, the Board on behalf of the State of Montana hereby amends and completely restates the Plan. The Plan consists of the provisions set forth in this document, as amended and restated and the applicable provisions in Title 19, Chapter 50, MCA.

Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after July 1, 2025, and to transactions under the Plan on and after July 1, 2025. The rights and benefits, if any, of individuals who are not Employees on or after July 1, 2025, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance From Employment, except as otherwise specifically provided herein or in a subsequent amendment.

### **ARTICLE I. – DEFINITIONS**

**1.01.** “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 losses of the Trust Fund allocable to the Participant (net of Trust Fund expenses) allocable to the Participant, any transfers for the Participant’s benefit, and any distribution made to the Participant or the Participant’s Beneficiary. The Account also includes any account established for rollover contributions made pursuant to Article XII, Designated Roth Contributions, plan-to-plan transfers made for a Participant, the account established for a Beneficiary after the Participant’s death, and any account established for an alternate payee (as defined in Code Section 414(p)(8)).

**1.02.** “Administrator” means the Board, and includes the Service Manager with regard to duties delegated to the Service Manager by the Board.

**1.03.** “Adoption Agreement” means the contract between an Employer that is a political subdivision and the Board to permit participation in the Plan.

**1.04.** “Annual Deferral” means the amount of Compensation deferred by a Participant in any taxable year as a pre-tax deferral, Designated Roth Contribution, or both pursuant to Article II and deposited by the Administrator.

**1.05.** “Applicable Form” means the appropriate form as designated and furnished by the Administrator to make an election or provide a notice as required by the Plan. If a written election

or consent is not specifically required by the Code, the Administrator may prescribe a verbal, electronic or telephonic instruction in lieu of or in addition to a written form.

**1.06.** “Beneficiary” means the person or persons designated by a Participant pursuant to an Applicable Form to receive any benefit payable upon the Participant’s death, or if none, the Participant’s estate.

**1.07.** “Board” means the Montana Public Employees’ Retirement Board.

**1.08.** “Code” means the Internal Revenue Code of 1986, as amended.

**1.09.** “Compensation” means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includable in the Employee’s gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includable in the Employee’s gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Article II). Compensation that would otherwise be paid for a payroll period that begins before Severance From Employment is treated as an amount that would otherwise be paid or made available before an Employee has a Severance From Employment.

(a) In addition, any compensation described in this section that is paid within 2½ months after an Employee’s Severance From Employment, or, if later, the end of the Plan Year during which the Severance From Employment occurred, does not fail to be Compensation merely because it is paid after the Employee’s Severance From Employment. The following are types of post-severance payments that are not excluded from Compensation because of timing if they are paid within 2½ months following Severance From Employment:

(1) Payments that, absent a Severance From Employment, would have been paid to the Employee while the Employee continued in employment with the 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 or shift differential), commissions, bonuses, or other similar compensation;

(2) 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; or

(3) Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Employee at the same time if the Employee had continued employment with the Employer and only to the extent that the payment is includable in the Employee’s gross income.

(b) Any payments not described above are not considered Compensation if paid after Severance From Employment, even if they are paid within 2½ months following Severance From Employment, or, if later, the end of the Plan Year during which the Severance From Employment occurred.

(c) Compensation also includes payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(d) Compensation also includes compensation described in Treas. Reg. § 1.415(c)-2(g)(4) with respect to Participants who are permanently and totally Disabled.

**1.10.** “Designated Beneficiary” means an individual Beneficiary within the meaning of Code Section 401(a)(9)(E)(i).

**1.11.** “Designated Roth Contribution” means an after-tax contribution by a Participant to the Participant’s Account that is:

(a) Designated irrevocably by the Participant at the time of the deferral election as a Designated Roth Contribution that is being made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and

(b) Treated by the Employer as includable in the Participant’s income at the time the Participant would have received that amount in cash if the Participant had not made a deferral election.

**1.12.** “Differential Wage Payment” means any payment which: (a) is made by an Employer to a Participant with respect to any period during which the Participant is performing service in the uniformed services while on active duty for a period of more than 30 days; and (b) represents all or a portion of the wages that the Participant would have received from the Employer if the Participant were performing services for the Employer.

**1.13.** “Disability” or “Disabled” means a total inability of the Participant to perform the Participant’s services by reason of physical or mental incapacity. The disability must be incurred while the Participant is an active Participant and must be one of permanent duration or extended duration, as determined by the Administrator on the basis of competent medical opinion.

**1.14.** “Eligible Designated Beneficiary” means a Designated Beneficiary who meets the additional criteria under Code Section 401(a)(9)(E)(ii).

**1.15.** “Employee” means any individual who performs services for an Employer for Compensation on a regular basis, specifically including any salaried employee or elected or appointed official. The term also includes an independent contractor who performs services for an Employer.

**1.16.** “Employer” means the State of Montana or any political subdivision of the State, as defined in 19-50-101, MCA, which enters into a contract to extend this Plan to its Employees pursuant to Article III.

**1.17.** “Includible Compensation” means an Employee’s Compensation within the meaning of Code Section 415(c)(3) required to be reported as actual wages in box 1 of Form W-

2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under Code Section 401(a)(17)) and increased (up to the dollar maximum) by any compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer Compensation under Section 4.03).

**1.18.** “Investment Option” means an investment fund which forms part of the Trust Fund as selected and monitored by the Trustees.

**1.19.** “MCA” means the Montana Code Annotated.

**1.20.** “Normal Retirement Age” means the age designated by a Participant for purposes of determining eligibility for the special catch-up contribution under Section 4.03. The designated age must not be earlier than the earliest age at which the Participant would be eligible to retire and receive unreduced retirement benefits under the Employer’s defined benefit pension plan (or money purchase plan, if applicable), and may be no later than 70 1/2. If the Employer does not sponsor such a plan, or if the Participant is an independent contractor, the Normal Retirement Age shall be deemed to be age 65. For Participants who are qualified police officers and firefighters, the Normal Retirement Age may be any age between age 50 and age 70 1/2. A Participant may designate only one Normal Retirement Age for purposes of the special catch-up contribution, and such designation shall be irrevocable once the catch-up provision is utilized. The designation of a Normal Retirement Age for catch-up purposes shall not affect the actual age at which the Participant retires or begins receiving distributions under the Plan.

**1.21.** “Participant” means an individual who is currently deferring Compensation, or who has previously deferred Compensation under the plan by salary reduction and who has not received a distribution of his or her entire Account under the Plan. Only individuals who perform services for the Employer, either as an Employee or an independent contractor, may defer Compensation under the plan.

**1.22.** “Participating Employer” means any political subdivision electing to adopt this Plan pursuant to Article III.

**1.23.** “Participation Agreement” means the Applicable Form completed by an Employee to participate in the Plan.

**1.24.** “Plan Year” means the calendar year.

**1.25.** “Roth Contribution Account” means a separate account within the Plan established that is composed of after-tax contributions made pursuant to Code Section 402A.

**1.26.** “Service Manager” means the person or organization appointed by the Administrator to perform third party service and administrative functions.

**1.27.** “Severance From Employment” means severance of a Participant’s employment with the Employer for any reason, including retirement, within the meaning of Code Section 402(e)(4)(D)(i)(III). A Participant shall be deemed to have severed employment with the Employer for purposes of the Plan when, in accordance with the established personnel practices of the Employer, the employment relationship is considered actually terminated. However,

Severance From Employment for an independent contractor occurs when (a) at least 12 months have expired since the date on which the last contract, pursuant to which the independent contractor provided any service to the Employer, was terminated, and (b) the independent contractor has not performed services for the Employer during that 12-month period.

**1.28.** “State” means the State of Montana.

**1.29.** “Trust” means the trust established by the Trustees pursuant to a written agreement that constitutes a valid trust under the law of Montana.

**1.30.** “Trust Fund” means the assets of the Trust in all Investment Options selected by the Trustees.

**1.31.** “Trustees” means the Board created in 2-15-1009, MCA.

If a term is defined in § 19-50-101, MCA, that definition applies to the term as used in this Plan. Words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate. Words used herein in the masculine or feminine gender shall be construed to include the feminine or masculine gender where appropriate.

## **ARTICLE II. – PARTICIPATION AND ELECTION TO DEFER COMPENSATION**

**2.01.** Participation. An Employee may become a Participant in the Plan immediately after commencement of employment with the Employer. A Participant shall cease to be a Participant on the distribution of his or her entire interest in the Plan. A former Participant who is reemployed by the Employer shall immediately become a Participant in this Plan as of his or her date of rehire as an Employee.

**2.02.** Minimum Deferral. The Administrator may establish a minimum Annual Deferral and/or minimum deposit amount, and may change such minimums from time to time.

**2.03.** Annual Deferrals

(a) Subject to the limitations under Article IV, an Employee who has satisfied the participation requirements under Section 2.01 may enter into a written Participation Agreement with the Employer agreeing to make Annual Deferrals to the Plan.

(b) Annual Deferrals shall begin as soon as administratively practicable following the date specified in the Participation Agreement, or, if later or if no date is specified, as soon as administratively practicable after the Participation Agreement is filed with the Administrator.

(c) Annual Deferrals shall reduce the Compensation otherwise payable to a Participant and shall be paid in cash to the Trust by the Employer, on a basis consistent with its payroll practices, as soon as administratively feasible after being withheld from the Compensation of a Participant, but no later than five business days after the payroll date in which such amount is withheld from the Compensation of the Participant.

(d) If the Participant fails to designate whether Annual Deferrals are pre-tax contributions or Designated Roth Contributions, the Participant will be deemed to have designated his or her Annual Deferrals as pre-tax contributions; provided, however, that effective January 1, 2026, or such later effective date determined by the Secretary of the Treasury through guidance, in the case of a Participant who is subject to Code Section 414(v)(7) and who has not previously made Designated Roth Contributions during the calendar year equal to the applicable catch-up limit under Code Section 414(v), the Participant will be deemed to have irrevocably designated his or her Annual Deferrals that are made pursuant to Code Section 414(v) as Designated Roth Contributions. Pre-tax contributions shall be allocated to the pre-tax contribution Account of the Participant as of the date of contribution. Designated Roth Contributions shall be allocated to the Roth Contribution Account of the Participant as of the date of contribution.

(e) A Participation Agreement shall remain in effect until superseded by another election or until the Administrator requires a Participant to complete a new Participation Agreement.

(f) A Participant may change his or her election or deemed election to make pre-tax contributions and/or Designated Roth Contributions at any time by filing a new Participation Agreement with the Administrator. Any such changes shall be effective as soon as administratively practicable following the date specified in the new Participation Agreement, or, if later, as soon as administratively practicable after the Participation Agreement is filed.

(g) A Participant may terminate his or her election or deemed election to make pre-tax contributions and/or Designated Roth Contributions at any time by filing the Applicable Form with the Administrator, which shall be effective as soon as administratively practicable after the Applicable Form is filed.

(h) An election to make pre-tax contributions and/or Designated Roth Contributions shall not be valid with respect to any period during which the Participant is not an Employee. No election or deemed election to make, change, or discontinue pre-tax contributions and/or Designated Roth Contributions shall be given retroactive effect, except as may be permitted under Proposed Treasury Regulation Section 1.414(v)-2(c) or such other guidance issued by the Secretary of the Treasury with respect to an election to make Annual Deferrals in excess of the applicable dollar limit under Code Section 415(e)(15) as Designated Roth Contributions by a Participant who will attain age 50 or more by the end of the calendar year and whose compensation is determined to exceed the wage limitation under Code Section 414(v)(7)(A), and provided that any such correction method must be applied consistently to all similarly situated Participants.

**2.04. Leave of Absence.** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

**2.05. Deferrals after Severance From Employment, Including Sick, Vacation, and Back Pay Under an Eligible Plan.** A Participant who has not had a Severance From Employment may elect to defer accumulated sick pay, accumulated vacation pay, and back pay if the requirements of Code Section 457(b) are satisfied. These amounts may be deferred for any calendar month only if the Participant is an Employee on the date the amounts would otherwise be paid or made

available. Compensation that would otherwise be paid for a payroll period that begins before Severance From Employment is treated as an amount that would otherwise be paid or made available before an Employee has a Severance From Employment. In addition, deferrals may be made for former Employees with respect to Compensation (relating to certain compensation paid within 2½ months following Severance From Employment), Compensation described in Treas. Reg. § 1.415(c)-2(e)(4), (g)(4), and (g)(7) (relating to Compensation paid to Participants who are permanently and totally Disabled, or Compensation relating to qualified military service under Code Section 414(u)) provided those amounts represent Compensation described in Treas. Reg. § 1.415(c)-2(e)(3)(i).

### **ARTICLE III. – EMPLOYER PARTICIPATION**

**3.01. State and State Entities.** This Plan is available to Employees of the following Employers: the State of Montana, state universities, state community colleges, and political subdivisions.

**3.02. Adoption by Political Subdivision.** Any political subdivision, as defined in 19- 50-101, MCA, may make the Plan available to its Employees pursuant to 19-50-201, MCA, if it takes the following actions:

(a) The governing body of the political subdivision must pass a resolution to enter into an Adoption Agreement with the Trustees authorizing its Employees to participate in the Plan. The resolution must contain a summary of the major provisions of the Plan.

(b) The resolution must indicate the date of adoption.

(c) The resolution must specify that the political subdivision shall abide by the terms of the Plan, including all investment and administrative agreements of the Plan, and all applicable provisions of the Code.

(d) The Adoption Agreement must specify that the political subdivision agrees that the Trustees are the Administrator of the Plan and agrees to the rules and conditions established by the Trustees for the proper administration of the Plan.

(e) Employer must complete an Adoption Agreement with the Trustees.

The Board shall determine whether the resolution and Employer actions comply with this section and, if they do, shall provide appropriate forms for the Employer and Employees to implement the participation.

Upon entry into participation in this Plan, a political subdivision with an existing 457 Plan may choose among the following:

(f) leave existing Employee account balances in the prior 457 plan with all new Employee contributions being made to this Plan;

(g) do a direct transfer of Employee account balances from the prior plan to this Plan pursuant to Section 11.03; or

(h) allow Employees to elect to do a direct transfer of their account balances, or portions thereof, to this Plan or to retain their existing account balances, or portions thereof, in the prior 457 plan (or plans). In either case, and pursuant to a political subdivision permitting it, an Employee may contribute to the prior 457 plan (or plans) and this Plan concurrently.

**3.03. Plan Termination by Political Subdivision.** A Participating Employer may terminate its participation in the Plan if it takes the following actions:

- (a) The governing body of the political subdivision must adopt a resolution terminating its Employees' rights to participate in the Plan.
- (b) The resolution must specify when the right to participate in the Plan shall end.
- (c) The Adoption Agreement may be revoked or amended in the manner prescribed in the existing Adoption Agreement between the Participating Employer and the Administrator.

The Trustees shall determine whether the resolution complies with this section and all applicable federal and State laws, shall determine an appropriate effective date and shall provide appropriate forms to the Participating Employer and the Participants to terminate ongoing participation. The assets attributable to the terminating Employer shall be handled in accordance with Section 17.01.

#### **ARTICLE IV. – LIMITATIONS ON DEFERRALS**

**4.01. Basic Annual Limitation.** In accordance with Code Section 457(b)(2), the maximum annual amount of Annual Deferrals for any calendar year shall not exceed the lesser of (1) the applicable dollar amount set forth under Code Section 457(e)(15)(A), as indexed under Code Section 457(e)(15)(B) or (2) the Participant's Includible Compensation for the calendar year.

**4.02. Age 50 Catch-up Annual Deferral Contributions.** A Participant who will attain age 50 or more by the end of the calendar year, and who is contributing up to the applicable dollar amount under Section 4.01, may make additional Annual Deferrals up to the applicable dollar amount set forth under Code Section 414(v), as indexed in accordance with Code Section 414(v)(2)(C). The adjusted dollar amount under Code Section 414(v)(2)(E), as increased by the cost of living adjustment in effect for such calendar year, shall apply to Participants who will attain age 60 but will not attain age 64 by the end of the calendar year.

**4.03. Special Section 457 Catch-up Limitation.** In accordance with Code Section 457(b)(3), 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 4.01 and 4.02, then the Annual Deferral limit under this Article IV shall be the lesser of:

- (a) An amount equal to two times the applicable dollar amount under Section 4.01 for such year; or
- (b) The sum of:

(1) An amount equal to (i) the aggregate limit under Section 4.01 for the current calendar year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (ii) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(2) An amount equal to (i) 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 4.02 and 4.03), minus (ii) the aggregate contributions to Pre-2002 Coordination Plans (as defined by Treasury Regulations and as provided in Section 4.04) for such years.

However, in no event can the deferred amount be more than the Participant's Includible Compensation for the year.

(c) Effective January 1, 2026, or such later effective date determined by the Secretary of the Treasury through guidance and subject to such guidance, with respect to a Participant whose wages within the meaning of Code Section 3121(a) for the preceding calendar year from the Employer exceed the limitation under Code Section 414(v)(7)(A), as indexed, paragraph (b) shall apply only if the Participant elects or is deemed to have elected the additional amount of Annual Deferrals to be made as Designated Roth Contributions or has previously made Designated Roth Contributions during the calendar year at least equal to the applicable dollar amount under Code Section 414(v) as set forth in this Section.

#### **4.04. Coordination of Limits.**

(a) *Participant Covered By More Than One Eligible Plan.* If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code Section 457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article IV. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) *Pre-Participation Years.* In applying Section 4.03, a year shall be taken into account only if (1) the Participant was eligible to participate in the Plan during all or a portion of the year and (2) Compensation deferred, if any, under the Plan during the year was subject to the basic annual limitation described in Section 4.01 or any other plan ceiling required by Code Section 457(b).

(c) *Pre-2002 Coordination Years.* For purposes of Section 4.03(b)(2), "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 the 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 Section 4.03(b)(2) 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.

(d) *Current Rule.* For 2002 and thereafter, any amounts contributed by the Participant to a tax-sheltered annuity pursuant to Code Section 403(b) or to a 401(k) plan pursuant to Code Section 402(e)(3) shall not reduce the maximum Annual Deferral under Sections 4.01, 4.02 and 4.03.

(e) *Coordination Responsibility.* The Participant is responsible for ensuring coordination of these limits.

**4.05. Employer Contribution Limits.** If the Employer agrees to make contributions to the Plan on behalf of a Participant to this Plan, the Employer contributions shall be deemed made by the Participant as additional Annual Deferrals. For purposes of administering Sections 4.01, 4.02 and 4.03 of this Plan, Employer contributions shall be processed as payroll deferrals, shall apply toward the maximum deferral limits in the taxable year that they are made, and must comply with any procedure established by the Administrator.

**4.06. Correction of Excess Deferrals.** If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

**4.07. Disregard Excess Deferral.** 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 4.06. 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.

## ARTICLE V. – ACCOUNTS AND REPORTS

**5.01. Account.** The Administrator or a duly appointed Service Manager shall maintain an Account with respect to each Participant, and that Account shall be credited with the Participant's Annual Deferral for each pay period. The balance of such Account shall be adjusted daily to reflect any distribution to the Participant and all interest, dividends, Account charges and changes of market value resulting from the investment of the Participant's Annual Deferral. All Plan records, including individual Account information, that are maintained by the Service Manager shall be the exclusive property of the Trustees. Account includes any Account established under Article XII for rollover contributions and Article XI for plan-to-plan transfers made for a Participant.

**5.02. Statements of Account to Participants.** A written report of the status of each Participant's Account shall be furnished by the Service Manager to the Participants within thirty

(30) days after the end of each Plan quarter. All reports to Participants shall be based on the fair market value of investments credited to their Accounts as of the reporting dates. Participant reports shall be deemed to have been accepted by the Participant as correct unless written notice to the contrary is received by the Service Manager within thirty (30) days after the mailing or distribution of a report to the Participant.

**5.03. Statements of Account to the Administrator.** A written report of the Plan assets shall be furnished by the Service Manager to the Administrator within thirty (30) days after the end of each Plan quarter. The Administrator may request additional reports from the Service Manager, in the Administrator's sole discretion.

**5.04. Year End Reports.** A written report shall be prepared as of December 31st of each year and submitted to the Administrator by the Service Manager within thirty (30) days (and maintained on file by the Administrator) showing the assets held under the Plan, a schedule of all receipts and disbursements and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as the Administrator deems appropriate. The Service Manager shall also provide such information to the Administrator as the Administrator deems necessary or appropriate for preparation of its annual report.

**5.05. Account Reviews.** In accordance with Montana law, the Administrator's records shall be open to inspection during normal business hours by any Participant or a designated representative of the Employer or a Participant. However, no Participant may review any record specifically relating to any other Participant.

## **ARTICLE VI. – VALUATION OF ACCOUNT**

**6.01. Valuation.** The managers of each Investment Option shall value the investments in their fund each business day based on acceptable industry practices. All daily transactions shall be based on that day's closing market values. The Service Manager shall apply such values to appropriate Participant Accounts.

**6.02. Deposits.** In all cases, deposits of deferrals shall be treated as actually made only as of the date the funds are accepted as in good order by the Service Manager.

## **ARTICLE VII. – TRUST**

**7.01. Trust Status.** All assets held in connection with the Plan, including all amounts of Compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan.

**7.02. Trust Fund.** Effective July 1, 1998, to the extent required by Code Section 457(g), all amounts of Compensation deferred pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan as of July 1, 1998, shall be held, managed, invested and distributed as part of the Trust Fund in accordance with the provisions of the Plan. All contributions to the Plan must

be transferred by the Employers to the Trust Fund pursuant to Section 2.03(c). All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to Article IX.

**7.03. Trustee.** The Board is the Trustee for the assets of the Trust Fund.

**7.04. Adoption of the Pooled Trust.** The State of Montana Public Employees Pooled Trust (“Pooled Trust”) is hereby adopted as part of this Plan.

**7.05. Transfer of Funds to the Pooled Trust.** In accordance with this Plan and the Pooled Trust, the Administrator may, from time to time, transfer funds of this Plan to and from the Pooled Trust.

## **ARTICLE VIII. – INVESTMENT OF ANNUAL DEFERRALS**

**8.01. Investment Options.** The Trustees shall evaluate annually the available Investment Options for Participants (or Beneficiaries upon the death of the Participant). Following such evaluation, the Trustees shall determine available Investment Options in their sole discretion. The Participants may direct the investment of their accounts among the Investment Options selected by the Trustees. The Administrator shall follow the Participants’ (or Beneficiaries’) directions with respect to the investment of each Participant’s (or Beneficiary’s) Account.

**8.02. Investment of Deferrals.** All Annual Deferrals shall be transferred to the Participant selected Investment Options within three (3) business days after receipt of the deferral in good order from the Employer.

**8.03. Investment Default.** If a Participant does not have a valid investment direction on file, any amount in that Participant’s Account and any Annual Deferral shall be invested in the appropriate target date fund selected from time to time by the Board. In such event, the Participant shall be deemed to have directed that option for his or her Account.

## **ARTICLE IX. – DISTRIBUTION OF BENEFITS**

**9.01. Distribution Restrictions**

(a) In accordance with Code Section 457(d), a Participant, or, if applicable, a Beneficiary, shall be eligible to receive a distribution of his or her Account if the Participant:

- (b) has a Severance From Employment;
- (c) dies;
- (d) is eligible for a distribution under Section 9.04;

(e) has a Severance From Employment and is subject to the mandatory distribution of the Account Balance under Section 9.03(e).

(f) Paragraph (a) notwithstanding, a Participant’s account attributable to rollover contributions made pursuant to Article XII may be distributed to a Participant at any time, to the

extent that the rollover contributions made pursuant to Article XII have been separately accounted for by the Administrator.

**9.02. Benefit Distribution Election.** A Participant may elect to commence distribution of his or her Account Balance any time after retirement or other Severance From Employment by filing an application for a distribution with the Administrator.

**9.03. Payment Options.**

(a) A Participant (or, if applicable, a Beneficiary) entitled to a distribution under this Article may elect to receive payment in any of the following forms of distribution:

(b) a lump sum payment of the total Account Balance;

(c) annual, monthly, or quarterly installment payments as permitted under the terms of the investment product(s); or

(d) a direct rollover to an eligible retirement plan.

(e) A lump sum payment of a Participant's Account may be made without the consent of the Participant or Beneficiary if their Account Balance does not exceed \$1,000 taking into account their rollover contributions, unless the Participant elects to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in a lump sum.

**9.04. Distribution Events.**

(a) **Unforeseeable Emergency Distributions.** In accordance with Code Section 457(d)(1)(A)(iii) and Treasury Regulation § 1.457-6(c)(1), if the Participant has an unforeseeable emergency before Severance From Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section.

(b) For this purpose, an unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant's spouse or dependents (as defined in Code Section 152(a) without regard to Code Section 152(b)(1), (b)(2) and (d)(1)(B)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code Section 152(a) without regard to Code Section 152(b)(1), (b)(2) and (d)(1)(B)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including nonrefundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

(c) A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement of compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan.

(d) Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the 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).

(e) **Voluntary Distribution of Small Amounts.** Upon proper written request to the Administrator, a Participant may elect to receive a distribution of his or her total Account Balance in a lump sum if the Account Balance does not exceed \$7,000 (or the dollar limit under Code Section 411(a)(11), if greater) without regard to amounts attributable to rollover contributions under Article XII, no Plan Contributions have been made for the Participant during the two-year period immediately prior to the date of distribution, and the Participant has not previously received a distribution of his or her Account Balance under this Section 9.04.

**9.05. Death.** If a Participant dies before the distribution of his or her entire Account, the remaining Account balance shall be distributed to the Beneficiary as soon as administratively practicable after the Participant's death, unless the Beneficiary elects a later payment date, subject to Code Section 401(a)(9). A Beneficiary may elect to receive a distribution of the Participant's Account under any distribution option available under Section 9.03, subject to Code Section 401(a)(9).

**9.06. Disability.** Upon Severance From Employment with the Employer because of becoming Disabled, a Participant may elect to have benefits commence on a date which is no later than the required beginning date under Code Section 401(a)(9), as specified in Section 9.04. Such election shall be made within 45 days after Severance From Employment due to Disability. If no election is made, benefits will commence 75 days after Severance From Employment due to Disability. A Participant may change the commencement date of distribution of the Account to a later date otherwise permitted under this Article. If a Participant has elected, in accordance with the Plan, to delay the commencement of distributions to a later date, then the Participant may make one additional election to further delay the commencement of distribution, provided that the election is filed before distribution actually begins and the later commencement date meets the required distribution commencement date provisions of Code Sections 401(a)(9) and 457(d)(2). All benefits shall be paid under a payment option under

#### **9.07. Required Minimum Distribution Rules**

(a) The provisions of this Section take precedence over any inconsistent provisions of the Plan. As required by Code Section 457(d)(2), the Plan shall comply with the minimum distribution requirements of Code Section 401(a)(9), as applicable to an eligible governmental plan described in Treasury Regulation § 1.457-2(f). All distributions under this Plan shall be made in accordance with a reasonable and good faith interpretation of Code Section 401(a)(9) and the regulations promulgated thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G) and the changes under the Setting Every Community Up for Retirement

Enhancement (SECURE) Act of 2019, SECURE 2.0 of 2022, and Treasury Regulation Sections 1.401(a)(9)-1 through -9, as each may be amended from time to time.

(b) A Participant's Accounts will be distributed, beginning not later than as required under paragraph (c), over one of the following periods (or a combination thereof):

- (1) The life of the Participant;
  - (2) The life of the Participant and a Designated Beneficiary;
  - (3) A period certain not extending beyond the life expectancy of the Participant;  
or
  - (4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and Designated Beneficiary;
- (c) A Participant's Account shall be distributed to the Participant beginning no later than April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains the applicable age within the meaning of Code Section 401(a)(9)(C)(v) or (ii) the calendar year in which the Participant has a Severance From Employment.

(d) Subject to regulations or other guidance issued under Code Section 401(a)(9), upon the death of the Participant before distribution of their Account has begun under paragraph (c), the following distribution provisions shall take effect:

- (1) The portion of the Participant's Account payable to a Beneficiary that is not a Designated Beneficiary shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (2) The portion of the Participant's Account payable to a Designated Beneficiary who is not an Eligible Designated Beneficiary shall be distributed by December 31 of the calendar year containing the tenth anniversary of the Participant's death. The portion of the Participant's Account payable to an Eligible Designated Beneficiary shall be distributed, pursuant to the election of the Eligible Designated Beneficiary, either (i) by December 31 of the calendar year containing the tenth anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the Eligible Designated Beneficiary or over a period not exceeding the life expectancy of the Eligible Designated Beneficiary. If the Eligible Designated Beneficiary is the surviving spouse, the Eligible Designated Beneficiary may elect to delay payment under item (ii) until December 31 of the calendar year in which the Participant would have attained the applicable age within the meaning of Code Section 401(a)(9)(C)(v). If the Eligible Designated Beneficiary does not elect a method of distribution as provided above, the Participant's Accounts shall be distributed in accordance with item (i).

(e) Subject to regulations or other guidance issued under Code Section 401(a)(9), upon the death of the Participant after distribution of their Account has begun under paragraph (c), any remaining portion of their Account shall continue to be distributed at least as rapidly as under the

method of distribution in effect at the time of the Participant's death; provided, however, that the portion of the Participant's Account payable to a Designated Beneficiary who is not an Eligible Designated Beneficiary shall be distributed in its entirety by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(f) Upon the death of an Eligible Designated Beneficiary, or the attainment of age 21 of an Eligible Designated Beneficiary who is a minor child of the Participant, before distribution of the Participant's entire Account under paragraphs (d) or (e), the remainder of the Participant's Account shall be distributed by December 31 of the calendar year containing the tenth anniversary of the Eligible Designated Beneficiary's death, or by December 31 of the calendar year in which the child attains age 31, as applicable.

(g) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as a distribution required under this Section.

(h) Effective 2020, notwithstanding any other provisions of this Plan, a Participant who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a recipient with a required beginning date of April 1, 2021) but for the enactment of Section 401(a)(9)(I) of the Code ("2020 RMD"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will receive those 2020 distributions unless the Participant or Beneficiary elects not to receive such distribution. Notwithstanding the preceding sentence, a Participant or Beneficiary will be given an opportunity to make an election as to whether or not to receive such 2020 RMD distributions.

#### **9.08. Designated Beneficiary.**

(a) A Participant shall have the right to file with the Administrator an Applicable Form designating the Beneficiary or Beneficiaries who shall receive the benefits payable under the Plan in the event of the Participant's death. No Beneficiary designation shall take effect until an Applicable Form is signed by the Participant and received and accepted by the Administrator. If the Participant dies without a Beneficiary form on file with the Administrator, the benefit payments shall be made to the Participant's estate.

(b) A Participant shall have the right to designate at least one primary and contingent Beneficiary and to indicate whether the Beneficiaries in each class are to share equally or according to specified percentages. A contingent Beneficiary shall receive benefit payments only if there is no surviving primary Beneficiary. If a Beneficiary predeceases the Participant, the surviving Beneficiaries in the same class (*i.e.*, primary or contingent) will share equally the deceased Beneficiary's share. In the event of the death of a Beneficiary, after the Beneficiary has become entitled to receive benefits, the remaining benefits to which that Beneficiary was entitled shall be paid to the estate of the Beneficiary.

#### **9.09. Plan Loans. Plan loans to Participants shall not be permitted.**

## ARTICLE X. – EMPLOYER OBLIGATIONS

Each Employer is required to remit correct deferrals on a timely basis pursuant to Section 2.03(c). Beyond that, an Employer has no obligation to each Participant. An Employer shall not be liable for losses arising from expense charges of any kind or from depreciation or shrinkage in the value of investments made under this Plan.

## ARTICLE XI. – PLAN TO PLAN TRANSFERS

**11.01. Direct Transfers Among Plans of the Same Employer.** A transfer from this Plan to another eligible governmental plan of the same Employer and a transfer to this Plan from another eligible governmental plan of the same Employer is permitted under the following conditions:

- (a) The transfer is from an eligible governmental plan to another eligible governmental plan of the same Employer (and, for this purpose, the Employer is not treated as the same Employer if the Participant's compensation is paid by a different entity);
- (b) The transferor plan provides for transfers;
- (c) The receiving plan provides for the receipt of transfers;
- (d) 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
- (e) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional Annual Deferrals in the receiving plan unless the Participant or Beneficiary is performing services for the entity maintaining the receiving plan.

**11.02. Plan-to-Plan Transfers from the Plan to the Plan of Another Employer.**

(a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account transferred to another eligible governmental plan within the meaning of Code Section 457(b) and Section 1.457-2(f) of the Income Tax Regulations. (1) A transfer is permitted under this Section 11.02(a) for a Participant only if the Participant has had a Severance From Employment with the Employer and is an Employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 11.02 (a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers only with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

(b) Upon the transfer of assets under this Section 11.02, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 11.02 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 11.02, 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 Treasury Regulations.

**11.03. Plan-to-Plan Transfers to the Plan.** At the direction of the Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under Code Section 457(b) to transfer assets to the Plan as provided in this Section. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10) and Section 1.45710(b) of the Treasury Regulations and to confirm that the other plan is an eligible governmental plan as defined in Section 1.457-2(f) of the Treasury Regulations. The amount so transferred shall be credited to the Participant's Account as a pre-tax deferral or a Designated Roth Contribution 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 Article IV.

**11.04. Permissive Service Credit Transfers.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan- to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's pre-tax portion of the Account transferred to the defined benefit governmental plan. A transfer under this Section 11.04(a) may be made before the Participant has had a Severance From Employment.

(b) A transfer may be made under Section 11.04(a) only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

**11.05. Direct Transfers to this Plan.** Subject to the approval of the Administrator, this Plan shall accept cash transfers of Participants' Accounts maintained under an eligible Section 457 plan directly to this Plan.

**ARTICLE XII. – ROLLOVER TO THIS PLAN**

(a) Effective January 1, 2002, at any time, a Participant may contribute to the Plan in cash as a rollover contribution a qualified rollover amount from a qualified plan under Code Section 401(a), an individual retirement account or annuity, a deferred compensation plan under Code Section 457, or a tax-sheltered annuity under Code Section 403(b), provided that the Administrator, in its discretion, determines that the contribution satisfies all applicable requirements of the Code. Before a rollover contribution is made, the Participant shall designate the Investment Options in which he wishes his rollover contribution to be invested.

(1) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution or Designated Roth Contributions paid to the Plan

from any eligible retirement plan that is not an eligible governmental plan under Code Section 457(b).

(2) In addition, the Plan shall establish and maintain for the Participant a separate Account for any eligible rollover distribution or any Designated Roth Contributions paid to the Plan from any eligible retirement plan that is an eligible governmental plan under Code Section 457(b).

(b) A rollover contribution shall be allocated to the rollover Account of the Participant as of the date of the contribution. The Participant's rollover Accounts shall be distributed at the same time and in the same manner as the Participant elects for his regular Account, however, the rollover Accounts shall be subject to any applicable penalties under the Code.

(c) Notwithstanding any of the above, the Plan will accept a rollover contribution from another Roth Contribution Account under an applicable retirement plan described in Section 402A(e)(1) and only to the extent the rollover contribution is permitted under the rules of Section 402(c) and Section 1.402A-2 of the Treasury Regulations. The Plan Administrator or other responsible party must provide the Plan with a statement indicating the first year of the five-taxable-year period and the portion of the rollover distribution that is attributable to investment in the contract under Code Section 72 or a statement that the distribution is a qualified distribution.

(d) In-Plan Roth Conversion.

(1) Effective as of July 1, 2025, any portion or all of a Participant's Account (other than Roth contributions or Roth rollovers and earnings thereon) is eligible for direct rollover to the Participant's Roth Contribution Account, even if the Account is not otherwise distributable (pursuant to Code Section 402A(c)(4)(E)) under the Plan, and the transfer shall be treated as a qualified rollover contribution (within the meaning of Code Section 408A(e)) to the Participant's Roth Contribution Account.

(2) A Participant's election under this Section shall be subject to the reasonable administrative procedures established by the Administrator, Code Section 402A(c)(4) and the regulations thereunder, and subsequent guidance from the Internal Revenue Service.

(3) The taxable portion of the Participant's Account directly rolled over to a Roth contribution Account under this Section shall be included in the Participant's gross income in the tax year in which the transfer occurs.

(4) To the extent required by Code Section 402(f), the Administrator shall provide written information regarding In-Plan Roth rollovers under this Section, for amounts that are otherwise distributable under this Plan.

## **ARTICLE XIII. – ROLLOVER FROM THIS PLAN**

**13.01. Plan Distributions and Withholding Requirements.** Effective January 1, 2002, notwithstanding any provisions of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner

prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

**13.02. Definitions.**

(a) An “Eligible Rollover Distribution” means any distribution of all or any portion of the balance to the credit of a Distributee; except that an Eligible Rollover Distribution does not include:

- (1) any installment payment that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s Beneficiary, or for a specified period of ten years or more;
- (2) any distribution to the extent such distribution is a required minimum distribution under Code Section 401(a)(9) and Section 9.04 of the Plan; and
- (3) any hardship distribution.

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax Employee contributions which are not includable in gross income. However, such after-tax portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or in a direct trustee-to-trustee rollover to a qualified trust under Code Section 401(a) or 403(a) that is part of a defined contribution or defined benefit plan, or to an annuity contract described in Code Section 403(b), and such trust or annuity contract separately accounts for amounts so transferred, including separate accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not includable. Effective January 1, 2008, an Eligible Rollover Distribution shall also mean a qualified rollover contribution to a Roth IRA within the meaning of Code Section 408A.

(b) An “Eligible Retirement Plan” means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts Eligible Rollover Distributions. An Eligible Retirement Plan shall also mean an annuity contract described in Code Section 403(b) and an eligible deferred compensation 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. Effective January 1, 2008, an Eligible Retirement Plan shall also mean a Roth IRA described in Code Section 408A. For Eligible Rollover Distributions after December 18, 2015, an Eligible Retirement Plan shall also mean a SIMPLE IRA described in Code Section 408(p), provided that the rollover contribution is made after the two-year period beginning on the date the Distributee first participated in any qualified salary reduction arrangement maintained by the Distributee’s employer under Code Section 408(p)(2), as described in Code Section 72(t)(6).

(c) A “Distributee” means a Participant, Beneficiary, or alternate payee who is the owner of the Account. For Direct Rollover purposes, a Distributee means a Participant. In addition, a Participant’s surviving spouse or a Participant’s former spouse who is an alternate payee are Distributees with regard to the interest of the surviving spouse or former spouse.

Effective January 1, 2007, a Beneficiary who is not a surviving spouse is a Distributee with regard to the interest of the Beneficiary.

(d) Effective January 1, 2007, and notwithstanding anything in the Plan to the contrary that otherwise would limit a Distributee's election under this Section, and to the extent allowed under the applicable provisions of the Code and the Treasury Regulations, a Distributee who is a Beneficiary, but not a surviving spouse, spouse or former spouse who is an alternate payee may elect, at the time and in the manner prescribed by the Administrator, to have all or any part of his or her Account that qualifies as an Eligible Rollover Distribution paid in a direct trustee-to-trustee transfer to an Eligible Retirement Plan that is an individual retirement plan described in clause (i) or (ii) of Code Section 402(c)(8)(B). If such a transfer is made: (1) the transfer shall be treated as an Eligible Rollover Distribution, (2) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code Section 408(d)(3)(C), and (3) Code Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such individual retirement plan.

(e) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

## **ARTICLE XIV. – ADMINISTRATION OF PLAN**

**14.01. Compliance with Code Section 457.** At all times, the Plan shall be administered in accordance with and construed to be consistent with Code Section 457 and Code Section 402 and any accompanying regulations.

**14.02. Administrator Duties and Powers.** The Administrator shall have the authority to control and manage the operation and administration of the Plan and shall be a named fiduciary of the Plan.

(a) The Administrator shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to enable the Administrator to carry out its duties under the Plan. By way of illustration and not limitation, the Administrator is empowered and authorized:

(1) to establish rules, regulations, and procedures in accordance with 19-50-102 and 19-50-103, MCA, and procedures with respect to administration of the Plan, not inconsistent with the Plan and the Code, and to amend or rescind such rules, regulations, and procedures;

(2) to determine, consistently with the Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan, including without limitation, Participants, former Participants, Beneficiaries, Employees and former Employees;

(3) pursuant to Article IX of the Plan, to authorize payments from the Trust Fund to Participants, their Beneficiaries and other persons as the Administrator may determine;

(4) to contract with one or more Service Managers to perform education, enrollment, and administrative services under this Plan;

(5) to accept service of legal process;

(6) subject to and consistent with the Code, to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Plan with respect to same.

(b) Any action by the Administrator, which is not found to be an abuse of discretion, shall be final, conclusive and binding on all individuals affected thereby. The Administrator may take any such action in such manner and to such extent as the Administrator in its sole discretion may deem expedient and the Administrator shall be the sole and final judge of such expediency.

**14.03. Advice.** The Administrator may employ or contract with one (1) or more persons to render advice with regard to its responsibilities under the Plan.

**14.04. Delegation by Administrator.** The Administrator may from time to time delegate to an individual, committee or organization certain of its fiduciary responsibilities under the Plan. Any such individual, committee or organization shall remain a fiduciary until such delegation is revoked by the Administrator, which revocation may be without cause and without advance notice. Such individual, committee or organization shall have such power and authority with respect to such delegated fiduciary responsibilities as the Administrator has under the Plan.

**14.05. Fiduciary Insurance.** The Board may require the purchase of fiduciary liability insurance for any of its fiduciaries to cover liability or losses occurring by reason of the act or omission of a fiduciary.

**14.06. Payment of Benefits.**

(a) *Payments to Minors and Incompetents.* If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, benefits will be paid to such person as the Administrator may designate pursuant to MCA 19-2-803 for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

(b) *Correctness of Actions.* The Administrator, if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment, or may file, in any state court of competent jurisdiction, a suit, in such form as it considers appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator may also bring a suit or take such other action as it deems appropriate in the case of questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and Participants, Beneficiaries, Administrator, and Service Manager shall be bound thereby insofar as such order affects the benefits payable under this Plan or the method or manner of payment.

**14.07. Payment of Expenses.** All expenses and costs associated with the administration and investments of the plan shall be assessed against Plan assets. Administrative costs shall be explicitly assessed against individual Participant Accounts. Investment costs shall be assessed explicitly against each specific Investment Option in a manner determined appropriate by the management of each Investment Option and approved by appropriate federal regulating entities and the Trustees if appropriate.

## **ARTICLE XV. – CLAIMS PROCEDURE**

Claims under the Plan shall be processed under the terms of the Montana Administrative Procedures Act, 2-4-701 et. seq. MCA.

## **ARTICLE XVI. – AMENDMENT OF THE PLAN**

Subject to the provisions of any applicable law, the Board may at any time amend or modify this Plan without the consent of the Participating Employers or of Participants (or any Beneficiaries thereof), provided that:

(a) All amendments shall become effective on the first day of the month following the giving of not less than forty-five (45) days prior notice of the amendment to Participants. However, this forty-five (45) day notice requirement shall be applicable only if the amendment limits or otherwise restricts the deferral and distribution rights of the Participants. Notice shall be deemed given when the amendment is posted in the office of the Board and is sent to each Employer. No amendments shall deprive any Participant of any of the benefits to which the Participant is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment.

(b) If the Plan is amended or modified, the Administrator shall nonetheless be responsible for the supervision and the payment of benefits resulting from amounts deferred prior to the amendment or modifications in accordance with this Article XVI.

## **ARTICLE XVII. – TERMINATION**

### **17.01. Termination of Participating Employer.**

(a) In the case of the complete or partial termination of the Plan, as to one or more Employers, including a termination arising from the complete discontinuance of contributions, the affected portion of the Trust Fund shall continue to be held pursuant to the direction of the Board. On termination, the Participating Employer shall determine: (1) whether the assets shall continue to be held in this Plan for the benefit of affected Participants pursuant to Article IX; (2) whether there will be a direct transfer of all balances to another 457 plan pursuant to Article XI; or (3) whether each Participant shall have the individual right to elect to retain their existing Account balance in this Plan or do a direct transfer to the new 457 plan.

(b) The Plan shall remain in full effect with respect to each Employer that does not terminate its participation in the Plan on behalf of its Employees.

**17.02. Termination of Plan.** The Board shall have the right to completely terminate this Plan, subject to any statutory requirements. In such a case, the Board shall distribute amounts

deferred under the Plan to all Participants and Beneficiaries as soon as administratively practicable after the termination of the Plan.

## ARTICLE XVIII. – NONASSIGNABILITY

**18.01. Nonassignment.** No Participant, Beneficiary or designee may commute, sell, assign, transfer or otherwise convey the right to receive any payment under the Plan.

**18.02. Qualified Domestic Relations Orders.** Qualified domestic relation orders and child support orders under Administrative Rules of Montana 2.43.5110 through 2.43.5112 shall be honored by the Plan. Notwithstanding Section 18.01, if a judgment, decree or other (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any state or tribal court (“qualified domestic relations order”), then the amount of the Participant’s Account shall be paid in the form of an immediate lump sum and to the person or persons so directed in the qualified domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the qualified domestic relations order.

### **18.03. Rights.**

(a) Except as provided in Section 18.02 and Section 18.03(b), the rights of Participants and Beneficiaries under this Plan shall not be subject to the rights of their creditors, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person, except to the extent a benefit distributable under Article IX is subject to a federal tax levy.

(b) Notwithstanding Section 18.03(a), the Administrator may pay from a Participant’s or Beneficiary’s 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.

## ARTICLE XIX. – MISCELLANEOUS

**19.01. Tax Treatment of Amounts Contributed.** It is intended that amounts deferred under this Plan constitute excludable gross income for federal and state income tax purposes until they are paid or otherwise made available to Participants or their Beneficiaries except to the extent that the amount deferred is a Designated Roth Contribution. This rule shall apply to state income taxation unless applicable state laws provide otherwise. Such amounts shall, however, be included as Compensation to the extent required under Federal Insurance Contributions Act (FICA). The Administrator, the Employers and the Service Manager do not guarantee that any particular Federal or State income, payroll or other tax consequence will occur because of participation in this Plan.

**19.02. Contract.** This Plan, including any properly adopted amendment hereof, and the Participation Agreement, including any properly executed amendment thereof, shall constitute the total agreement or contract between the Employer and any Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by any Participant.

**19.03. Conflicts.** In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that (a) causes the Plan to constitute an eligible plan under the provisions of Code Section 457 and the Trust to be exempt from tax under Code Section 457, (b) causes the Plan to comply with all applicable requirements of the Code and (c) causes the Plan to comply with all applicable Montana statutes and rules, shall prevail over any different interpretation.

**19.04. Limitation on Rights.** Neither the establishment or maintenance of the Plan, nor any amendment thereof nor any act or omission under the Plan (or resulting from the operation of the Plan) shall be construed:

(a) as conferring upon any Participant, Beneficiary, or any other person a right or claim against the Trust, Administrator, Employer or Service Manager, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the Employer for the validity or effect of the Plan;

(c) as a contract, including an employment agreement, between the Employer and any Participant or other person;

(d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) as giving any Participant the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or other person at any time.

**19.05. USERRA and HEART Compliance.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified uniformed services as defined in chapter 43 of title 38, United States Code shall be provided in accordance with USERRA, the Heroes Earnings Assistance and Relief Tax Act of 2008 (“HEART”), including Code Section 457(g)(4) and Code Section 414(u).

(a) An Employee whose employment is interrupted by qualified uniformed services under Code Section 414(u) or who is on a leave of absence for qualified uniformed services under Code Section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee’s employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave.

This right applies to five years following the resumption of employment, if sooner, for a period equal to three times the period of the interruption or leave.

(b) Effective January 1, 2009, an Employee whose employment is interrupted by qualified uniformed services or who is on a leave of absence for qualified uniformed services and who receives a Differential Wage Payment within the meaning of Code Section 414(u)(12)(D) from the Employer, will be treated as an Employee of the Employer and the Differential Wage Payment will be treated as Compensation.

(c) Effective January 1, 2007, death benefits payable under the Plan shall be paid in accordance with Code Section 401(a)(37), which provides that in the case of a Participant who dies while performing qualified uniformed services (as defined in chapter 43 of title 38, United States Code), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified uniformed services) provided under the Plan had the Participant resumed and then terminated employment with the Employer on account of death.

(d) Effective January 1, 2009, a Participant who dies or becomes Disabled while performing qualified uniformed services (as defined in chapter 43 of title 38, United States Code) shall be treated as if the Participant had resumed reemployment with the Employer in accordance with the Participant's reemployment rights under USERRA on the day preceding death or Disability (as the case may be) and terminated employment on the actual date of death or Disability. The amount of Annual Deferrals of a Participant treated as reemployed under this subsection shall be determined on the basis of the Participant's average actual Annual Deferrals for the lesser of (1) the 12-month period of service with the Employer immediately prior to qualified service, or (2) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.

**19.06. Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt includes providing notice through certified mail to the last known mailing address, a review of plan and employment records and other publicly available records, attempted contact to a designated plan beneficiary, and a reasonable use of either a commercial locator service, a credit reporting agency, or a proprietary internet search tool for locating individuals. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.

**19.07. Erroneous Payments.** If the Administrator makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Administrator may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator may deduct it when making any future payments directly to that Participant.

**19.08. Mistaken Contributions/Deferrals.** If any contribution or deferral (or any portion of a contribution or deferral) is made to the Plan by a good faith mistake of fact, then within one

year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

**19.09. Release.** Any payment to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Administrator.

**19.10. Liability.** The Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or electronic transmission believed by the Administrator to be genuine or to be executed or sent by an authorized person.

**19.11. Governing Laws.** The law of the State of Montana shall apply in determining the construction and validity of this Plan, with venue in the First Judicial District.

**19.12. Necessary Parties to Disputes.** Necessary parties to any accounting, litigation or other proceedings relating to the Plan shall include only the Board. The settlement or judgment in any such case in which the Board is duly served shall be binding upon all affected Participants in the Plan, their beneficiaries, estates and upon all persons claiming by, through or under them.

**19.13. Severability.** If any provision of the Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

**19.14. Supersession.** The terms of the Plan shall supersede any previous agreement between the parties pertaining to the Plan.

**19.15. Counterparts.** This Plan may be executed in one (1) or more counterparts, each of which shall constitute an original.