

## RESOLUTION No. 1633

### A RESOLUTION REPEALING RESOLUTION 610-R AND SELECTING AN ADDITIONAL DEFERRED COMPENSATION PROVIDER FOR THE CITY OF TROUTDALE.

1. **WHEREAS**, the City Council of Troutdale adopted resolution 610-R selecting ICMA Retirement Corporation as a deferred compensation provider on February 12, 1986; and
2. **WHEREAS**, the City no longer has a plan agreement with ICMA and no City employee has participated in this plan for over fifteen years; and
3. **WHEREAS**, the City has considered the establishment of an additional Deferred Compensation Plan to be made available to all eligible employees; and
4. **WHEREAS**, the City selected ING on October 25, 2002 to provide an additional Deferred Compensation Plan, after having interviewed three prospective deferred compensation plan providers recommended by other jurisdictions in the Portland metropolitan area, in accordance with TMC 2.24.240.
5. **WHEREAS**, the additional Deferred Compensation Plan offers local financial planning services for employees in said Deferred Compensation Plan; and
6. **WHEREAS**, such benefits will act as incentives to City employees to voluntarily set aside and invest portions of the current income to meet their future financial requirements and supplement their City retirement and Social Security (if applicable), at no cost to the City.

### NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

**Section 1.** That Resolution 610-R is repealed as of the date this resolution takes effect.

**Section 2.** The City Council hereby adopts the Deferred Compensation Plan provided by ING, or by its successors or assigns subject to the consent of the City Council, attached hereto as Exhibit A, for the voluntary participation of all eligible City employees.


**Section 3.** ING, or its successors or assigns subject to the consent of the City Council, is hereby authorized to execute individual participation agreements with City employees requesting same, and to act as the investment and fund managers of the Deferred Compensation Plan, in accordance with the Plan Document.

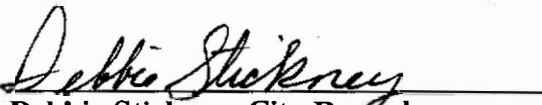
**Section 4.** The City Administrator, or his designee, shall be the Plan administrator. It is understood that other than the incidental expenses of coordinating the Plan, that there is to be no cost or contribution by the City to the Plan.

**Section 5.** The City Administrator is authorized to execute any agreements as are necessary to make the attached Deferred Compensation Plan available to eligible City employees.

**Section 6.** This Resolution shall take effect upon approval by the Council of the City of Troutdale.

<b>YEAS:</b>	<b>7</b>
<b>NAYS:</b>	<b>0</b>
<b>ABSTAINED:</b>	<b>0</b>

  
Paul Thalhofer, Mayor  
Dated: 11-13-02

  
Debbie Stickney, City Recorder  
Adopted: November 12, 2002

**ING**

**SPECIMEN 457(b) DEFERRED COMPENSATION PLAN FOR  
GOVERNMENTAL EMPLOYERS**

This specimen plan document is for illustrative purposes only presented by ING for consideration of a plan sponsor's legal counsel and reflects a good faith interpretation of the IRS proposed regulations issued on 5/8/02. This document may require further changes based on final 457 regulations, the IRS' issuance of model 457 amendments and subsequent guidance from the IRS. Because specific facts, circumstances, and laws of various states impact your 457 deferred compensation plan, interested parties should consult their attorneys regarding any modifications that may be required.

## TABLE OF CONTENTS

	Page
Preamble	1
Article I – Definitions	2
Article II – Eligibility	6
Article III – Contributions and Allocations	8
Article IV – Determination, Distribution and Transfer of Benefits	12
Article V – Administration	18
Article VI – Miscellaneous	21
Article VII – Amendment and Termination	24

SPECIMEN DOCUMENT

SPECIMEN 457(b) DEFERRED COMPENSATION  
PLAN FOR GOVERNMENTAL EMPLOYERS  
PREAMBLE

The Sponsoring Employer hereby establishes the Code Section 457(b) Deferred Compensation Plan for Governmental Employers (the "Plan").

The Plan is established pursuant to applicable state law and is intended to comply with the provisions of Section 457(b) of the Internal Revenue Code of 1986, as amended, regulations thereunder and applicable law. The Plan consists of the provisions set forth in this document and the Adoption Agreement, and is applicable to each Eligible Individual.

## ARTICLE I DEFINITIONS

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context.

1.1 "Administrator" means the person(s) or entity designated by the Sponsoring Employer pursuant to Section 5.2 to administer the Plan and perform fiduciary functions for the Plan on behalf of the Sponsoring Employer.

1.2 "Adoption Agreement" means the separate agreement which is executed by the Sponsoring Employer and which sets forth the elective provisions of the Plan. The Adoption Agreement shall be considered a part of the Plan.

1.3 "Age 50 Plus Catch-Up Contribution" means the catch-up contribution for workers who attain age 50 by the end of the calendar year, as permitted under Code Section 414(v) pursuant to Section 3.3.

1.4 "Beneficiary" means, subject to Article IV, the person(s) or entity designated by the Participant in the Participation Agreement or a beneficiary designation form by a Participant to receive the Participant Account in the event of the Participant's death. Subject to Article IV, the Participant may designate more than one Beneficiary or primary and secondary Beneficiaries or may change the designation of a Beneficiary. If two or more, or less than all, designated Beneficiaries survive the Participant, payments shall be made equally to all such Beneficiaries, unless otherwise provided in the form of designation made by the Participant. Elections made by a Participant on the beneficiary designation form shall be binding on any such Beneficiary or Beneficiaries. If the Participant does not designate a Beneficiary, then the Participant's estate shall receive the Participant Account in accordance with Section 4.3.

1.5 "Code" means the Internal Revenue Code of 1986, as amended.

1.6 "Compensation" means all amounts payable to a Participant from the Sponsoring Employer as remuneration for services rendered which would be includible in income for federal tax purposes if not deferred under this Plan, subject to the provisions of the current Code.

1.7 "Eligible Individual" means any Employee or Independent Contractor for the Sponsoring Employer who meets the criteria set forth in Section 2.1 and is in one or more of the classifications specified in the Adoption Agreement. Individuals who do not perform services for the Sponsoring Employer may not defer Compensation under the Plan.

This specimen plan is intended to assist you and your counsel in adopting a 457 deferred compensation plan. Modifications may be required to meet your plan's particular objectives.

1.8 "Employee" means any person who is employed by the Sponsoring Employer who performs services for the Sponsoring Employer for which Compensation is payable. Unless otherwise provided in the Adoption Agreement, the term Employee shall not include Leased Employees.

1.9 "Employer" means a state or the District of Columbia, any political subdivision of a state or the District of Columbia, or any agency or instrumentality of a state or the District of Columbia, which satisfies the definition of Code Section 457(e)(1)(A).

1.10 "Includible Compensation" means wages, salaries, and fees for professional services (including contributions made to a plan under Code Section 125 to fund group health insurance coverage which the Employee does not have the option of receiving in cash because such Employee is unable to certify that he has other health coverage) and other amounts payable (without regard to whether or not an amount is paid in cash) for personal services actually rendered to the Sponsoring Employer to the extent that the amounts are includible in gross income.

Includible Compensation shall include elective contributions that are made by the Sponsoring Employer on behalf of a Participant that are not includible in gross income under Code Sections 125, 402(g)(3), 457(b) and 132(f)(4).

Includible Compensation shall not include Employee pick-up contributions described in Code Section 414(h)(2).

1.11 "Independent Contractor" means any person to whom Compensation from the Sponsoring Employer is payable for services rendered pursuant to one or more written or oral contracts, if such person is not a common-law employee.

1.12 "Investment Product" means group or individual annuity contracts or such other investment arrangements issued by or offered through the Provider and used to hold assets of the plan.

1.13 "Leased Employee" means any person described in Code Section 414(n).

1.14 "Normal Retirement Age" means the age specified in the Adoption Agreement that is used for the Special 457 Catch-up Contribution election under Section 3.2.

1.15 "Participant" means any individual who has entered into a Participation Agreement and for whom a Participant Account is maintained under the Plan.

1.16 "Participant Account" means the total of the Participant Deferral Account, the Participant 457 Rollover Account, and the Participant Non-457 Rollover Account for each Participant under the Plan.

1.17 "Participant Deferral Account" means that portion of the Participant Account established and maintained by the Administrator for each Participant with respect to his deferral of Compensation to the Plan, including any amounts transferred in accordance with Section 3.6.

1.18 "Participant 457 Rollover Account" means that portion of the Participant Account established and maintained by the Administrator for each Participant with respect to Rollover Contributions received from another Employer's Code Section 457(b) plan in accordance with Section 3.7.

1.19 "Participant Non-457 Rollover Account" means that portion of the Participant Account established and maintained by the Administrator for each Participant with respect to Rollover Contributions rolled over from all rollover eligible plans other than from another Employer's Code Section 457(b) plan in accordance with Section 3.7.

1.20 "Participation Agreement" means an agreement, which meets the requirements of Section 2.4, entered into between an Eligible Individual and the Sponsoring Employer pursuant to which an Eligible Individual agrees to commence deferring amounts from Compensation to the Plan and to thus become a Participant.

1.21 "Plan Year" means the Plan's accounting year as selected in the Adoption Agreement.

1.22 "Provider" means one or more of the ING Group companies, their successors or such other provider entity as the Sponsoring Employer may approve.

1.23 "Rollover Contribution" means, if so elected in the Adoption Agreement, contributions made by a Participant pursuant to a rollover of "eligible rollover distributions" in accordance with Code Section 402(c)(4).

1.24 "Special Section 457 Catch-up Contributions" means the catch-up contribution for Participants in the three year prior to Normal Retirement Age, as permitted under Code Section 457(b)(3) and pursuant to Section 3.2.

1.25 "Sponsoring Employer" means the Employer named in the Adoption Agreement and any successor which shall maintain this Plan, and any predecessor which has maintained this plan.

1.26 "Unforeseeable Emergency" means:

(a) severe financial hardship resulting from a sudden and unexpected illness or accident of a Participant, the Participant's spouse or of a Participant's dependent (as defined in Code Section 152(a);

(b) loss of the Participant's property due to casualty; or

(c) similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

An Unforeseeable Emergency shall be determined based on the relevant facts and circumstances. Notwithstanding this Section 1.26, an Unforeseeable Emergency shall not include an emergency that is or may be relieved by:

- reimbursement or compensation by insurance or otherwise,
- liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself create severe financial hardship; or
- cessation of the Participant's deferrals under the Plan.

## ARTICLE II ELIGIBILITY

### 2.1 CONDITIONS OF ELIGIBILITY

Each Eligible Individual shall be permitted to participate upon satisfying the requirements specified in the Adoption Agreement under this Plan.

### 2.2 DETERMINATION OF ELIGIBILITY AND EFFECTIVE DATE OF PARTICIPATION

(a) The Administrator shall determine the eligibility of each Employee and, if applicable, Independent Contractor for participation in the Plan based upon information furnished by the Sponsoring Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan.

(b) An Eligible Individual shall elect to participate and become a Participant by signing a Participation Agreement pursuant to Section 2.4 with the Sponsoring Employer and filing such agreement with the Plan Administrator.

(c) The Participant shall provide investment direction for contributions made to the Investment Product on such forms as may be required by the Provider.

### 2.3 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Individual to a non-Eligible Individual, the Participant Account of such inactive Participant shall continue to be allocated any attributable earnings based on the investment direction supplied by the Participant.

### 2.4 PARTICIPATION AGREEMENTS

(a) In order to participate in the Plan, a Participant must complete and file a Participation Agreement in a manner and method determined by the Administrator. The Participation Agreement shall specify:

- (i) The amount (expressed either as a dollar amount or as a percentage) of the Participant's Compensation which the Sponsoring Employer and the Participant agree to defer, subject to the limitations of Article III;
- (ii) The date as of which reduction and deferral of Compensation pursuant to the Participation Agreement shall begin.

An Eligible Individual may defer Compensation payable in the calendar month during which the individual first becomes an Eligible Individual if the Participation Agreement providing for such deferral is entered into on or before the first day on which he first becomes an Eligible Individual.

(b) A Participant may, by amendment of a Participation Agreement or by any manner as the Administrator may prescribe, do any of the following:

- (i) change the specification of the investment of any contributions of the Account under the Investment Product; or
- (ii) change prospectively the amount of Compensation to be deferred.

An amendment to the Participation Agreement shall be effective as early as administratively practicable, but not earlier than the first day of the following calendar month in which the Compensation is paid or made available.

ARTICLE III  
CONTRIBUTIONS AND ALLOCATIONS

3.1 DEFERRALS

(a) Except as provided in Section 3.2 and 3.3, the maximum amount which may be deferred by a Participant in any taxable year shall not exceed the lesser of (i) the dollar amount provided under Code Section 457(b)(2) (as may be indexed annually) or (ii) 100% of the Participant's Includible Compensation.

(b) If elected by the Sponsoring Employer in the Adoption Agreement, a Participant may elect to defer accumulated sick pay, accumulated vacation pay and back pay provided the Participant enters into a Participation Agreement to defer such pay before the beginning of the calendar month in which the amounts would otherwise be paid or made available and the Participant is an Employee in that month.

3.2 SPECIAL 457 CATCH-UP CONTRIBUTIONS

(a) In any one or more of a Participant's last three tax years ending before the year in which the Participant attains Normal Retirement Age, as defined in the Adoption Agreement, the Participant may elect to defer an amount not exceeding the lesser of (i) twice the dollar amount permitted as a general deferral under Section 3.1 or (ii) the sum of the maximum deferral permitted under Section 3.1 for the current tax year and as much of the applicable deferral limit under Code Section 457(b)(2) in prior years before the current tax year that had not previously been used ("underutilized amount"). For purposes of this section, a prior year shall be taken into account only if such year began after December 31, 1978, and the Participant was eligible to participate in the Plan during all or a portion of the prior year. A Participant may only make this election under this subsection (a) once with respect to any Code Section 457(b) deferred compensation plan of the Sponsoring Employer.

(b) In determining a Participant's underutilized amount, the Plan shall take into consideration:

- (i) Prior to 2002, if a Participant made deferrals to the Plan and deferrals to any other Code Section 457(b) plan, salary reduction contributions made to Code Section 401(k) plans, Code Section 403(b) plans, Code Section 402(h)(1) simplified employee pension (SARSEP) plans, Code Section 408(p) simple retirement accounts, and amounts deferred under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), such deferrals to the other plans will be

taken into account in determining a Participant's underutilized amount under Section 457(b)(2). In addition, Includible Compensation shall be limited to the limitation in effect in the calendar year in which the deferrals were made. If such deferrals cumulatively exceed the then-applicable dollar amount in Section 457(b)(2) in the year that such amounts were deferred, then there will be no underutilized amount for that year.

- (ii) To the extent that the Sponsoring Employer did not maintain a Code Section 457(b) plan, no underutilized limitation is available to a Participant for that prior year.
- (iii) After 2001, only deferrals to Code Section 457(b) plans will be taken into account for purposes of determining the underutilized amount.
- (iv) Age 50 Plus Catch-Up Contributions will not be taken into account for purposes of determining a Participant's underutilized amount.

### 3.3 AGE 50 PLUS CATCH-UP CONTRIBUTIONS

If elected by the Sponsoring Employer in the Adoption Agreement, a Participant who has attained age 50 before the close of the taxable year may elect the catch-up provision under Code Section 414(v) and commence making Age 50 Plus Catch-up Contributions.

### 3.4 MAXIMUM ANNUAL CONTRIBUTIONS

(a) In the event that the limit on deferral contributions is exceeded, the Administrator shall direct the Provider as to the proper correction method permissible under applicable law, including calculation of any earnings or losses and the proper tax reporting with respect to such distributions.

(b) Any catch-up contributions made by a Participant pursuant to Section 3.2 or 3.3 may not exceed the greater of (i) the amount that the Participant is eligible to defer under Section 3.2 or (ii) the amount that the Participant is eligible to defer under Section 3.3.

(c) A Participant who participates in the Plan and another 457(b) plan of another employer shall be responsible for complying with the deferral limits of this Article III. In the event of an excess amount, the Participant shall notify the Administrator so that the excess may be distributed as soon as practicable.

### 3.5 INVESTMENTS

(a) Amounts deferred under the Plan shall be invested in an Investment Product. Participants will direct the investment of their Participant Accounts among the

This specimen plan is intended to assist you and your counsel in adopting a 457 deferred compensation plan. Modifications may be required to meet your plan's particular objectives.

investment options available under the Investment Product. If any provision of an Investment Product agreement is not consistent with the Plan provisions, the terms of the Plan shall control.

(b) The Provider is not responsible for the tax or legal aspects of this Plan. The Provider is absolved from any liability and shall be held harmless for any actions taken in accordance with the direction of the Administrator, and shall have no duty to see to the application of any funds paid from the Plan pursuant to the direction of the Administrator, nor be required to question any actions directed by the Administrator.

### 3.6 TRANSFERS FROM OTHER CODE SECTION 457(b) PLANS

If elected by the Sponsoring Employer in the Adoption Agreement, this Plan shall accept transfers of amounts previously deferred under another Code Section 457(b) plan maintained by another Employer which satisfies the definition of Code Section 457(e)(1)(A).

### 3.7 ROLLOVERS TO THE PLAN

(a) If elected by the Sponsoring Employer in the Adoption Agreement and with the consent of the Administrator, amounts that are considered "eligible rollover distributions" in accordance with Code Section 402(c)(4) may be rolled over by an Eligible Individual, whether or not a Participant at the time, from an "eligible retirement plan." The amounts rolled over from an eligible retirement plan other than a Code Section 457(b) plan maintained by an Employer which satisfies the definition of Code Section 457(e)(1)(A) shall be allocated to the Participant Non-457 Rollover Account. The amounts rolled over from another Code Section 457(b) plan maintained by an Employer which satisfies the definition of Code Section 457(e)(1)(A) shall be allocated to the Participant 457 Rollover Account. Amounts in the Participant Non-457 Rollover Account shall be accounted for separately from amounts in the Participant 457 Rollover Account.

(b) For purposes of this Section, the term "eligible retirement plan" shall mean any other Code Section 457(b) plan maintained by an Employer which satisfies the definition of Code Section 457(e)(1)(A), a Code Section 403(b) program, a Code Section 401(a) plan, an individual retirement account as described in Code Section 408(a), and an individual retirement annuity as described in Code Section 408(b). For purposes of this Section, the term "amounts rolled over from an eligible retirement plan" shall mean:

- (i) amounts rolled to the Plan directly from another eligible retirement plan;
- (ii) distributions received by an Eligible Individual from another eligible retirement plan that are eligible for tax deferred rollover to a Code

Section 457(b) plan maintained by an Employer which satisfies the definition of Code Section 457(e)(1)(A) and that are rolled over by the Eligible Individual to the Plan within sixty (60) days, following his receipt thereof; and

- (iii) amounts rolled over to the Plan under subparagraphs (i) and (ii) by an Eligible Individual who is also a surviving spouse in accordance with Code Section 401(a)(9) or a spouse or former spouse who is the alternate payee as defined in Code Section 414(p).

ARTICLE IV  
DETERMINATION, DISTRIBUTION AND TRANSFER OF BENEFITS

4.1 DISTRIBUTIONS UNDER THE PLAN

(a) A Participant Deferral Account may not be paid to a Participant (or, if applicable, the Beneficiary) until one of the following events has occurred:

- (i) upon the Participant's severance from employment (or, if applicable, separation from service);
- (ii) in the event of the Participant's death;
- (iii) an Unforeseeable Emergency, within the meaning of and subject to Section 4.7, if permitted under the Adoption Agreement; or
- (iv) the election of a small balance distribution within the meaning of and subject to Section 4.8, if permitted under the Adoption Agreement.

(b) A Participant 457 Rollover Account and a Participant Non-Rollover Account will be distributed at the time elected by the Sponsoring Employer in the Adoption Agreement.

(c) An Independent Contractor shall be considered to have a severance from employment upon the expiration of all of the contracts under which services are performed for the Sponsoring Employer, if the expiration constitutes a good faith and complete termination of the contractual relationship. An expiration of such contractual relationship shall not be considered to be a good faith and complete termination if the Sponsoring Employer anticipates a renewal of such contractual relationship or the Independent Contractor becomes an Employee.

4.2 DETERMINATION OF BENEFITS PAYABLE TO THE PARTICIPANT

(a) Upon attainment of a distributable event described in Section 4.1, but in no event later than the requirement to commence minimum distribution payments in accordance with Code Section 401(a)(9), a Participant may elect a benefit distribution option as permitted in Section 4.6 pursuant to which benefits will be paid. In the event that a Participant does not make an election of benefit distribution, any benefits payable to the Participant will be made in the form of a payment specified in the Adoption Agreement and commencing no later than the date indicated in subsection (d).

(b) Such an election will be effective only if made on forms provided by the Administrator and received in the office of the Administrator in accordance with such procedures as the Administrator may establish.

This specimen plan is intended to assist you and your counsel in adopting a 457 deferred compensation plan. Modifications may be required to meet your plan's particular objectives.

(c) If permitted by the Sponsoring Employer in the Adoption Agreement and subject to subsection (d), a Participant, Former Participant or Beneficiary who made an irrevocable election pursuant to Code Section 457(e)(9) prior to the time such benefits first become payable or otherwise made available, may change their benefit election in accordance with procedures established by the Sponsoring Employer, to the extent permitted under the Investment Product and applicable law.

(d) Minimum distribution payments under Code Section 401(a)(9) must begin by April 1 of the year following the later of:

- (i) the year in which the Participant attains age 70 1/2, or
- (ii) the year in which the Participant retires from employment with the Sponsoring Employer.

#### 4.3 DETERMINATION OF BENEFITS UPON DEATH

(a) Death benefits payable to a Beneficiary shall be made in a form as selected by the Sponsoring Employer in the Adoption Agreement. In the event that a Beneficiary does not make an election to the form of death benefit payments, such Beneficiary's death benefit will be paid as indicated by the Sponsoring Employer in the Adoption Agreement.

(b) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant, shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the regulations thereunder, including the minimum distribution incidental benefit rules.

(c) If minimum payments under Code Section 401(a)(9) have not begun upon the death of a Participant and the designated Beneficiary is not the Participant's surviving spouse, death benefit payments must, in accordance with the designated Beneficiary's election or, if an election is not made, in accordance with the relevant provisions in the Adoption Agreement:

- (i) begin to be distributed to the designated Beneficiary no later than the December 31 of the calendar year immediately following the calendar year of the Participant's death payable over a period not to exceed the life expectancy of the Beneficiary; or
- (ii) be distributed no later than the December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) If the designated Beneficiary is the Participant's surviving spouse and minimum payments under Code Section 401(a)(9) have not begun upon the death of a Participant, minimum payments to the surviving spouse must begin by the later of the:

- (i) December 31 of the calendar year immediately following the calendar year in which the Participant dies, or
- (ii) December 31 of the calendar year in which the Participant would have attained age 70 1/2.

The payments to the surviving spouse must be made over a period not to exceed the surviving spouse's life expectancy. However, a surviving spouse may elect to receive the death benefit payments no later than the December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(e) If minimum payments under Code Section 401(a)(9) have begun prior to the death of the Participant, the remaining portion of the Participant Account shall be distributed to the Beneficiary(ies) as least as rapidly as under the method of distribution in effect prior to the death of the Participant.

#### 4.4 DISTRIBUTION FOR MINOR BENEFICIARY

In the event a distribution is to be made to a minor, then the Administrator may direct that such distribution be paid to the legal guardian, or if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his residence, or to the custodian for such Beneficiary under the Uniform Gift [Transfers] to Minors Act, if such is permitted by the laws of the state in which Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor Beneficiary shall fully discharge the Provider, any other providers of the Plan, Administrator, Sponsoring Employer, and Plan from further liability on account thereof.

#### 4.5 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or his Beneficiary hereunder shall, at the Participant's severance from employment, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or his Beneficiary, the amount so distributable shall be treated as a forfeiture pursuant to the Plan and maintained in a forfeiture account, with investment direction provided by the Administrator, under the Plan. In the event a Participant or Beneficiary is located subsequent to his benefit being held in such account, such benefit shall be restored, including any applicable interest, and paid, to the Participant, or (if applicable) Beneficiary, in accordance with this Article IV.

#### 4.6 FORM OF DISTRIBUTION OF BENEFITS

(a) A Participant or (if applicable) Beneficiary may choose a benefit distribution option as selected by the Sponsoring Employer in the Adoption Agreement.

(b) Notwithstanding any provision in the Plan to the contrary, the distribution of benefits, whether under the Plan or through the purchase of an annuity contract, shall be made in accordance with the requirements of Code Section 401(a)(9) and the regulations thereunder, including any applicable minimum distribution incidental benefit requirements.

#### 4.7 UNFORESEEABLE EMERGENCY WITHDRAWALS

(a) A Participant or Beneficiary may request an Unforeseeable Emergency withdrawal subject to the following requirements:

- (i) The request for an Unforeseeable Emergency withdrawal will be determined by the Administrator based on the Participant's (or, if applicable, the Beneficiary's) relevant facts and circumstances.
- (ii) The request for an Unforeseeable Emergency may be made only to the extent that such emergency may not be relieved through:
  - reimbursement or compensation from insurance or otherwise;
  - liquidation of the Participant's (or, if applicable, the Beneficiary's) assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
  - cessation of the Participant's deferrals under the Plan.
- (iii) Distributions must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(b) A Participant or Beneficiary may request an Unforeseeable Emergency withdrawal by submitting that request, in writing on the Plan's approved form to the Administrator, who will review and approve the request. If the request is denied, a request for review of the determination may be made in writing to such entity as the Administrator may designate, provided that such entity has accepted the designation. If the review of the determination fails to confirm a claim of Unforeseeable Emergency, an appeal may be made to the appellate committee established by the Administrator in writing. If at any time a request of an Unforeseeable Emergency withdrawal is approved, the Sponsoring Employer may thereupon direct the Provider to distribute so much of the

Participant Account as is necessary to provide the amount approved to meet the Unforeseeable Emergency, as determined by the Administrator.

#### 4.8 SMALL BALANCE DISTRIBUTION

To the extent permitted in the Adoption Agreement and upon proper written request, a Participant may elect to receive a small balance distribution, payable in a lump sum, if the Participant Deferral Account value is \$5,000.00 or less, and the Participant has not deferred into the Plan for a period of two years prior to distribution. A Participant may take a small balance distribution under this Section only once while a Participant under the Plan.

#### 4.9 ROLLOVERS FROM THE PLAN

(a) Notwithstanding any provision of the plan to the contrary, a Participant shall be permitted to elect to have any "eligible rollover distribution" rolled directly to an "eligible retirement plan" specified by the Participant. The Participant shall, in the time and manner prescribed by the Administrator, specify the amount to be rolled over and the "eligible retirement plan" to receive the rollover. Any portion of a distribution which is not rolled over shall be distributed to the Participant.

(b) For purposes of this Section, the term "eligible rollover distribution" means any distribution of amounts other than in a distribution form of substantially equal periodic payments over life or life expectancy of the Participant (or joint life or joint life expectancies of the Participant and the designated Beneficiary) or a distribution over a period certain of ten years or more. Amounts required to be distributed under Code Section 401(a)(9) are not eligible rollover distributions.

(c) For purposes of this Section, the term "eligible retirement plan" shall mean any other Code Section 457(b) plan maintained by an Employer which satisfies the definition of Code Section 457(e)(1)(A), a Code Section 403(b) program, a Code Section 401(a) plan, an individual retirement account as described in Code Section 408(a), and an individual retirement annuity as described in Code Section 408(b).

(d) The election described in subsection (a) also applies to the surviving spouse in accordance with Code Section 401(a)(9) after the Participant's death or a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p).

#### 4.10 PURCHASING SERVICE CREDITS UNDER A STATE OR LOCAL RETIREMENT SYSTEM

If elected by the Sponsoring Employer in the Adoption Agreement, a Participant may direct the Administrator to transfer amounts under his Participant Account tax-free under the Plan in accordance with Code Section 457(e)(17) to the fiduciary of a state or local retirement system in order to enable the Participant to purchase years of service credits under the system or repay amounts previously cashed out under the system even if the Participant is not eligible for a distribution under Section 4.1. The Administrator shall take such reasonable measures as required to ensure that the intended recipient plan will accept such transferred amounts.

#### 4.11 TRANSFERS TO OTHER CODE SECTION 457(b) PLANS UPON SEVERANCE FROM EMPLOYMENT

If the Participant separates from service to accept employment with or perform services for another Employer which satisfies the definition of Code Section 457(e)(1)(A) and which maintains a Code Section 457(b) plan, the amounts deferred under the Plan shall, at the Participant's election, be transferred to such other Code Section 457(b) plan, provided:

- (a) The Code Section 457(b) plan to which the Participant's benefit is being transferred provides for the acceptance of such amounts, and
- (b) The Participant has a benefit equal to the amount immediately after the transfer to least equal to the amount under the Plan immediately before the transfer.

ARTICLE V  
ADMINISTRATION

5.1 POWERS AND RESPONSIBILITIES OF THE SPONSORING EMPLOYER

(a) The Sponsoring Employer shall have full power to interpret and construe the Plan in a manner consistent with its terms and provisions and with Code Section 457, including regulations thereunder and to establish practices and procedures conforming to those provisions. In all such cases the Sponsoring Employer's determination shall be final and conclusive upon all persons. It is recognized that unusual circumstances may occur and questions may arise that are not specifically covered by any provision of the Plan, and the Sponsoring Employer shall have the right to resolve all such questions. Notwithstanding the above, the Sponsoring Employer's power and responsibility under the Plan shall not extend to, nor have any control over, those responsibilities and duties of the Provider or any other provider offering investment products under the Plan.

(b) The Sponsoring Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.

(c) The Sponsoring Employer shall periodically review the performance of any person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Sponsoring Employer or by a qualified person specifically designated by the Sponsoring Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

5.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Sponsoring Employer may appoint a committee ("Committee") of one or more local public officials to serve as the Administrator and to discharge the Administrator's responsibilities under the Plan. The Sponsoring Employer may remove a Committee member for any reason by giving such member ten (10) days written notice and may thereafter fill any vacancy thus created. If the Sponsoring Employer does not appoint a Committee to administer the Plan, the Sponsoring Employer shall be the Administrator.

### 5.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Administrator, the responsibilities of each Administrator may be specified by the Sponsoring Employer and accepted in writing by each Administrator. In the event that the Sponsoring Employer makes no such delegation, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Sponsoring Employer in writing of such action and specify the responsibilities of each Administrator.

### 5.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to be deemed a qualified plan under the terms of Code Section 457, and shall comply with the terms of all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish his duties under this Plan. The Administrator shall be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of Employees and Independent Contractors to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) determine the amounts to be contributed to each Participant Account;
- (c) to authorize and direct the Provider with respect to all disbursements to which a Participant is entitled under the Plan;
- (d) to maintain all necessary records for the administration of the Plan;
- (e) to maintain practices and procedures necessary to administer the Plan as are consistent with the terms hereof;

(f) to determine the size and type of any Investment Product to be purchased from the Provider; and

(g) to assist any Participant regarding his rights, benefits, or elections available under the Plan.

#### 5.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

#### 5.6 APPOINTMENT OF ADVISORS

The Administrator may appoint employ such agents, attorneys, actuaries, accountants, auditors, investment counsel, and clerical assistants, and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan.

#### 5.7 INFORMATION FROM SPONSORING EMPLOYER

To enable the Administrator to perform his functions, the Sponsoring Employer shall supply the necessary information to the Administrator on a timely basis regarding the Participants under the plan, including but not limited to Compensation, date of hire, date of death, disability, or termination of employment, and such other pertinent facts as the Administrator may require. The Administrator may rely upon such information as is supplied by the Sponsoring Employer and shall have no duty or responsibility to verify such information.

#### 5.8 PAYMENT OF EXPENSES

All expenses of administration will be paid by the Sponsoring Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan.

## ARTICLE VI MISCELLANEOUS

### 6.1 ASSETS FOR EXCLUSIVE BENEFIT OF PARTICIPANTS AND BENEFICIARIES

All amounts of Compensation deferred under this Plan, all property and rights which may be purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust (or a custodial account or annuity contract described in Code Section 401(f)) for the exclusive benefit of Participants and their Beneficiaries. All such amounts shall not be subject to the claims of the Sponsoring Employer's general creditors.

### 6.2 RECOGNITION OF APPROVED DOMESTIC RELATIONS ORDERS

In accordance with Code Section 414(p)(1) as modified by Code Section 414(p)(11), a Participant's benefit may be the subject of a domestic relations order between the Participant and the alternate payee (as defined in Code Section 414(p)(8)) if the order is determined to be a Qualified Domestic Relations Order. The Administrator shall adopt reasonable procedures to determine the qualified status of domestic relations orders and to administer the distributions thereunder. If elected by the Sponsoring Employer in the Adoption Agreement, distributions may be made immediately to an alternate payee pursuant to a qualified domestic relations order before the date on which the Participant attains the earliest retirement age as defined in Code Section 414(p)(4)(B).

### 6.3 PARTICIPANT RIGHTS

This Plan shall not be deemed to constitute a contract between the Sponsoring Employer and any Participant or to be a consideration or an inducement for the employment of any Participant, Employee, or Independent Contractor. Nothing contained in this Plan shall be deemed to give any Participant, Employee, or Independent Contractor the right to be retained in the service of the Sponsoring Employer or to interfere with the right of the Sponsoring Employer to discharge any Participant, Employee or Independent Contractor at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

#### 6.4 ALIENATION

Subject to applicable state law (and Code Section 401(g) if the Investment Product consists of an annuity contract) and except as provided in Section 6.2, no benefit which shall be payable to any person (including a Participant or his Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall be subject to attachment or legal process for or against such person, and the same shall not be recognized except to such extent as may be required by law.

#### 6.5 CONSTRUCTION OF PLAN

This Plan shall be construed and enforced according to the state and local laws of the state in which the Sponsoring Employer is located.

#### 6.6 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in one other form in all cases where they would so apply.

#### 6.7 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, his legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Provider, Administrator and Sponsoring Employer.

#### 6.8 MILITARY SERVICE

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

## 6.9 PRE-1979 ACCOUNTS

Any amounts held by the Sponsoring Employer as a result of deferrals made by a Participant prior to January 1, 1979 shall be held under this Plan from and after the latest of (a) the Effective Date; (b) the date on which the Participant elects to have this Plan apply to such amount; or (c) the date on which such Participant exercises any right or power available under this Plan but not under the Plan agreement pursuant to which such deferral was made. All such persons who were Participants in any prior plan, who exercise any such right or privilege and who have not yet received a distribution of the amounts to which they are entitled under such prior plan shall be deemed to be Participants under this Plan for all purposes.

ARTICLE VII  
AMENDMENT AND TERMINATION

7.1 AMENDMENT

(a) The Sponsoring Employer shall have the right at any time to amend this Plan subject to the limitations of this section. Any such amendment shall become effective as provided therein upon its execution.

(b) No amendment to the Plan shall be effective if it authorizes or permits any part of the Investment Product (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Investment Product to revert to or become property of the Sponsoring Employer.

7.2 TERMINATION

(a) The Sponsoring Employer shall have the right at any time to terminate the Plan by resolution of its governing board. In addition, the Sponsoring Employer must deliver written notice of discontinuance of the Investment Product to the Provider.

(b) Upon the full termination of the Plan, the Sponsoring Employer shall direct the distribution of the assets to Participants in a manner which is consistent with and satisfies the provisions of Section 4.6 as soon as administratively practicable after termination of the eligible plan.

7.3 TRANSFER OF PLAN ASSETS TO ANOTHER ELIGIBLE PLAN

If the Sponsoring Employer ceases to be an eligible Employer, such Sponsoring Employer may elect to transfer the Plan to another eligible Employer, which satisfies the definition of Code Section 457(e)(1)(A), within the state under which the Plan is governed by resolution of its governing board. In addition, the Sponsoring Employer must deliver written notice of discontinuance or transfer of the Investment Product to the Provider.

This Specimen Document, consisting of a Plan document and Adoption Agreement, is for illustrative purposes only, presented by ING for the consideration of a plan sponsor's legal counsel. This Specimen Document reflects a number of the special rules applicable to governmental 457 plans. Because of differences in facts, circumstances, and laws of various states, interested parties should consult their own attorneys or tax advisors. The client's counsel alone must decide whether this specimen or any portion thereof should be used in any particular set of circumstances. This Plan has not been reviewed or approved by the Internal Revenue Service, and the submission of the Plan to the IRS for a Private Letter Ruling by any client is also solely the responsibility of the client.

This Specimen Document includes a number of provisions which are optional, or as part of which there are different options that may be selected. Such provisions are generally indicated on the Adoption Agreement. This does not mean that other provisions may not also be optional, or that other options may not be available. As indicated above, the selection of appropriate options is solely the responsibility of the plan sponsor and should be done only after consulting with the client's own knowledgeable counsel.

Copyright 2002 ING

This specimen is current for changes made by the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 that became effective January 1, 2002, the technical corrections made under the Job Creation and Worker Assistance Act of 2002 and the proposed Regulations issued by the IRS on May 8, 2002.