

AMENDMENT FOR THE FINAL 415 REGULATIONS

ATTACHED TO AND MADE PART OF THE NATIONWIDE RETIREMENT SOLUTIONS, INC. MODEL GOVERNMENTAL DEFINED CONTRIBUTION PLAN AND TRUST

ARTICLE I PREAMBLE

- 1.1 **Purpose of Amendment.** The purpose of the Amendment is to make a good faith effort to conform the Plan to the Final Section 415 Regulations that were released in April 2007.
- 1.2 **Superseding of Inconsistent Provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.4 **Adoption by Participating Employer.** Pursuant to Section 10.6 of the Plan, amendment of the Plan requires written action of each and every Participating Employer.
- 1.5 **Effective Date.** This Amendment is effective for limitation years that begin on or after July 1, 2007.

ARTICLE II ADOPTION AGREEMENT ELECTIONS

The election of the Employer in section E1(a) of the Adoption Agreement is affirmed.

ARTICLE III FINAL SECTION 415 REGULATIONS

- 3.1 **Modification of definition of compensation.** (Plan Section 1.7). The definition of "Compensation" under Section 1.7 of the Plan shall be amended to the following:

"Compensation" with respect to any Participant means one of the following as elected in the Adoption Agreement.

(a) W-2 wages (or simplified compensation). Compensation is defined as the employee's wages, salaries, fees for professional services, and other amounts received without regard to whether or not an amount is paid in cash for personal services actually rendered in the course of employment with the Employer, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)).

The term does not include--

(1) Contributions (other than elective contributions described in Code section 402(e)(3), section 408(k)(6), section 408(p)(2)(A)(i), or section 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in section 408(k) or a simple retirement account described in section 408(p) to the extent that the contributions are not includible in the gross income of the employee for the taxable year in which contributed. Distributions from a plan of deferred compensation are not considered as compensation for section 415 purposes, regardless of whether such amounts are includible in the gross income of the employee when distributed. Any amounts received by an employee pursuant to a nonqualified unfunded deferred compensation plan are considered as compensation for section 415 purposes in the year the amounts are actually received, but only to the extent such amounts are includible in the Employee's gross income.

(2) Other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in Code section 125).

(3) Any other items of remuneration that are similar to the exclusions from the term listed in paragraphs (1) and (2) of this subsection (a).

(b) Code Section 3401(a) wages. Compensation is defined as wages within the meaning of section 3401(a) (for purposes of income tax withholding at the source), plus amounts that would be included in wages but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). However, any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2))

are disregarded for this purpose.

(c) Other 415 safe-harbor definition. Compensation is defined as including Code Section 3401(a) wages in addition to all other payments of compensation to an employee by Employer (in the course of the Employer's trade or business) for which Employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3), and 6052.

3.2 **415 Compensation.** (Plan Sections 1.21 and, by reference, 4.4(f)(2)). 415 Compensation shall be adjusted to include the following types of compensation paid after a Participant's severance from employment with Employer (or such other entity that is treated as the Employer pursuant to Code Section 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code § 415(c)(3), even if payment is made within the time period specified above.

(a) **Regular pay.** 415 Compensation shall include regular pay after severance of employment if:

(1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.

(b) **Leave cashouts and deferred compensation.** Leave cashouts shall be included in 415 Compensation if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with Employer and only to the extent that the payment is includible in the participant's gross income.

(c) **Differential wage payments (military service participants).** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code § 3401(h)(2), shall be treated as an employee of the employer making the payment; (ii) the differential wage payment shall be treated as compensation; and (iii) the Plan will not be treated as failing to meet the requirements of any provision described in Code § 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential payment.

(d) **Salary continuation payments for disabled Participants.** 415 Compensation does not include compensation paid to a Participant who is permanently and totally disabled as defined in Code Section 22(e)(3).

(e) **Salary paid following administrative delay.** 415 Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

3.3 **Modification of the definition of annual additions.** (Plan Section 4.4(f)(1)). The Plan's definition of "annual additions" is modified as follows:

(a) **Restorative payments.** Annual additions for purposes of Code Section 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a court-approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan).

(b) **Other Amounts.** Annual additions for purposes of Code Section 415 shall not include:

(1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan;

(2) Rollover contributions (as described in Code Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16));

(3) Repayments of loans made to a participant from the Plan; and

(4) Repayment of contributions to a governmental plan as defined in Code Section 414(d) as described in Code Section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.

3.4 **Change of limitation year.** The limitation year may only be changed by a Plan amendment. If the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.

3.5 **Excess Annual Additions.** Notwithstanding any provision of the Plan to the contrary, if the annual additions within the meaning of Code Section 415 are exceeded for any Participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2008-50 or any superseding guidance, including, but not limited to, the preamble of the final Code Section 415 regulations.

3.6 **401(k) elective deferrals.** If the Plan is a 401(k) plan, then Participants may not make elective deferrals with respect to amounts that are not 415 Compensation; however, for this purpose, 415 Compensation is not limited to the annual compensation limit of Code Section 401(a)(17).

3.7 **Aggregation and Disaggregation of Plans.**

(a) For purposes of applying the limitations of Code Section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by Employer (or a "predecessor employer") under which the participant receives annual additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§ 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code Section 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former employer is a "predecessor employer" with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an employer of a participant, a former entity that antedates the Employer is a "predecessor employer" with respect to the participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(b) **Break-up of an affiliate employer or an affiliated service group.** For purposes of aggregating plans for Code Section 415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code Section 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(c) **Midyear Aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code Section 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code Section 415 with respect to a Participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the Participant's Account after the date on which the plans are required to be aggregated.

This amendment is hereby adopted this _____ day of _____, _____.

Name of Plan: _____

Name of Employer: _____

By: _____
Employer Signature