

**AMENDMENT TO THE ADMINISTRATIVE SERVICES AGREEMENT  
FOR THE MONTEREY COUNTY DEFERRED COMPENSATION PLAN**

This Amendment to the Monterey County Deferred Compensation Plan Administrative Services Agreement (“Amendment”) is effective as of the last date opposite of the respective signatures below by and between Nationwide Retirement Solutions, Inc., a Delaware corporation (hereinafter “Nationwide”), and Monterey County, California, by and through its Deferred Compensation Administrative Committee, the Plan Sponsor (hereinafter “Plan Sponsor”).

**WHEREAS**, Plan Sponsor and Nationwide executed the Monterey County Deferred Compensation Plan Administrative Services Agreement (“Agreement”) between Plan Sponsor and Nationwide on the 8<sup>th</sup> day of May 2019, under which Nationwide agreed to provide administrative services to the Employer’s 457(b) Deferred Compensation Plan (hereinafter “Plan”); and

**WHEREAS**, Plan Sponsor desires to continue to contract with Nationwide in connection with the administration of the Plan; and

**WHEREAS**, Nationwide desires to continue to provide such administrative services to the Plan subject to the terms and conditions set forth in the Agreement; and

**NOW, THEREFORE**, Plan Sponsor and Nationwide hereby mutually agree to amend the Agreement by agreeing to the following:

Section 7.A (“Plan Documents”) of the Agreement is hereby deleted and replaced in its entirety with the following:

**4. COMPENSATION**

**A. PLAN DOCUMENTS**

- 1) Nationwide will provide the Plan Sponsor with an Adoption Agreement and Plan Document which has been designed to comply with the requirements of Section 457(b) of the Code. The Adoption Agreement and Plan Document will be prepared by Nationwide at the direction of the Plan Sponsor and with the understanding that it will be reviewed by the Plan Sponsor and the Plan Sponsor’s tax and legal advisors prior to execution. Nationwide does not provide tax or legal advice. Plan Sponsor agrees to provide Nationwide with executed copies of the Adoption Agreement and any other related Plan documentation as requested by Nationwide.
- 2) When directed by the Plan Sponsor, or at such other times as it may determine, Nationwide will prepare and provide draft Plan amendments for review and approval by the Plan Sponsor. Such Plan amendments may include changes required to keep the Plan Document in compliance with the Code as the result of changes in federal law that affect the Plan. The Plan Sponsor will remain responsible for the accuracy and timely adoption of any Plan amendments. The Plan Sponsor is responsible for properly executing and retaining such documents and agrees to provide Nationwide with executed copies of same.
- 3) Nationwide will prepare the Adoption Agreement for review by the Plan Sponsor utilizing information and representations provided by the Plan Sponsor, which

information and representations may include Plan provisions found in the prior Plan documents not prepared by Nationwide.

Plan Sponsor acknowledges that:

- a) The accuracy and completeness of the information and representations in the Adoption Agreement prepared by Nationwide, which determine the Plan's provisions used by Nationwide to administer the Plan, are the sole responsibility of the Plan Sponsor.
- b) Nationwide does not review prior Plan documents to ensure that all required amendments or restatements were properly and timely made, or that any of the prior Plan provisions are in compliance with applicable laws and regulations. The restatement of the Plan Sponsor's Plan onto a Nationwide specimen Plan document does not retroactively correct any Plan documentary or operational errors that may have occurred prior to the date Administrative Services are provided by Nationwide.

Except as otherwise amended herein, all other terms and conditions of the Agreement not in conflict shall remain in full force and effect. If there is a conflict or ambiguity among the Amendment and the Agreement, the documents in the following order shall prevail and control: (1) this Amendment; (2) the original Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment effective on the date first written below.

Nationwide Retirement Solutions, Inc.

County of Monterey, California  
Plan Sponsor

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Dean Carothers

Title: \_\_\_\_\_

Title: Chair, Monterey County Deferred  
Compensation Administrative Committee

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_

Brian Briggs, Deputy County Counsel



**ADMINISTRATIVE SERVICES AGREEMENT FOR THE  
MONTEREY COUNTY DEFERRED COMPENSATION PLAN**

This Administrative Services Agreement ("Agreement") is effective as of the last date opposite of the respective signatures below by and between Nationwide Retirement Solutions, Inc., a Delaware corporation ("Nationwide"), and the County of Monterey, California, by and through its Deferred Compensation Administrative Committee, the Plan Sponsor (hereinafter "Plan Sponsor").

**WHEREAS**, Plan Sponsor, pursuant to and in compliance with the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code"), established and sponsors a Section 457(b) Plan (hereinafter the "Plan") for the benefit of its eligible employees; and

**WHEREAS**, Plan Sponsor is the sponsor and trustee for the Plan, with responsibility to obtain investment alternatives and services for employees participating in the Plan, and the Plan Sponsor further serves as the Plan Administrator and a fiduciary with respect to the Plan; and

**WHEREAS**, Plan Sponsor previously circulated a Request for Proposals for Plan Administration and Record Keeping Services (RFP, No. 10693, attached hereto and incorporated herein by reference as Exhibit 1) for the Plan; and

**WHEREAS**, Nationwide responded to said RFP (incorporated herein by reference as Exhibit 2) was selected by the Plan Sponsor as the best overall value provider that responded to the RFP; and

**WHEREAS**, the Plan Sponsor desires to have Nationwide perform the non-discretionary recordkeeping and administrative services for the Plan described in this Agreement (hereinafter referred to as "Administrative Services"); and

**WHEREAS**, Nationwide desires to provide such Administrative Services subject to the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, Nationwide and Plan Sponsor agree as follows:

**1. RECITALS**

The above recitals are hereby incorporated into the terms of this Agreement.

**2. DESIGNATION**

Plan Sponsor designates Nationwide as Plan Sponsor's provider of Administrative Services for the Plan in accordance with the terms of this Agreement.

**3. APPOINTMENTS AND RESPONSIBILITIES**

**Plan Sponsor:**

Plan Sponsor is responsible for maintaining the Plan and for maintaining the tax-qualified status of the Plan. Plan Sponsor represents and warrants that the Plan has been properly adopted and established in accordance with any applicable state or local laws or regulations governing the Plan Sponsor's ability to sponsor the Plan. Plan Sponsor warrants that the 457(b) Plan was established, and will be maintained by Plan Sponsor, in accordance with the provisions of Section 457(b) of the

Code. Plan Sponsor further acknowledges and agrees the Plan Sponsor is an eligible governmental employer as defined by Section 457(e)(1)(A) of the Code.

Plan Sponsor hereby appoints Nationwide to act as the Plan Sponsor's provider of Administrative Services for the Plan. Any duties or services not specifically described herein as being provided by Nationwide are the responsibility of the Plan Sponsor, unless specifically delegated to Nationwide in the Plan Document.

**Nationwide:**

Nationwide will serve Plan Sponsor, in a non-fiduciary capacity, as the provider of Administrative Services for the Plan Sponsor with respect to the Plan. In performing administrative services, Nationwide does not exercise any investment discretion, control or authority over the Plan or the assets of the Plan, and this Agreement does not require Nationwide to do so. Nationwide agrees to perform all Administrative Services for the Plan Sponsor with respect to the Plan as directed or delegated by the plan described in this Agreement. This Agreement does not require, nor shall this Agreement be construed as requiring, Nationwide to provide investment, legal, or tax advice to the Plan Sponsor or to the participants of the Plan. However, to the extent Nationwide makes investment advice and financial planning services available to participants through its affiliates, such advice and services will be provided by entities and individuals acting in a fiduciary capacity.

During the term of this Agreement, Nationwide shall make available to Plan Sponsor and Plan Participants the My Investment Planner online tool, which is provided by Nationwide Investment Advisors, LLC ("NIA"), an SEC registered investment adviser and Nationwide affiliate. Any investment advice provided by NIA through My Investment Planner, or any of its other investment services, is investment fiduciary advice as described in NIA's Form ADV.

Retirement planning and analysis services will be provided by Personal Retirement Counselors both onsite and through toll-free phone lines through a separate agreement between Plan Sponsor and Nationwide Securities, LLC ("NSLLC"), an SEC registered investment adviser and Nationwide affiliate. Any investment advice offered by NSLLC Personal Retirement Counselors as described in NSLLC's Form ADV is fiduciary investment advice.

**4. TERM**

The Agreement term shall be from April 1, 2019, to March 31, 2024. Plan Sponsor, in its sole discretion, shall have the option to extend this Agreement upon the same terms for up to two additional one (1) year terms. In order to exercise its option to so extend this Agreement, Plan Sponsor must notify Nationwide in writing of its election to so extend the Agreement at least thirty (30) days prior to the expiration of the current term; the parties may agree to waive and or shorten said notice period. The Agreement shall remain in effect at all times during the term and any extensions thereof unless it is terminated by one or both of the parties pursuant to Section 9 of this Agreement.

**5. COMPENSATION**

A. As compensation for the performance of the Administrative Services provided by Nationwide pursuant to this Agreement, the Plan Sponsor and Nationwide agree that Nationwide shall be entitled to receive an annualized compensation requirement of 0.025% (2.5 basis points) of the Plan's account value held by Nationwide ("Compensation Requirement") to be calculated and collected according to the methodology below.

Nationwide's Compensation Requirement will be taken in the form of an explicit asset management charge applied against all Plan assets under management, including Plan balances held in the Self-Directed Brokerage Account ("SDBA") and as outstanding participant loan balances. The explicit asset management charge of 0.025% will be taken against participant loans by applying an additional finance charge to the loan interest rate.

Nationwide's annualized Compensation Requirement of 0.025% will be calculated and assessed monthly based on the market value of total Plan assets held by Nationwide as of the last Business Day of each month. The Compensation Requirement will be calculated and assessed as detailed below:

Compensation Requirement (0.025%) x Total Plan Assets on Last Business Day of Month x (number of calendar days since the last fee was assessed) / (number of days in the calendar year) at market close;

In addition to the foregoing, the parties acknowledge and agree that Nationwide may receive revenue associated with annuity contracts, revenue from mutual fund providers, as well as fees associated with specific services or products. The parties agree that neither the Investment Options Payments balance, as described in subsection (D) below, nor the Plan Expense Account balance, as described in subsection (E) below, shall be included in the account value held by Nationwide for purposes of determining Nationwide's compensation.

- B. The Plan Sponsor may direct Nationwide to assess and collect an additional asset management charge, to be applied against all Plan assets under management, including Plan balances held in the Self-Directed Brokerage Account, to be remitted to and used by the Plan Sponsor for reasonable and necessary Plan related expenses. This additional asset management charge will be calculated and collected from participant accounts according to the methodology below. This Plan expense charge will be in addition to Nationwide's Compensation Requirement described in Section 4.A above.

The additional asset management charge for Plan related expenses is to be calculated and assessed monthly based on the market value of total Plan assets held by Nationwide as of the last Business Day of each month. The asset management charge will be calculated and assessed as detailed below:

- C. Asset management charge x Total Plan Assets on Last Business Day of Month x (number of calendar days since the last fee was assessed) / (number of days in the calendar year) at market close. Nationwide will provide the Plan Sponsor with a quarterly Compensation Requirement report within thirty (30) Business Days after the end of each quarter. As used in this Agreement, the term "Business Day" means each Monday through Friday during the hours that the New York Stock Exchange is open for business.
- D. The Plan Sponsor acknowledges that Nationwide and its affiliates receive payments in connection with the sale and servicing of investments allocated to participant Plan accounts ("Investment Option Payments"). The Investment Option Payments include mutual fund service fee payments and other payments received from investment option providers as described in detail at [www.nrsforu.com](http://www.nrsforu.com). The Plan Sponsor directs Nationwide to credit all Investment Option Payments to participant accounts on a quarterly basis. The Investment Option Payments shall be credited to participant accounts on a pro-rata basis based on each participant's total assets held in all Plan investment options that generated the Investment Option Payments.

- E. The Plan Sponsor directs Nationwide to establish and maintain a separate account (the "Plan Expense Account") to which the asset management charge may apply, which is referred to in Section 4.B and will be credited. The Plan Expense Account will be funded on a quarterly basis. The Plan Sponsor will select a single investment vehicle to be used for the Plan Expense Account, which cannot be an investment vehicle included in the participant investment option line-up. The Plan Sponsor will direct Nationwide, in writing, to pay reasonable and necessary Plan expenses directly to a Plan service provider and/or reimbursement to members of the Monterey County Deferred Compensation Committee for Plan related expenses as approved by the Committee.
1. When each invoice is submitted to Nationwide for payment, the Plan Sponsor shall certify in writing that the expenses represented by the invoice are reasonable and necessary Plan expenses. As the fiduciary of the Plan, the Plan Sponsor is solely responsible for making determinations with respect to the appropriateness of all expenses of the Plan and how the Plan Expense Account is managed; Nationwide does not accept this responsibility.
  2. The account balance, account transactions and investment experience of the Plan Expense Account will be reported to the Plan Sponsor at each of the Monterey County Deferred Compensation Committee's regularly scheduled meetings.
  3. At the direction of Plan Sponsor, any balance in the Plan Expense Account that has not been applied to pay for reasonable and necessary Plan expenses may be allocated to participant accounts on a pro-rata basis based on their total account balance on an annual basis to be mutually determined and agreed to by the parties.
- F. The Plan sponsor may request Nationwide and/or its affiliates to provide additional services not described in this Agreement by making such a request in writing, which Nationwide may decide to perform for compensation to be negotiated by the parties prior to the commencement of the additional services.
- G. To the extent offered under the Plan, in addition to the above described fees, Nationwide shall also receive fees with respect to a Participant's use of participant loan administration, the Self-Directed Brokerage Account, and Nationwide's managed account service ("ProAccount") as follows:
1. Loans – If requested by the Plan Sponsor and permitted under the terms of the Plan, Nationwide will assist the Plan Sponsor in processing Participant loan requests pursuant to Plan Sponsor's existing Loan Policy (as may be amended from time to time) attached hereto and incorporated herein by reference as Exhibit 3). All Participant loan fees are governed by the Plan's Loan Policy document and shall be consistent with Nationwide's response to RFP.
  2. Self-Directed Brokerage Account – The Plan offers an SDBA investment option for qualifying Participants in the Plan. Initial and annual administrative fees may be charged as outlined in the separate fee agreement for the SDBA that will be provided to each Participant by Nationwide.
  3. Managed account services (Nationwide ProAccount) – Managed account services are offered by Nationwide Investment Advisors ("NIA"), an affiliate of Nationwide, and the Plan Sponsor will execute a separate agreement with NIA if the Plan Sponsor wants



to add ProAccount to the Plan. Only Participants who choose to utilize Nationwide's ProAccount managed account service are assessed fees as negotiated in a separate ProAccount agreement between the Participant and NIA.

Fees related to Participant loans, the SDBA, and Nationwide ProAccount are in addition to and separate from the Compensation Requirement for Administrative Services as provided in this Agreement.

- H. The Plan Sponsor acknowledges that it has received all information about compensation paid to Nationwide as the Plan Sponsor has reasonably requested and has determined that the total amount of compensation paid to Nationwide as described in this Section 5 is reasonable and appropriate for the services provided.

## **6. INVESTMENT OPTIONS**

Nationwide agrees to accept contributions to the Plan for investment in the investment options selected for the Plan by the Plan Sponsor or other responsible plan fiduciary in its sole discretion. If an investment option selected by the Plan Sponsor is not currently available on Nationwide's platform, Nationwide must be able to establish an agreement with the fund provider prior to the addition of the fund to the Plan's investment menu.

Plan Sponsor agrees to accept the terms and conditions of the annuity contracts, mutual funds, and any other investment products selected for the Plan after being provided with a copy of same. Attached hereto and incorporated herein by reference as Exhibit 4 is the agreed upon Investments Menu which Nationwide shall make available to Plan Sponsor and Plan Participants which may be changed from time to time at the direction of the Plan Sponsor and consent of Nationwide which shall not be unreasonably withheld.

## **7. ADMINISTRATION SERVICES**

### **A. PLAN DOCUMENTS**

The Plan Sponsor will provide Nationwide with an Adoption Agreement and Plan Document that have been designed to comply with the requirements of Section 457(b) of the Internal Revenue Code and shall be responsible for preparing, adopting, and executing all amendments required to keep the Plan Document in compliance with the Internal Revenue Code as the result of applicable revisions to federal law. The Plan Sponsor acknowledges that the accuracy and completeness of the information and representation in the Plan Document are the sole responsibility of the Plan Sponsor and that Nationwide is not required to review previous Plan Documents and will express no opinions as to the Plan Document's compliance with applicable laws and regulations. The Plan Sponsor agrees to provide Nationwide with executed copies of the Plan Document, any amendments to the Plan Document, and any other related Plan documentation requested by Nationwide required to provide services under this Agreement.

### **B. PARTICIPANT ENROLLMENT AND COMMUNICATION/EDUCATION SERVICES**

Nationwide agrees to establish an account for each Plan participant, beneficiary and alternate payee (for purposes of this Agreement only, hereinafter referred to as "participants"). For each such account, Nationwide will record and maintain the following information, provided Nationwide is provided with same:

- (a) name;
- (b) Social Security number;
- (c) mailing address;
- (d) date of birth;
- (e) current investment allocation direction;
- (f) contributions allocated and invested;
- (g) investment transfers;
- (h) benefit payments;
- (i) current account balance;
- (j) transaction history since funding under the Agreement;
- (k) contributions since funding under the Agreement;
- (l) e-mail address;
- (m) beneficiary designation;
- (n) benefit tax withholding information; and
- (o) such other information as agreed upon by the Plan Sponsor and Nationwide.

Nationwide will post and credit the amounts transmitted by the Plan Sponsor to the accounts of Plan participants in accordance with the latest instructions from participants or the Plan Sponsor (as applicable) on file with Nationwide, which instructions can include direction via electronic sources such as the website or the interactive voice response system.

Nationwide will provide one on-site Retirement Specialist to provide education services to the Plan Sponsor's participants. Nationwide agrees to process the enrollment of employees eligible to participate in the Plan as determined by the Plan Sponsor. Nationwide also agrees to conduct enrollment meetings with Plan Sponsor's employees, with an annual commitment of no less than 200 annual on-site service days. The Plan Sponsor agrees to allow and facilitate the periodic distribution of materials to Plan participants at the time and in the manner determined by the Plan Sponsor; provided however, that all reasonable expenses associated with such distribution shall be paid by Nationwide. The Plan Sponsor further agrees to allow and facilitate the periodic distribution to its employees of materials prepared by Nationwide regarding products and services offered by Nationwide, or its affiliates, which Nationwide reasonably believes would be beneficial to such Plan participants.

Nationwide's communication and education efforts will include participant outreach through educational workshops, individual consultations, financial reviews and targeted campaigns at all Plan Sponsor worksites as mutually agreed upon. Nationwide will provide flyers, posters and signage to Plan Sponsor to promote on-site education attendance. Plan Sponsor will provide support for Nationwide to gain access to all departments and shifts, as needed. Nationwide will provide an online appointment scheduling tool that will allow participants to select an appointment time and location and request specific topics of interest prior to the appointment.

Nationwide will provide access to a Personal Retirement Counselor who will offer retirement planning and analysis services onsite, as mutually agreed to by the Plan Sponsor and Nationwide. Nationwide will also provide access to a Personal Retirement Counselor through a toll-free phone line and at no additional cost. Nationwide will also provide access to a Thought Leadership Consultant through the Nationwide Retirement Institute, providing the Plan Sponsor and employees additional financial education at no additional cost.

### C. PLAN CONTRIBUTIONS

Plan Sponsor agrees to send all Plan contributions to Nationwide on a timely basis that is in compliance with all applicable legal requirements. Nationwide agrees to post funds received as contributions to the Plan in accordance with the separate funding agreements between Plan Sponsor and Nationwide or any of its affiliates when received from the Plan Sponsor in good order by Nationwide. The term "in good order," as used in this Agreement, means the receipt of required information by Nationwide, in a form deemed reasonably acceptable to Nationwide, with respect to the processing of a request or the completion of a task by Nationwide that reasonably requires information from a third-party. More specifically, Plan contributions and contribution allocation information must meet all of the following requirements in order to be deemed to be in good order:

- 1) All records must include the correct and complete participant name, Social Security number, and the amount to be credited to the participant's account(s);
- 2) The source of funds must be identified (e.g., 457(b) salary reduction, employer contribution);
- 3) The Plan name and Plan number must be clearly identified;
- 4) Both the participant allocation detail and the total contribution amount must be received, and these two totals must match each other; and
- 5) All participants making or receiving a contribution must have an active account in the Plan.

At the direction of the Plan Sponsor, Nationwide shall establish a default investment option for Participants who make contributions in good order but do not select an investment option.

Funds may be sent by wire transfer, through an automated clearinghouse or by check in accordance with written instructions provided by Nationwide and agreed upon by the Plan Sponsor. Failure to follow the written instructions provided by Nationwide may result in delay of posting to participant accounts.

All contribution allocation information with respect to participant accounts will be provided to Nationwide in a mutually agreed upon format.

If Nationwide makes a determination that the contribution or allocation detail is not in good order, Nationwide shall notify the Plan Sponsor of such determination upon discovery. After such notification, the parties will continue to try to resolve the not in good order status, but if resolution is not achieved, Nationwide shall return the funds to the Plan Sponsor within thirty (30) Business Days. Nationwide will not be liable for any delay in posting if the Plan Sponsor fails to send the funds representing contribution amounts or contribution allocation information in accordance with Nationwide's instructions to Nationwide's home office in Columbus, Ohio, or for any delay in posting that results from the receipt of funds and/or contribution allocation that Nationwide determines to be not in good order.

The Plan Sponsor shall, upon request, timely provide all information required by Nationwide to perform its services to the Plan as described in this Agreement. The Plan Sponsor shall be responsible for ensuring that the provided information is accurate and complete. Nationwide

shall be entitled to rely exclusively on the information provided by the Plan Sponsor or the Plan Sponsor's advisors, whether oral or in writing, and will have no responsibility to independently verify the accuracy of that information. The Plan Sponsor acknowledges that inaccurate and/or late information could result in tax penalties and/or participant/beneficiary legal claims. Nationwide assumes no responsibility for, and shall not have any liability for, any consequences that result from Nationwide's inability to complete its work in the ordinary course of its business determined to be solely due to the failure of the Plan Sponsor to provide accurate and timely information to Nationwide.

The Plan Sponsor is responsible for providing updated information regarding Plan participants requested by Nationwide that the Plan Sponsor and Nationwide mutually agree is necessary for Nationwide to perform the Administrative Services to the Plan Sponsor under this Agreement.

- 1) Nationwide will provide deferral limit testing services to the Plan Sponsor subject to the following: Nationwide shall accept or reject participant election forms;
- 2) Nationwide shall not be responsible for monitoring deferrals to Section 403(b), 401(a), 414(h) plans or other plans referenced by IRC.
- 3) Nationwide will not be responsible for monitoring inter-plan coordination should Plan Sponsor offer more than the one (1) Section 457 plan.

#### D. SERVICES WITH RESPECT TO PARTICIPANT PLAN ACCOUNTS

- 1) Nationwide will provide a secure Internet site that complies with applicable data protection and privacy laws. Using this site, participants may: (i) obtain information regarding their accounts, and (ii) conduct certain routine transactions with respect to their accounts. The Plan Sponsor authorizes Nationwide to honor instructions regarding such transactions that may be submitted by a participant using the secure Internet site. Nationwide shall implement administrative, physical and technical safeguards to protect all Plan Sponsor and Plan Participant data. Such safeguards shall be no less rigorous than accepted industry practices, including specifically the National Institute of Standards and Technology Special Publication 800-53, and shall ensure that all such safeguards, including the manner in which Plan Sponsor and Plan Participant data and or confidential information is collected, accessed, used, stored, processed, disposed of and disclosed, and shall comply with all applicable data protection and privacy laws. Nationwide shall immediately notify Plan Sponsor of any security breach whatsoever.
- 2) Participants will have the unlimited ability to increase (within the limitations of Section 457(b) of the Code) or decrease contributions to the Plan. All requests to increase or decrease contribution amounts will be processed by Nationwide within five (5) Business Days of receipt of the request, but cannot be effective until the later of (1) the first of the calendar month following the month in which the contribution change was requested, and (2) the date the contribution change can be processed by the Plan Sponsor given Plan Sponsor's payroll processing schedule.
- 3) Participants will have the ability to exchange existing account balances, in full or in part, and to redirect future contributions from one investment option offered by the Plan to another on any Business Day, subject to Nationwide policies, as stated below,

and any applicable restrictions or penalties applied by the investment options. Nationwide policies are as follows:

- a. If six or more trade events occur in one calendar quarter, the participant is notified that the level of trading activity in their account has characteristics of market timing.
  - b. After this notification, if 11 trade events occur across two consecutive calendar quarters, all trade requests for the remainder of the calendar year are required to be submitted in paper form via regular mail.
  - c. Once 20 trade events occur in a calendar year, all trade requests for the remainder of the year are required to be submitted in paper form via regular mail.
  - d. A "trade event" is defined as any trade or combination of trades occurring on a given valuation day, including an asset rebalancing transaction. In addition, a trade event can include any and all funds available within a participant's account.
  - e. Trade requests received after the close of the market (typically 1:00 P.M. PT) will be processed the following business day at that day's closing market price. Fund houses may also apply additional restrictions on the number of allowable trades and/or trading frequency in accordance with their prospectus.
- 4) Participants will receive consolidated quarterly statements detailing their account activity and account balances for the Plan. Participants shall be informed that they must notify Nationwide of any errors within forty-five (45) days of receipt of their statements or confirmation of their investments. Nationwide will not be liable for any errors not reported within this time frame.
  - 5) Nationwide agrees to deliver account statements (by U.S. mail or electronically) to participants within thirty (30) calendar days after the end of each calendar quarter. This timeframe is contingent upon Nationwide receiving fund returns from the mutual fund providers within four (4) Business Days after the end of each quarter.
  - 6) Nationwide agrees to provide reports to the Plan Sponsor at each of the Monterey County Deferred Compensation Committee's regularly scheduled meetings summarizing the following:
    - a) All participant activity that transpired during the reporting period;
    - b) Total contributions allocated to each investment or insurance option under the Plan; and
    - c) Total withdrawals by participant. This report shall include the amount, type and date of withdrawal.
  - 7) Nationwide agrees to maintain, for a reasonable amount of time, the records necessary to produce any required reports. Plan Sponsor agrees that all related paper and electronic records shall remain the property of Nationwide.

#### E. DISTRIBUTIONS

- 1) Nationwide shall make all distributions solely as directed by the Plan Sponsor, in accordance with the Plan Document. All distributions will be made pro-rata from each of the participant's investment options and money sources unless directed otherwise by the participant. Participants are responsible for selecting a form of payment from those available under the terms of the Plan and making all other elections regarding available distribution options, such as rollover elections. Nationwide shall provide Plan Sponsor with Administrator access rights as necessary for Plan Sponsor to review, monitor, approve, or disapprove all Plan Participant requests for distributions.
- 2) Nationwide shall furnish each Participant, who has received a benefit payment, tax reporting forms in the manner and time prescribed by federal and state law. Plan Sponsor shall be responsible for all tax reporting requirements for periods prior to the effective date of this Agreement, or after the termination date of this Agreement, unless otherwise agreed to in writing by the parties to this Agreement.
- 3) To the extent required by federal and state law, Nationwide will calculate and withhold from each benefit payment federal and state income taxes. Nationwide will report such withholding to the federal and state governments as required by applicable law. Plan Sponsor shall be responsible for all tax reporting requirements for periods prior to the effective date of this Agreement, or after the termination date of this Agreement, unless otherwise agreed to in writing by the parties to this Agreement.
- 4) Nationwide will provide notice and a distribution form to each participant attaining age 70½ or older in the current calendar year. The notice will inform the participant that required minimum distributions must begin no later than the April 1 of the calendar year following the later of attainment of age 70½ or retirement. All required minimum distributions will be made in accordance with the Plan Document.
- 5) Nationwide shall administer participant and beneficiary unclaimed property funds, including but not limited to uncashed distribution checks and death claims, in accordance with Nationwide's standard unclaimed property procedures.

#### F. QUALIFIED DOMESTIC RELATIONS ORDERS (QDROS)

If the Plan accepts Qualified Domestic Relations Orders (hereinafter "QDROs"), the Plan Sponsor directs Nationwide to process QDROs in accordance with Nationwide's standard QDRO procedures (Attached hereto and incorporated herein by reference as Exhibit 5) and applicable California law, and the Plan Sponsor hereby approves the use of such standard QDRO procedures.

#### G. UNFORESEEABLE EMERGENCY WITHDRAWALS

If the Plan offers unforeseeable emergency withdrawals, the Plan Sponsor instructs Nationwide to process all unforeseeable emergency withdrawal requests received in good order, and in a manner satisfactory to Nationwide. Withdrawals will only be permitted due to an unforeseeable emergency resulting in a severe financial hardship to the participant or beneficiary that cannot be alleviated by any other means available to the participant, in accordance with Nationwide's standard unforeseeable emergency procedures (Attached hereto and incorporated herein by reference as Exhibit 6), and IRS guidelines. Plan Sponsor

hereby approves the use of such standard unforeseeable emergency procedures to make these determinations.

**8. PARTICIPANT SERVICES**

**A. WEBSITE**

Nationwide will create and maintain a website with a custom domain for and on behalf of the Plan Sponsor for the use of its participants. Participants may access the website via the internet to review and make changes to their accounts. The website is the exclusive property of Nationwide.

The website is available twenty-four (24) hours a day, except for routine maintenance of the system.

**B. INTERACTIVE VOICE RESPONSE SYSTEM**

Nationwide will provide an interactive voice response (IVR) toll free telephone number, which shall be operative twenty-four (24) hours per day, seven (7) days per week, except for routine maintenance of the system.

Participants shall be able to conduct routine plan transactions and obtain account balance information through the IVR.

The Plan Sponsor authorizes Nationwide to honor participant instructions, which may be submitted using the toll-free number, either through the IVR or a live representative.

**C. CUSTOMER SERVICE**

Nationwide's customer service representatives will be available toll-free to answer participant questions and process applicable transactions between the hours of 5:00 a.m. and 8:00 p.m. Pacific Time each Monday through Friday, and between the hours of 6:00 a.m. and 3:00 p.m. Pacific Time each Saturday, with the exception of certain holidays as dictated by the New York Stock Exchange holiday trading schedule.

Nationwide agrees to commit up to \$25,000 annually towards performance guarantees and an additional \$25,000 toward a successful transition and compliance with transition benchmarks. The table below identifies specific services, benchmarks and the respective performance guarantee amounts. Nationwide shall provide Plan Sponsor with an annual report detailing Nationwide's actual performance with respect to meeting the Benchmarks below.

Phone	Benchmark	Amount at Risk
Plan sponsor services response time:	one business day	No dollars at risk
Participant services response time:	80% within 20 seconds	\$1,750/annually
Return all calls to plan sponsor within:	one business day	No dollars at risk

	Benchmark	Amount at Risk
<b>Return all calls to participants within:</b>	one business day	No dollars at risk
<b>Statements</b>		
<b>Participant statement mail time:</b>	Within 15 business days of the end of the reporting period	\$1,750/annually
<b>Sponsor plan statement mail time:</b>	Within 30 days of the end of the reporting period	\$1,750/annually
<b>Participant online statement posting:</b>	Within 15 business days of the end of the reporting period	\$1,750/annually
<b>Sponsor online statement posting:</b>	Within 30 days of the end of the reporting period	\$1,750/annually
<b>Participant Services</b>		
<b>Number of on-site individual meetings:</b>	2,500	\$2,000/annually
<b>Number of on-site group meetings:</b>	150	\$2,000/annually
<b>Financial planning services:</b>	Quarterly targeted email communications	No dollars at risk
<b>Plan participation rate increases:</b>	Nationwide will discuss expectations with the Plan	No dollars at risk
<b>Deferral rate increases:</b>	Nationwide will discuss expectations with the Plan	No dollars at risk
<b>Transition</b>	Nationwide will ensure a smooth transition with a \$25,000 transition performance guarantee. We will work with the Plan during the discovery phase to finalize mutually agreed upon targets according to your personalized needs.	\$25,000
<b>Timeline:</b>	16 weeks	\$15,000
<b>Deliverables:</b>	<ul style="list-style-type: none"> <li>- One day blackout period</li> <li>- Funds applied correctly</li> <li>- Employees educated on enhancements and consolidation</li> </ul>	\$5,000
<b>On-site meetings:</b>	20 days / 160 service hours	\$5,000
<b>Administration</b>		
<b>Contribution posting:</b>	Same business day if received in good order by 1 p.m. PT	\$1,750/annually if less than 99%
<b>Withdrawals processed:</b>	Within 3 to 5 business days	\$1,750/annually if less than 99%
<b>Emergency withdrawals processed:</b>	Within 3 to 5 business days	\$1,750/annually if less than 99%
<b>Rollovers/transfers out:</b>	Within 3 to 5 business days of receipt in good order	\$1,750/annually if less than 99%
<b>Loan processing (if applicable):</b>	Within 3 to 5 business days of receipt in good order	\$1,750/annually if less than 99%
<b>Plan Sponsor Services</b>		
<b>Report delivery:</b>	Within 30 days of the end of the reporting period	\$1,750/annually



	Benchmark	Amount at Risk
<b>Maximum Deferral Report</b>	Report of participants on track to over-defer with a hard stop (and restart to the extent possible).	\$1,000 / annually
<b>Training:</b>	We would like to discuss requirements and expectations with the Plan	No dollars at risk
<b>Overall Satisfaction</b>		
<b>Draft and distribute survey:</b>	<p><b>Client Satisfaction Survey</b> Our Plan Sponsor survey is conducted annually or biennially, depending on the Plan's preference.</p> <p><b>Onsite Participant Surveys</b> Onsite participant surveys are offered when attending a consultation or group workshop allowing them to provide feedback on the content and presentation. These surveys are conducted after every meeting.</p>	\$1,750/annually
<b>Satisfaction survey score:</b>	Survey results are compiled and reported back to the Plan on a mutually agreeable frequency.	No dollars at risk

## 9. TERMINATION

Excepting for termination at the end of the Term of this Agreement, either the Plan Sponsor or Nationwide may terminate this Agreement without cause upon providing one-hundred and twenty (120) days written notice to the other party. Provision of such written notice of termination by Plan Sponsor to Nationwide does not relieve the Plan Sponsor of any termination requirements that may be associated with specific investment options, nor does it relieve Plan Sponsor of any termination requirements associated with those investment options. Plan Sponsor further acknowledges and agrees that the Plan is responsible for any investment product liquidation fees, if applicable, and that neither Nationwide nor any of its affiliates assumes liability for any such fees.

Pursuant to Nationwide's Response to RFP, the parties agree that Plan Sponsor must exercise its option to place a one (1) year "put" on the Nationwide Fixed Account prior to Plan Sponsor terminating this Agreement with Nationwide. To that end, the parties agree that Plan Sponsor through this Agreement hereby so elects, in advance, to exercise its option to place a one (1) year "put" on the Nationwide Fixed Account to be effective one (1) year prior to the end of the term of this Agreement, and only if Plan Sponsor has not otherwise elected its option(s) for an extension of the term of this Agreement. No further action or notice whatsoever is required for Plan Sponsor to exercise its one (1) year "put" option. This clause shall equally apply to any and all extensions of the term of this Agreement such that Nationwide agrees and recognizes that Plan Sponsor hereby elects to exercise its one (1) year "put" option to be co-terminus with the end of the term of any extension under this Agreement.

Nationwide shall provide Plan Sponsor, or such other entity as the Plan Sponsor may designate in writing, with a copy of all participant records in an electronic format as

mutually agreed upon between Nationwide and Plan Sponsor, no less than thirty (30) calendar days prior to the termination of this Agreement.

Upon the date of termination of this Agreement the following shall occur:

- A. Nationwide will no longer accept contributions to the Plan except by mutual agreement of the parties.
- B. Nationwide will:
  - 1) Transfer any periodic distribution amounts and schedules, continuing loan repayments, or other ongoing participant transactional activity to the Plan Sponsor, or such other entity as the Plan Sponsor may designate in writing, in accordance with the time frame described above for the delivery of participant records.
  - 2) Transfer all Plan assets under its control to the Plan Sponsor or to such other entity as the Plan Sponsor may designate in writing. Nationwide agrees to provide a final accounting of all Plan assets for which Nationwide provides recordkeeping.
  - 3) Maintain all Plan Sponsor and or Plan Participant data for the period of time required by law and cooperate with Plan Sponsor to obtain any such data as needed for three (3) years after the termination of this Agreement. This clause shall survive the termination of this Agreement.

Notwithstanding the above, Plan Sponsor may cancel this Agreement immediately upon oral and written notice in the event that the County of Monterey ceases providing eligible employees with the benefit of a 457(b) Plan.

#### **10. ASSIGNABILITY**

Inasmuch as this Agreement is intended to secure the specialized services of Nationwide, Nationwide may not assign or transfer any interest herein without the prior written consent of the Plan Sponsor. This provision shall not restrict Nationwide's right to delegate certain services to an agent, including any affiliate, without first obtaining the written consent of Plan Sponsor. Unless agreed to by the parties, no such assignment shall relieve any party to this Agreement of any duties or responsibilities herein.

#### **11. CONFIDENTIALITY**

Nationwide agrees to maintain all information obtained from or related to all Plan participants as confidential. The Plan Sponsor and Nationwide agree that Nationwide, its officers, employees, brokers, registered representatives, affiliates, vendors and professional advisors (such as attorneys, accountants and actuaries) may use and disclose Plan and participant information only to enable or assist it in the performance of its duties hereunder and with other Plan-related activities, and the Plan Sponsor expressly authorizes Nationwide to disclose Plan and participant information to its agents and/or broker of record on file with Nationwide. Such plan related activities expressly do not include the sale of outside products and services. Notwithstanding anything to the contrary contained herein, it is expressly understood that Nationwide retains the right to use any and all information in its possession in connection with its defense and/or prosecution of any litigation which may arise in connection with this Agreement, the investment arrangement funding the Plan, or the Plan; provided, however, in no event will Nationwide release any information to any person

or entity except as permitted by applicable law, nor shall Nationwide transfer, convey, or sell any Plan Participant non-identifiable analytical data.

This Section 11 will survive the termination for any reason of this Agreement.

**12. CIRCUMSTANCES EXCUSING PERFORMANCE**

Neither party to this Agreement shall be in default by reason of failure to perform in accordance with its terms if such failure arises out of causes beyond their reasonable control and without fault or negligence on their part. Such causes may include, but are not limited to, Acts of God or public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine or restrictions, freight embargoes, and unusually severe weather.

Neither party shall be responsible for performing all or any portion of the services contemplated by this Agreement that are precluded by the foregoing events for such period of time as the Plan Sponsor or Nationwide are prevented from performing such services in the normal course of business. Neither Nationwide nor the Plan Sponsor shall be liable for lost profits, losses, damage or injury, including without limitation, special or consequential damages, resulting in whole from the foregoing events.

"Acts of God" are defined as acts, events, happenings or occurrences due exclusively to natural causes and inevitable accident or disaster, exclusive from all human intervention.

**13. INDEMNIFICATION**

Nationwide agrees it shall defend, indemnify, and hold harmless, at Nationwide's sole expense, the County of Monterey and its employees, officers, contractors, the Deferred Compensation Committee, and agents ("the County Indemnitees") from and against any claim, action, or judicial or administrative proceeding whatsoever brought against the County Indemnitees, or any of them, arising out of or in connection with Nationwide's performance (or lack of performance) of its duties pursuant to the provisions of this Agreement under Nationwide's exclusive control, or negligence or willful misconduct in the performance of its services, duties and obligations under this Agreement. Nationwide shall further pay all losses, liabilities, damages, penalties, costs, awards, interest, judgments, fees (including reasonable attorney's fees) and expenses arising from any such claim, action, or judicial or administrative proceeding whatsoever except for the portion of such loss or damage determined to be caused by the gross negligence or willful misconduct of the County Indemnitees. The Plan Sponsor shall promptly notify Nationwide of any such claim, action, or proceeding and the County Indemnities shall cooperate fully in the defense thereof. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as permitted by the law of the State of California. In addition, Nationwide represents, warrants and covenants that the indemnification in this paragraph is enforceable under applicable law and that Nationwide will not assert a position contrary to such representation in any judicial or administrative proceeding.

Nationwide shall not provide Plan Sponsor with any product or design that violates or infringes any registered United States patent, copyright, trade secret or other intellectual property right. Nationwide warrants that it has the right to license and or distribute to Plan Sponsor for Plan Sponsor's use, all software and or any product or item associated with this Agreement including but not limited to operating software and compliance software. If Plan Sponsor promptly notifies Nationwide in writing of any third party claim against County Indemnitees that any software or other item provided to Plan Sponsor by Nationwide infringes any patent, copyright, trade secret or

other intellectual property right of any third party, Nationwide shall indemnify, defend and hold harmless County Indemnitees against any such claims, including but not limited to attorney's fees and damages actually incurred by Plan Sponsor in connection therewith. If any software, item, or product is, or in Nationwide's reasonable opinion is likely to be held to be infringing, Nationwide shall at its expense and options: 1) procure the right for Plan Sponsor to continue using it; or 2) replace or modify it so that it becomes non-infringing while giving equivalent performance. If Nationwide is initially unable to perform either option (1) or (2) for a period not to exceed 30 days, Nationwide may require Plan Sponsor to stop using the potentially infringing system or portion thereof, until Nationwide can perform either option (1) or (2), providing however that Nationwide supplies Plan Sponsor with an alternate means by which Plan Sponsor may continue its operations pursuant to this Agreement.

This Section 13 will survive the termination for any reason of this Agreement.

#### 14. INSURANCE

All coverages, except surety, if applicable, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager. Without limiting Nationwide's duty to indemnify, Nationwide shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$3,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Nationwide has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit of no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to Nationwide's profession, with a limit of no less than \$10,000,000 per occurrence or claim, \$10,000,000 aggregate.
5. **Fiduciary Liability:** Insurance appropriate to Nationwide's profession, with a limit of no less than \$5,000,000 per occurrence or claim.
6. **Cyber Liability:** Insurance appropriate to Nationwide's profession, with a limit of no less than \$5,000,000 per occurrence or claim, \$10,000,000 aggregate. Prior to commencement of this Agreement, Nationwide shall provide a "Certificate of Insurance" certifying that coverage as required here has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, Nationwide shall, upon request, provide a certified copy of the policy or policies.

7. **Crime Insurance:** Nationwide shall carry and maintain crime insurance with limits of not less than \$5,000,000 and aggregate of \$ \$10,000,000 covering claims involving employee dishonesty, forgery or alteration, theft, disappearance and destruction, and computer fraud. Prior to commencement of this Agreement, Nationwide shall provide a "Certificate of Insurance" certifying that coverage as required here has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, Nationwide shall, upon request, provide a certified copy of the policy or policies.

All insurance required by this Agreement shall be with a company acceptable to Plan Sponsor and issued and executed by an admitted insurer authorized to transact business in the State of California. Unless otherwise specified in this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Nationwide completes its performance of services under this Agreement. Each liability policy shall provide that the Plan Sponsor shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Nationwide and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor show each subcontractor has identical insurance coverage to the requirements herein.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of Nationwide's work hereunder, including but not limited to ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by Plan Sponsor and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by Nationwide's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Nationwide shall provide such certificates of insurance to Plan Sponsor prior to the commencement of this Agreement and shall provide a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate on file with the Plan Sponsor. Acceptance and approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Nationwide shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by Plan Sponsor, annual certificates to the Monterey County Deferred Compensation Committee. If the certificate is not received by the expiration date, Plan Sponsor shall notify Nationwide and Nationwide shall submit the certificate, evidencing no lapse in coverage during the interim. Failure by Nationwide to maintain such insurance is a default of this Agreement which entitles Plan Sponsor, in its sole discretion, to terminate this Agreement immediately.

15. **WARRANTY**

Nationwide further warrants that any software or product, when delivered and or installed by Nationwide, does not contain, and Nationwide has not knowingly introduced through any media, any virus, worm, trap door, back door, bomb, bug, or other contaminant or disabling device, including without limitation, any timer, clock, counter or other limiting routines, codes, commands, or instructions that may have the effect or be used to access, alter, delete, limit, control, damage, or disable any Plan Sponsor property and that Nationwide shall be held strictly liable for all damages, costs, loss of revenue, and attorney's fees in the event that this warranty is breached.

16. **NON-DISCRIMINATION**

Nationwide shall not employ discriminatory practices in the treatment of persons in relation to the circumstances provided herein, including assignment of accommodations, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, gender, or sexual orientation.

17. **EMPLOYMENT STATUS**

Nationwide shall, during the entire term of this Agreement, be construed as an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow Plan Sponsor to exercise discretion of control over the professional manner in which Nationwide performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Nationwide shall be provided in a manner consistent with the professional standards applicable to such services. The sole interest of the Plan Sponsor is to ensure that the services shall be rendered and performed in a competent, efficient and satisfactory manner. Nationwide shall be fully responsible for payment of all taxes due to the State of California and or the Federal government, which would be withheld from compensation of Nationwide, if Nationwide were a Plan Sponsor employee. Plan Sponsor shall not be liable for deductions for any amount for any purpose from Nationwide's compensation. Nationwide shall not be eligible for coverage under Plan Sponsor's Workers Compensation Insurance Plan nor shall Nationwide be eligible for any other Monterey County employee benefit.

18. **PARTIES BOUND**

This Agreement and the provisions thereof shall be binding upon and shall inure to the benefit of the successors and assigns of Nationwide and the Plan Sponsor. The Plan and Plan Participants are not parties to this Agreement, and Nationwide has no contractual obligations to the Plan or Plan Participants. This Agreement shall be enforceable only by the parties, not by Plan Participants or other third parties, and is intended to create no third-party beneficiaries.

19. **PRIVITY OF CONTRACT**

Plan Sponsor acknowledges and agrees that Nationwide and Plan participants shall have no privity of contract with each other.

**20. APPLICABLE LAW AND VENUE**

This Agreement shall be governed and interpreted under the laws of the State of California without regard to choice of law principles. Venue for any action arising from this Agreement shall be the California Superior Court in Monterey County or the San Jose division of the Northern District Court of California.

This Section 20 will survive the termination for any reason of this Agreement.

**21. MODIFICATION**

This writing is intended both as the final expression of the Agreement between the parties and as a complete statement of the terms of the Agreement. Notwithstanding anything contained herein to the contrary, this Agreement may be amended from time to time and as mutually agreed upon by the parties. Except as otherwise provided herein, no modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

**22. NO WAIVER**

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision in this Agreement and either party may, at any time, enforce the provision previously unenforced, unless a modification to this Agreement has been executed that affects the provision previously unenforced.

**23. SEVERABILITY**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction where performance is required shall be ineffective to the extent such provision is prohibited or unenforceable without invalidating the remaining provisions, and any such prohibition or unenforceable provision in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**24. AUTHORIZED PERSONS**

The Plan Sponsor will furnish a list to Nationwide (and from time to time whenever there are changes therein) of the individuals authorized to transmit instruction to Nationwide concerning the Plan and/or assets in the account, and written direction regarding the form of such instructions.

**25. COMPLIANCE WITH LAWS**

Both the Plan Sponsor and Nationwide agree to comply, in their respective roles under this Agreement, in all material respects with all applicable federal laws and regulations as they affect the Plan and the administration thereof. Nothing contained herein shall be construed to prohibit either party from performing any act or not performing any act as either may be required by statute, court decision, or other authority having jurisdiction thereof.

**26. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND INDEMNITY**

Notwithstanding anything to the contrary, any representations and warranties contained herein shall survive termination of this Agreement for the full period of any applicable statute of limitations that may apply to this Agreement. Further, the party making any representation or warranty shall

notify the other party in writing within five (5) business days of any representation or warranty that is no longer valid. Notwithstanding anything to the contrary, any indemnity provisions contained herein shall survive the termination of this Agreement for the full period of any applicable statute of limitations that may apply to this Agreement.

**27. ATTORNEYS' FEES**

Each party agrees that in the event of a claim, arbitration, or lawsuit filed by a party to this Agreement, attorney's fees shall be awarded to the prevailing party.

**28. HEADINGS**

The headings of articles, paragraphs, sections, and exhibits in this Agreement are included for convenience only and shall not be considered by either party in construing the meaning of this Agreement

**29. ADDITIONAL PROVISIONS/EXHIBITS**

The following Exhibits are incorporated herein by reference and are included as part of this Agreement:

1. Monterey County, California 457(b) Deferred Compensation Plan Request for Proposals for Plan Administration and Record Keeping Services, RFP No. 10693;
2. Nationwide's Response to RFP No. 10693;
3. Plan Sponsor's Loan Policy;
4. Investment Menu;
5. QDRO policies;
6. Unforeseeable Emergency Withdrawal Policy and Procedures.

Nationwide shall comply with all provisions of Exhibits 1 & 2. In the event of a conflict between the provisions of the main body of this Agreement and any attached Exhibits, the main body of the agreement shall take precedence. In the event of a conflict between the provisions of Exhibit 1 (RFP No. 10693) and the provisions of Exhibit 2 (Nationwide's Response to RFP), the provisions of Exhibit 1 shall take precedence.

**30. RESOLUTION OF AMBIGUITIES**

If an ambiguity exists in this Agreement, or in a specific provision hereof, neither the Agreement nor such provision shall be construed against the party who drafted the Agreement or such provision.

**31. NOTICES**

All notices and demands to be given under this Agreement by one party to another shall be given by certified or United States mail, addressed to the party to be notified or upon whom a demand is being made, at the addresses set forth in this Agreement or such other place as either party may,



from time to time, designate in writing to the other party. Notice shall be deemed received on the earlier of three (3) days from the date of mailing, or the day the notice is actually received by the party to whom the notice was sent.

If to Nationwide: Nationwide Retirement Solutions, Inc.  
10 W. Nationwide Blvd., 05-04-101A  
Columbus, Ohio 43215

If to Plan Sponsor: Monterey County Employee Benefits Department  
168 W. Alisal St. 3<sup>rd</sup> Floor  
Salinas CA 93901

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective as of the last date opposite of the respective signatures below. The Plan Sponsor represents and warrants they are an employer eligible to adopt a governmental plan as defined by Section 457(e)(1)(A) of the Internal Revenue Code of 1986, as amended (check one below):

     (A) State of (including Commonwealth) \_\_\_\_\_  
  X   (B) political subdivision of the State or Commonwealth of California  
agency of (A) or (B): \_\_\_\_\_  
instrumentality of (A) or (B): \_\_\_\_\_

Nationwide Retirement Solutions, Inc.

County of Monterey, California  
Plan Sponsor

By:     KEDL    

By:     [Signature]    

Name:     Kerth Wild    

Name: Dean Carothers

Title:     VP/CEO    

Title: Chair, Monterey County Deferred Compensation Administrative Committee

Date:     4/25/19    

Date:     5/8/19    

By:     [Signature]    

Name:     Wendy Shaw    

Title:     VP Operations    

Date:     4/25/19    

APPROVED AS TO FORM AND LEGALITY

By:     [Signature]      
Brian Briggs, Deputy County Counsel

