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U.S. DEPT. OF LABOR  
FMLA/PUBLIC DISCLOSURE

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5 July, 2000

Top Hat Plan Exemption  
Pension and Welfare Benefits Administration  
Room N-5644  
U. S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Dear Sir or Madame:

Avesta Sheffield NAD, Inc. has established a non-qualified deferred compensation plan for a select group of its management employees. Attached is a notice which contains the required information together with a copy of the plan.

If there are any questions, or if additional information is required, please do not hesitate to contact me.

Very truly yours,  
AVESTA SHEFFIELD NAD, INC.

Richard N. Holloway  
Director of Personnel

Direct Line: 847.413.4198

Telefax: 847.995.8580

e-mail [rholloway@asnad.com](mailto:rholloway@asnad.com)

AVESTA SHEFFIELD NAD, INC.

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Schaumburg, IL 60173-2218

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[www.avestashffield.com/na](http://www.avestashffield.com/na)

DEPARTMENT OF LABOR  
FILING FOR UNFUNDED DEFERRED COMPENSATION PLAN

Name and address of employer: Avesta Sheffield NAD, Inc.  
425 North Martingale Road, Suite 2000  
Schaumburg, IL 60173—2218

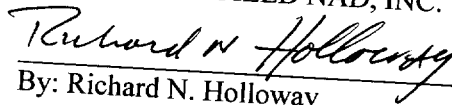
Employer Identification No.: 22-3052092

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The above employer maintains an unfunded plan solely for the purposes of providing deferred compensation for a select group of its management or highly compensated employees. Benefits under the plan are paid as needed solely from the general assets of the employer. There is currently one (1) employee covered by the plan. The plan was effective July 01, 2000.

The employer maintains one other deferred compensation arrangement for a current employee, and one other deferred compensation arrangement for a former employee.

AVESTA SHEFFIELD NAD, INC.



By: Richard N. Holloway  
Director of Personnel

**Avesta Sheffield NAD, Inc.**  
**Supplemental Executive Retirement Plan**

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**Avesta Sheffield NAD, Inc. Supplemental Executive Retirement Plan**

**ARTICLE I.**

**ESTABLISHMENT OF PLAN**

**Section 1.01. Establishment.** Avesta Sheffield NAD, Inc. hereby establishes the Avesta Sheffield Supplemental Executive Retirement Plan ("Plan"), effective July 1, 2000.

**Section 1.02. Purpose.** The sole purpose of the Plan is to provide certain executive employees in the Company additional benefits, to the extent that the benefits to which they would otherwise be entitled under the Avesta Sheffield Salaried Retirement Plan and the Avesta Sheffield 401(k) Plan are limited by Sections 401(a)(17), 402(g), and 415 of the Internal Revenue Code of 1986, as amended, and corresponding provisions of subsequent federal income tax laws ("Code").

**Section 1.03. Funding.** The Plan shall be an unfunded benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended, and the Code. Benefits payable under the Plan shall be paid from the general assets of the Company. The right of a Participant or Beneficiary to receive payment under the Plan is merely a contractual right to payment, and the Plan does not give Participants or Beneficiaries any interest in or right to any of the funds, property, or assets of the Company other than as a general creditor of the Company.

**ARTICLE II.**

**DEFINITIONS AND INTERPRETATION**

**Section 2.01. Definitions.** When the initial letter of a word or phrase is capitalized herein, such word or phrase shall have the meaning hereinafter set forth:

(a) "Actuarial Equivalent" or "Actuarially Equivalent" means a benefit having the same actuarial value, as reasonably determined by the Company, using the assumptions set out from time to time in the Retirement Plan; provided, however, no change in the actuarial assumptions used under the Retirement Plan shall reduce the benefit to which a Participant is entitled under the Plan below the amount of such benefit, as determined on the day immediately preceding such change in assumptions.

(b) "Beneficiary" means the person or persons designated by the Participant as their beneficiary hereunder on forms provided by the Company and received by the Company during the Participant's life. If the Participant does not designate a Beneficiary as provided in the preceding sentence, or if the Beneficiary or Beneficiaries that the Participant has designated predecease the Participant, the Beneficiary shall be the Participant's Spouse at the time of death or, if not survived by their Spouse, their estate.

(c) "Board" means the board of directors of the Company. The "Board" may delegate any function hereunder to a person or committee, in which case the term "Board" shall refer to such person or committee.

(d) "Code" means the Internal Revenue Code of 1986, as amended, or any corresponding provisions of any subsequent federal income tax law.

(e) "Company" means Avesta Sheffield NAD, Inc.

(f) "Credited Earnings" means the earnings and losses credited to the Deferral Account.

(g) "Deferral Account" means the bookkeeping account pursuant to which the Participant's Defined Contribution Replacement Benefit is determined. When so indicated by the context, Deferral Account also means the amount credited to the bookkeeping account.

(h) "Defined Benefit Replacement Benefit" means the Replacement Benefit provided for in Article V.

(i) "Defined Contribution Plan" means the Avesta Sheffield 401(k) Plan.

(j) "Defined Contribution Replacement Benefit" means Replacement Benefit provided for in Article VI.

(k) "Good Cause" means (i) commission of a felony or any crime or offense lesser than a felony involving the property of the Company; or (ii) engaging in conduct that has caused demonstrable and serious injury to the Company, monetary or otherwise; or (iii) gross dereliction of duties or other grave misconduct and the failure to cure such situation within 30 days after receipt of notice thereof from the Chairman of the Board.

(l) "Elective Deferral" means compensation deferred by the Participant pursuant to Section 6.01.

(m) "Married Participant" means a Participant who has been married to their Spouse throughout the one-year period ending on the date of their death.

(n) "Monthly Retirement Benefit" means a monthly retirement benefit payable to the Participant, when paid as a Single Life Annuity beginning as of their 62nd birthday.

(o) "Participant" means an employee who is a member of the Management Committee and who has been designated by the Board as being eligible to receive benefits under this Plan.

(p) "Plan" means the "Avesta Sheffield NAD, Inc. Supplemental Executive Retirement Plan," as set forth herein and as it may be amended from time to time hereafter.

(q) "Plan Year" means the period beginning July 01, 2000, and ending December 31, 2000, and each calendar year thereafter.

(r) "Qualified Joint and Survivor Annuity" means a level monthly annuity payable to the Participant beginning as of their Retirement Date and continuing for their life, with a survivor annuity to the Participant's surviving Spouse for their life in a monthly amount equal to 50% of the monthly amount payable to the Participant while alive.

(s) "Replacement Benefit" means the sum of the Defined Benefit Replacement Benefit and the Defined Contribution Replacement Benefit.

(t) "Retirement Date" means the first day of the month coinciding with or immediately following the later of the Participant's (i) Termination of Employment or (ii) 55th birthday.

(u) "Retirement Plan" means the "Avesta Sheffield Salaried Retirement Plan," as amended from time to time.

(v) "Single Life Annuity" means a level monthly annuity payable to the Participant beginning as of the Participant's Retirement Date and ending on the date of their death.

(w) "Spouse" means the Participant's wife or husband, provided that they have been married continuously throughout the one-year period ending on the Participant's Retirement Date (or, if the Participant dies before their Retirement Date, throughout the one-year period ending on the date of death).

(x) "Standard Defined Benefit Replacement Benefit" has the meaning specified in Section 5.01.

(y) "Termination of Employment" means a complete termination of the employment relationship between the Participant and the Company, or any parent, subsidiary, or affiliate thereof, for any reason, including without limitation retirement, resignation, discharge, or death.

## **Section 2.02. Construction and Governing Law.**

(a) The Plan shall be construed, enforced, and administered, and the validity thereof determined in accordance with, the laws of the State of Illinois.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and the words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

### ARTICLE III.

#### PARTICIPATION

An employee shall become a Participant effective on the date specified by the Board, provided they have completed such forms and made such elections as the Board may prescribe, including an agreement to be bound by all terms of the Plan and all determinations of the Board.

### ARTICLE IV.

#### RETIREMENT AND FORFEITURES

**Section 4.01. Replacement Benefit.** The Participant's Replacement Benefit shall be determined pursuant to Articles V and VI and shall become payable as of their Retirement Date in accordance with those Articles.

**Section 4.02. Forfeitures.**

(a) The Participant's right to any Replacement Benefit attributable to their Elective Deferrals shall be non-forfeitable.

(b) Except to the extent provided in Subsection (a), the Participant shall forfeit all rights to any benefit under the Plan if (i) their employment is involuntarily terminated by the Company for Good Cause, as determined by the Board in its reasonable discretion; or (ii) they compete with the Company in violation of Article VII during or within two years after their Termination of Employment.

(c) If the Participant dies before any benefit becomes payable under the Plan, they shall forfeit any and all rights that they or their Beneficiaries may have to such benefit, except any death benefit payable pursuant to Article V or VI.

### ARTICLE V.

#### DEFINED BENEFIT REPLACEMENT BENEFIT

**Section 5.01. Determination of Standard Defined Benefit Replacement Benefit.** The Board shall determine the Participant's Standard Defined Benefit Replacement Benefit as follows:

Step 1: The Board shall determine the Monthly Retirement Benefit that the Participant

would have accrued under the Retirement Plan as of their Retirement Date, if the limitations of Code Sections 415 and 401(a)(17) had been disregarded.

Step 2: The Board shall determine the Monthly Retirement Benefit that the Participant has actually accrued under the Retirement Plan as of their Retirement Date.

Step 3: The Board shall reduce the benefit amount determined pursuant to Step 1 by the benefit amount determined pursuant to Step 2. The amount determined pursuant to the preceding sentence shall be the Participant's Standard Defined Benefit Replacement Benefit.

**Section 5.02. Adjustment of Standard Defined Benefit Replacement Benefit.** If the Participant's Replacement Benefit is paid as a Single Life Annuity beginning on or after their 62nd birthday, the monthly amount of their Defined Benefit Replacement Benefit shall be equal to their Standard Defined Benefit Replacement Benefit. If the Participant's Replacement Benefit is paid as a Qualified Joint and Survivor Annuity, the monthly amount of their Defined Benefit Replacement Benefit shall be the Actuarial Equivalent of the Single Life Annuity that would otherwise be payable. If distribution of the Participant's Replacement Benefit begins before their 62nd birthday, the monthly amount of their Defined Benefit Replacement Benefit shall be reduced for early commencement, using the early commencement reduction factors, if any, that would be applicable if such benefit were paid pursuant to the Retirement Plan.

**Section 5.03. Form of Payment.** If a Participant Terminates Employment for a reason other than death, their Defined Benefit Replacement Benefit, to the extent not forfeited pursuant to Section 4.02, shall be paid as a Single Life Annuity (or, if the Participant has been married throughout the one-year period ending on their Retirement Date, a Qualified Joint and Survivor Annuity) beginning as of their Retirement Date.

**Section 5.04. Death of Participant.**

(a) If a Married Participant dies before their Retirement Date, their Spouse shall be entitled to a survivor annuity, which shall be payable as of the earliest date on which their Spouse could have begun to receive the survivor annuity under the Retirement Plan. If the survivor annuity begins on or after the date that would have been the Participant's 62nd birthday, the monthly amount of the survivor annuity shall be equal to the survivor annuity payable under a Qualified Joint and Survivor Annuity that is Actuarially Equivalent to the Participant's Standard Defined Benefit Replacement Benefit. If the beginning date for the survivor annuity precedes the date that would have been the Participant's 62nd birthday, the amount of the survivor benefit determined in accordance with the preceding sentence shall be reduced for early commencement, using the early commencement reduction factors, if any, that would be applicable if such benefit were paid pursuant to the Retirement Plan.

(b) If a Participant dies after their Retirement Date, the only survivor benefit shall be the benefit payable under the Qualified Joint and Survivor Annuity, if any.

## ARTICLE VI.

### DEFINED CONTRIBUTION REPLACEMENT BENEFIT

**Section 6.01. Revised Definition of Compensation.** For purposes of calculating the Participant's Deferral Election pursuant to Section 6.02 and the matching contribution pursuant to Section 6.03, the Participant's "Compensation" for a calendar year, for purposes of determining the amount that could have been contributed to the Defined Contribution Plan absent the restrictions referred to in Section 6.02, shall be the cash compensation paid to them by the Company or a related company during such calendar year includable in wages for income tax purposes, increased by reductions to the Participant's cash compensation for such year pursuant to a salary reduction agreement resulting in an exclusion pursuant to Code Section 125 or 402(a)(8) or a deferral pursuant to Section 6.02 and decreased (to the extent otherwise includable in Compensation) by any amounts paid to the Participant pursuant to the Replacement Plan, the Incentive Compensation Plan, or any welfare fringe benefit plan maintained by the Company or a related company. Notwithstanding the preceding sentence, the average deferral percentage and average contribution percentage used for calculating the amount that the Participant could have contributed to the Defined Contribution Plan in the absence of the limitations specified in Section 6.02 shall not be recalculated as a result of the revised definition of "Compensation" hereunder.

**Section 6.02. Participant Deferral Election.** Before the beginning of each Plan Year, the Participant may elect to defer a portion of their compensation for the calendar year ending in such Plan Year equal to the difference between the amount that could have been contributed to the Defined Contribution Plan, absent the limitations of Code Sections 401(a)(17), 402(g), and 415 and the amount that they were permitted to contribute to the Defined Contribution Plan for such year, taking into account those limitations. The Elective Deferrals shall be withheld from their pay throughout the year and credited to a Deferral Account in their name. The Participant may not change or cancel a deferral election with respect to a Plan Year after the beginning of the year.

Example: In 2000, the Participant earns "Compensation" (as defined in Section 6.01) of \$250,000. The Participant can contribute up to 6% of their compensation (as defined by the Defined Contribution Plan), or \$10,000, to the Defined Contribution Plan without violating the 401(k) non-discrimination test for 1999. The Participant may defer \$5,000  $[(.06 \times \$250,000) - \$10,000]$  to this Plan for 2000. Pursuant to Section 6.03, a matching contribution of \$5,000 would also be credited to the Participant's Deferral Account.

**Section 6.03. Credits to Deferral Account.** Elective Deferrals shall be credited to the Participant's Deferral Account at the time they are withheld from their pay. The Company shall also credit to the Participant's Deferral Account an amount equal to the amount of any additional matching contributions that would have been made on behalf of the Participant to the Defined Contribution Plan if they had also contributed the Elective Deferrals to the Defined Contribution Plan, and the limitations of Code Sections 401(a)(17), 402(g), and 415 had not applied. Finally,

the Deferral Account shall be credited with earnings and losses through the date of conversion to an annualized amount (as described in Section 6.03), at the same rate as the Participant's accounts under the Defined Contribution Plan are credited with earnings and losses. The Board shall separately account for the portion of the Participant's Deferral Account attributable to Elective Deferrals and the portion attributable to matching contributions.

**Section 6.04. Determination of Defined Contribution Replacement Benefit.** As of the Participant's Retirement Date, their Deferral Account, to the extent not forfeited pursuant to Section 4.02, shall be converted to an Actuarially Equivalent annuity, the form of which shall be determined pursuant to Section 6.05.

**Section 6.05. Form of Payment.** If a Participant Terminates Employment for a reason other than death, their Defined Contribution Replacement Benefit, to the extent not forfeited pursuant to Section 4.02, shall be paid as a Single Life Annuity (or, if the Participant has been married throughout the one-year period ending on their Retirement Date, a Qualified Joint and Survivor Annuity) beginning as of their Retirement Date.

**Section 6.06. Death of Participant.**

(a) If a Married Participant dies before their Retirement Date, their Spouse shall be entitled to a survivor annuity, which shall be payable as of the earliest date on which their spouse could have begun to receive the survivor annuity under the Retirement Plan. The monthly amount of the Spouse's survivor annuity shall be Actuarially Equivalent to the amount credited to the Participant's Deferral Account, to the extent not forfeited pursuant to Section 4.02, as of the date of their death.

(b) Subject to the provisions of Subsection (c), if a Participant dies after their Retirement Date, the only survivor benefit shall be the benefit payable under the Qualified Joint and Survivor Annuity, if any.

(c) If, at the time of the Participant's death (or if the Participant is survived by their Spouse, the time of their Spouse's death), the total payments that have been made to the Participant and their Spouse pursuant to the Plan are less than the portion of the Participant's Deferral Account attributable to their Elective Deferrals (determined as of the earlier of their Retirement Date or date of death), the difference shall be paid to their Beneficiary as a lump sum payment not later than 120 days after such death.

## ARTICLE VII.

### NONCOMPETITION PROVISIONS

The Participant shall not, while employed by the Company or during the 24-month period immediately following their Termination of Employment, directly or indirectly, whether as an individual or sole proprietor or as owner, partner, shareholder (except a holder of 1% or less of any class of outstanding securities listed on any national securities exchange or actively traded in an over-the-counter market), officer, director, manager, agent, consultant, or advisor of any person, firm, association, partnership, venture, employee, consultant, advisor, corporation, or other business entity:

- (i) engage in a business competitive with that of the Company within North America; or
- (ii) sell or endeavor to sell to any of the customers or patronage of the Company any products or services in competition with the Company within the geographical territory listed above; or
- (iii) solicit, take away, or endeavor to take away any of the customers or patronage of the Company within the geographical territory listed above; or
- (iv) solicit, take away, hire, employ, or endeavor to employ any of the employees of the Company; or
- (v) lend money, guarantee loans, make gifts of money or other property, or otherwise lend financial or other assistance in any form to any person, firm, association, partnership, venture, corporation, or other business entity that is engaged or will within the above period engage in any of the activities prohibited by the foregoing clauses (i), (ii), (iii), and (iv).

If the Participant violates this Section, they shall lose all rights to future payments under the Plan.

## ARTICLE VIII.

### MISCELLANEOUS

**Section 8.01. Plan Termination.** If the Retirement Plan is terminated in accordance with the terms thereof, the obligation to provide any Replacement Benefit accrued up to the termination date shall continue.

**Section 8.02. Amendments.** The Board from time to time may amend, suspend, or terminate the Plan or any part hereof; provided, however, that no such action shall affect the

rights of the Participant or the operation of the Plan with respect to any benefits of the Participant that have become payable before such action, or to which the Participant may have accrued a right hereunder before the effective date of such action based on the accrued benefit of such Participant under the Retirement Plan as of such date.

**Section 8.03. General Administration.** The Board shall have exclusive authority to administer the Plan. The Board shall have the exclusive right and authority to interpret the Plan and resolve any ambiguities. The decisions, actions and records of the Board shall be conclusive and binding upon the Company and all persons having or claiming to have any right or interest in or under the Plan. The Board may delegate to such officers, employees or departments of the Company such authority, duties, and responsibilities of the Board as it, in its sole discretion, considers necessary or appropriate for the proper and efficient operation of the Plan, including, without limitation, (a) interpretation of the plan, (b) approval and payment of claims, and (c) establishment of procedures for administration of the Plan.

**Section 8.04. No Employment Rights.** Neither the establishment of the Plan nor the status of an employee as a Participant shall give the Participant any right to be retained in the employ of the Company; and no Participant and no person claiming under or through such Participant shall have any right or interest in any benefit under the Plan unless and until the terms, conditions, and provisions of the Plan affecting such Participant shall have been satisfied.

**Section 8.05. Non-alienation.** The right of the Participant or any person claiming under or through such Participant to any benefit or any payment hereunder shall not be subject in any manner to attachment or other legal process for the debts of such Participant or person; and the same shall not be subject to anticipation, alienation, sale, transfer, assignment or encumbrance.

**Section 8.06. Limitation of Liability.** No member of the Board, and no officer or employee of the Company, shall be liable to any person for any action taken or omitted in connection with the administration of the Plan, nor shall the Company be liable to any person for any such action or omission. No person shall, because of the Plan, acquire any right to an accounting or to examine the books or the affairs of the Company. Nothing in the Plan shall be construed to create any trust or any fiduciary relationship between the Company and any Participant or any other person.

**Section 8.07. Acceleration or Change of Payment.** The Board in its sole discretion may accelerate the time of payment of any benefit to the extent that it deems equitable or desirable under the circumstances or, if there has been a change in the family circumstances of the Participant, may change the method of payment of any such benefit.

**Section 8.08. Tax Withholding.** The Company may withhold from any payment due hereunder any taxes required to be withheld under applicable federal, state, or local tax laws or regulations.

**Section 8.09. Severability.** The invalidity, illegality, or unenforceability of any provision hereof shall not affect the balance of this Agreement.

**Section 8.10. Counterparts.** The Plan may be evidenced by any number of counterparts, each of which shall constitute an original.

The Avesta Sheffield Replacement Plan has been executed by the duly authorized officers of Avesta Sheffield NAD, Inc. on this 29th day of June, 1999.

AVESTA SHEFFIELD NAD, INC.

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

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

ATTEST:

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



field Inc.  
ringale Road

IL 60173-2218



Pension and Welfare Benefits Administration  
Room N-5644  
U. S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210