

**AMENDMENT TO THE STATE OF SOUTH CAROLINA  
SALARY DEFERRAL [401(K)] AND SAVINGS PROFIT SHARING  
PLAN AND TRUST**

WHEREAS, the South Carolina Deferred Compensation Commission (“Commission”) has the responsibility and authority to modify or amend in whole or in part any or all of the provisions of the State of South Carolina Salary Deferral [401(k)] and Savings Profit Sharing Plan and Trust (“Plan”); and,

WHEREAS, the Commission adopted amendments to the Plan at its meeting on September 27, 2013, to be effective January 1, 2013, and directed that the Plan document be restated to incorporate those amendments and all prior amendments subsequent to the last restatement of the Plan on January 1, 2007; and,

WHEREAS, the Commission reviewed the amended and restated Plan document at its meeting September 27, 2013, and has authorized the Vice Chairman of the Commission to execute the amended and restated Plan document on its behalf;

NOW, THEREFORE, BE IT RESOLVED that the Plan, as amended and restated effective January 1, 2013, shall read as follows:

**STATE OF SOUTH CAROLINA  
SALARY DEFERRAL [401(k)] AND SAVINGS  
PROFIT SHARING PLAN AND TRUST**

Amended and Restated Effective January 1, 2013

## **PREAMBLE**

As set out in Section 8-23-10 of the South Carolina Code of Laws, the South Carolina Deferred Compensation Program is intended “to enable employees of the State, its agencies and political subdivisions to participate in voluntary deferred compensation plans authorized by the United States Internal Revenue Code as interpreted and administered by the Internal Revenue Service, thereby permitting such employees to obtain the advantages inherent in such plans relative to the income tax treatment of the contributions and disbursements made pursuant to tax sheltered voluntary income deferral plans.” As part of its administration of that Program, the South Carolina Deferred Compensation Commission has established the “South Carolina Salary Deferral [401(k)] and Savings Profit Sharing Plan and Trust” pursuant to Section 401(k) of the Internal Revenue Code of 1986 (“Code”). The Plan is for the exclusive benefit of Eligible Employees, and their Beneficiaries, of any Participating Employer electing to participate in the Plan and Trust. The Plan is intended to be a qualified plan under Code Sections 401(a) and 401(k) and a governmental plan within the meaning of Code Section 414(d), and the Trust is intended to be tax-exempt under Code Section 501(a).

The Plan was most recently restated effective January 1, 2007. The Plan is now being amended and restated effective January 1, 2013, except as otherwise provided herein, to include all amendments made since the prior restatement and to make certain other required and desired changes. In particular, this restatement is intended to provide a fully updated and tax-compliant plan document to Board of Directors of the South Carolina Public Employee Benefit Authority when responsibility for the administration of the Deferred Compensation Program is transferred to that Board upon the abolition of the Deferred Compensation Commission on January 1, 2014, as provided in Section 63 of Act 278 of 2012.

Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2013, and to transactions under the Plan on and after January 1, 2013. The rights and benefits, if any, of individuals who are not Employees on or after such date are determined under the Plan that was in effect on the date that their employment terminated, except as otherwise specifically provided herein or in a subsequent amendment.

## TABLE OF CONTENTS

ARTICLE I. PURPOSE OF PLAN AND TRUST .....	1
ARTICLE II. DEFINITIONS .....	1
2.1. "Accounts" .....	1
2.2. "Account Balance" .....	1
2.3. "Adjustment Factor" .....	1
2.4. "Agent" .....	1
2.5. "Alternate Payee" .....	2
2.6. "Beneficiary" .....	2
2.7. "Code" .....	2
2.8. "Commission" .....	2
2.9. "Compensation" .....	2
2.10. "Default Investment Option" .....	2
2.11. "Designated Beneficiary" .....	3
2.12. "Direct Rollover" .....	3
2.13. "Discretionary Employer Matching Contributions" .....	3
2.14. "Discretionary Employer Matching Contribution Account" .....	3
2.15. "Distributee" .....	3
2.16. "Distribution Calendar Year" .....	3
2.17. "Effective Date" .....	3
2.18. "Eligible Employee" or "Employee" .....	3
2.19. "Eligible Retirement Plan" .....	4
2.20. "Eligible Rollover Distribution" .....	4
2.21. "Employer" .....	4
2.22. "Employer Matching Contributions" .....	4
2.23. "Employer Matching Contribution Account" .....	5
2.24. "Enrollment Form" .....	5
2.25. "Fiduciary" .....	5
2.26. "Investment Options" .....	5
2.27. "Leased Employee" .....	5
2.28. "Life Expectancy" .....	5
2.29. "Normal Retirement Date" .....	5
2.30. "Participant" .....	5
2.31. "Participant's Account Balance" .....	5
2.32. "Participating Employer" .....	5
2.33. "Participation Agreement" .....	6
2.34. "Plan" .....	6
2.35. "Plan Administrator" or "Administrator" .....	6
2.36. "Plan Year" .....	6
2.37. "Prior Plan" .....	6
2.38. "Qualified Domestic Relations Order" or "QDRO" .....	6
2.39. "Required Beginning Date" .....	6
2.40. "Rollover Contribution Account" .....	6
2.41. "Rollover Contributions" .....	6

2.42.	"Roth Elective Deferral Contributions" .....	6
2.43.	"Roth Elective Deferral Contribution Account" .....	6
2.44.	"Roth Elective Deferral Rollover Account" .....	6
2.45.	"Roth Elective Deferral Rollover Contributions" .....	7
2.46.	"Salary Deferral Agreement" .....	7
2.47.	"Salary Deferral Contributions" .....	7
2.48.	"Salary Deferral Contribution Account" .....	7
2.49.	"State" .....	7
2.50.	"Termination" .....	7
2.51.	"Trust" .....	7
2.52.	"Trust Agreement" .....	7
2.53.	"Trust Fund" .....	7
2.54.	"Trustee" .....	7
2.55.	"Valuation Date" .....	7
ARTICLE III. PARTICIPATION .....		8
3.1.	<u>Entry Date</u> .....	8
3.2.	<u>Binding Force</u> .....	8
3.3.	<u>Suspension of Participation</u> .....	8
3.4.	<u>Reemployment</u> .....	9
ARTICLE IV. RETIREMENT DATES .....		9
4.1.	<u>Retirement Date</u> .....	9
4.2.	<u>Normal Retirement Date</u> .....	9
4.3.	<u>Early Retirement Date</u> .....	9
4.4.	<u>Postponed Retirement Date</u> .....	9
4.5.	<u>Disability Retirement Date</u> .....	9
ARTICLE V. CONTRIBUTIONS .....		9
5.1.	<u>Salary Deferral Contributions</u> .....	9
5.2.	<u>Roth Elective Deferrals</u> .....	10
5.3.	<u>Employer Matching Contributions</u> .....	11
5.4.	<u>Discretionary Employer Matching Contributions</u> .....	12
5.5.	<u>Administrative Rules Governing Salary Deferral Agreements</u> .....	12
5.6.	<u>Exclusive Benefit Rule and Reversion of Contributions</u> .....	12
5.7.	<u>Protection of Persons Who Serve in a Uniformed Service</u> .....	13
ARTICLE VI. LIMITATIONS ON PLAN CONTRIBUTIONS .....		15
6.1.	<u>Maximum Amount of Roth 401(k) Elective Deferral Contributions and Salary Deferral Contributions</u> .....	15
6.2.	<u>Overall Limitation on Annual Additions</u> .....	15
6.3.	<u>Annual Compensation Limitation</u> .....	15
6.4.	<u>Catch-up Contributions</u> .....	16
6.5.	<u>Special Rules and Definitions</u> .....	16

ARTICLE VII. DISTRIBUTION OF EXCESS DEFERRALS AND EXCESS ANNUAL ADDITIONS.....	17
7.1. <u>Distribution of Excess Deferrals</u> .....	17
7.2. <u>Distribution of Excess Annual Addition</u> .....	17
ARTICLE VIII. PARTICIPANT ACCOUNTS, INVESTMENTS AND TRUST FUND .....	18
8.1. <u>Trust Fund</u> .....	18
8.2. <u>Investments</u> .....	18
8.3. <u>Valuation of Accounts</u> .....	19
ARTICLE IX. BENEFITS AND DISTRIBUTIONS .....	19
9.1. <u>Deferral of Retirement Benefits</u> .....	19
9.2. <u>Death Benefit</u> .....	19
9.3. <u>Disability Benefit</u> .....	20
9.4. <u>Other Termination of Employment Benefits</u> .....	20
9.5. <u>Hardship Distribution and Loans</u> .....	20
9.6. <u>Attainment at Age 59-1/2</u> .....	20
9.7. <u>In-Service Distributions of TERI Transfers and Rollover Contributions</u> .....	20
9.8. <u>Involuntary Cash-Outs</u> .....	20
9.9. <u>Form of Distribution</u> .....	21
9.10. <u>Alienation</u> .....	21
9.11. <u>Qualified Domestic Relations Orders</u> .....	22
9.12. <u>IRS Levy</u> .....	22
9.13. <u>Federal Restitution Orders and Garnishments</u> .....	22
9.14. <u>Forfeiture</u> .....	23
9.15. <u>Qualified Reservist Distribution</u> .....	23
9.16. <u>Distribution for Minor Beneficiary</u> .....	23
9.17. <u>Distribution for Incompetents</u> .....	23
9.18. <u>Procedure when Distributee Cannot Be Located</u> .....	23
ARTICLE X. MINIMUM DISTRIBUTION REQUIREMENTS .....	24
10.1. <u>General Rules</u> .....	24
10.2. <u>Time and Manner of Distribution</u> .....	24
10.3. <u>Required Minimum Distributions During Participant's Lifetime</u> .....	25
10.4. <u>Required Minimum Distributions After Participant's Death</u> .....	25
10.5. <u>Required Minimum Distribution Waiver of 2009</u> .....	27
ARTICLE XI. HARDSHIP WITHDRAWALS AND LOANS .....	27
11.1. <u>Hardship Withdrawals</u> .....	27
11.2. <u>Loans to Participants</u> .....	29

ARTICLE XII. ADMINISTRATION OF THE PLAN .....	32
12.1. <u>Plan Administrator</u> .....	32
12.2. <u>Powers of the Commission</u> .....	32
12.3. <u>Selection of Professional Counselors Other Than Investment Manager</u> .....	33
12.4. <u>Appointment of Investment Manager</u> .....	33
12.5. <u>Reliance on Professional Counselors</u> .....	33
12.6. <u>Source of Payment of Expenses</u> .....	33
12.7. <u>Compensation of the Commission</u> .....	33
ARTICLE XIII. THE TRUSTEE .....	34
13.1. <u>Custody of Assets</u> .....	34
13.2. <u>Payment of Benefits</u> .....	34
13.3. <u>Investments Authorized</u> .....	34
13.4. <u>Power of Trustee</u> .....	34
13.5. <u>Administration</u> .....	34
13.6. <u>Expenses and Compensation</u> .....	34
13.7. <u>Reports and Audits</u> .....	35
13.8. <u>Limitation on Duties and Liabilities</u> .....	35
13.9. <u>Succession of Trustee</u> .....	35
13.10. <u>Rights of Successor Trustee</u> .....	36
13.11. <u>Indemnification of Trustee</u> .....	36
13.12. <u>Incapacity of Administrator and State</u> .....	36
13.13. <u>Plan Audits</u> .....	36
ARTICLE XIV. AMENDMENT OR TERMINATION .....	36
14.1. <u>State's Right to Amend</u> .....	36
14.2. <u>Voluntary Termination of or Permanent Discontinuance of Contributions to the Plan</u> .....	37
14.3. <u>Payments on Termination or Permanent Discontinuance of Contributions to the Plan</u> .....	37
ARTICLE XV. ROLLOVERS AND TRANSFERS .....	37
15.1. <u>Direct Rollover of Funds to Other Plans</u> .....	37
15.2. <u>Rollover of Funds From Other Plans</u> .....	38
15.3. <u>Transfers Directly From Other Plans</u> .....	39
15.4. <u>Transfers Directly to the South Carolina Retirement System, the South Carolina Police Officers Retirement System, the Retirement System for Members of the General Assembly of the State of South Carolina, and the Retirement System for Judges and Solicitors of the State of South Carolina</u> .....	39

ARTICLE XVI. GENERAL PROVISIONS .....	40
16.1. <u>Duty to Furnish Information and Documents</u> .....	40
16.2. <u>Available Information</u> .....	40
16.3. <u>Form of Notices and Elections</u> .....	40



## **ARTICLE I.**

### **PURPOSE OF PLAN AND TRUST**

The State of South Carolina Salary Deferral [401(k)] and Savings Profit Sharing Plan and Trust has been created for the exclusive benefit of Eligible Employees, and their Beneficiaries, of any Participating Employer electing to participate in the Plan and Trust. The Plan is intended to qualify under Code Sections 401 (a) and 401(k). The Plan is also intended to be funded through one or more qualified trusts under Code Section 501(a), custodial accounts treated as qualified trusts under Code Section 401(f), group trusts as permitted pursuant to Rev. Rul. 2011-1, and/or annuity contracts treated as qualified trusts under Section 401(f) and in accordance with the qualification requirements of the Code.

## **ARTICLE II.**

### **DEFINITIONS**

Each item defined below, when used in the Plan and Trust, with the first letter of each word capitalized, shall have the meaning set forth in this Article.

2.1. "Accounts" means the Salary Deferral Contribution Account, the Roth Elective Deferral Contribution Account, the Employer Matching Contribution Account, the Discretionary Employer Matching Contribution Account, the Roth Elective Deferral Rollover Account, and the Rollover Account established and maintained with respect to each Participant and to which all earnings and losses of the Trust Fund allocable to the Participant are credited. If a Participant dies, a separate Account shall be established for each Beneficiary. A separate Account shall also be established and maintained for each Alternate Payee.

2.2. "Account Balance" means the value of a Participant's Salary Deferral Contribution Account, Roth Elective Deferral Account, Employer Matching Contribution Account, Discretionary Employer Matching Contribution Account, Roth Elective Deferral Rollover Account, and Rollover Account, jointly and severally as applicable by the context in which it is used as of the relevant date.

2.3. "Adjustment Factor" means the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code for years beginning on or after January 1, 1998 as applied to such items and in such manner as the Secretary shall provide.

2.4. "Agent" means each person authorized by the Commission to perform services with respect to administration and recordkeeping or otherwise regarding the Plan, together with its affiliates and subsidiaries, and their successors, and any other officers, employees, representatives, or agents of them. Any person is an Agent regarding the Plan solely according to the terms of his/her/its written agreement with the Commission or with a Participant or Beneficiary.

An Agent is responsible only for those duties stated by its written agreement. An Agent has all powers necessary to fulfill those duties. Any transaction effected or handled by an Agent shall be subject to the protections of the written agreement between an Agent and its principal

and subject to the rules, regulations, customs and usages of the transaction and of the exchange or market where executed. Any Agent (including any officer or representative or employee or agent of it) shall not be a fiduciary. Any Agent shall not exercise any discretionary authority or discretionary control concerning the management of the Plan or the management or disposition of the Plan assets. Any Agent shall not have discretionary responsibility in the administration of the Plan. Any Agent (including any officer or representative or employee or agent of it) shall not be a Plan Administrator or a Plan representative.

2.5. "Alternate Payee" means a person who is an alternate payee (within the meaning of Code Section 414(p)(8)) under an order directed to the Plan that the Plan Administrator has determined to be a Qualified Domestic Relations Order (QDRO).

2.6. "Beneficiary" means any person, persons, or entity designated by a Participant as set forth in Section 9.2, or determined pursuant to the provisions of this Plan to receive benefits payable in the event of the Participant's death. If no such designation is in effect at the time of death of the Participant, or if no person or persons so designated shall survive the Participant, the Beneficiary shall be the estate of the Participant.

2.7. "Code" means the Internal Revenue Code of 1986, and Treasury Regulations promulgated thereunder, as amended from time to time.

2.8. "Commission" means, prior to January 1, 2014, the South Carolina Deferred Compensation Commission acting pursuant to Section 8-23-10 et seq. of the South Carolina Code of Laws as Administrator, Trustee, and governing body for the Plan. After December 31, 2013, "Commission" as used in this Plan shall mean the Board of Directors of the South Carolina Public Employee Benefit Authority, which shall thereafter act as Administrator, Trustee, and governing body for the Plan pursuant to Section 8-23-10 et seq. of the South Carolina Code of Laws and Section 63 of Act 278 of 2012.

2.9. "Compensation," except as otherwise provided herein, means the Participant's total remuneration from a Participating Employer, paid during the Plan Year for services rendered to the Participating Employer, which are includible on the Participant's W-2 form furnished by his Participating Employer. In addition, payments for regular salary and wages, overtime, bonuses and similar pay, accrued bona fide sick, vacation, or other leave paid within 2½ months following Termination are Compensation.

For purposes of Code Section 415 and Article VI only, Compensation shall include amounts that would be cash compensation for services to the Participating Employer includible in the Eligible Employee's gross income but for a compensation reduction election under Code Section 125, 132(f)(4), 401(k), 403(b), or 457(b).

This Plan shall not take into consideration a Participant's Compensation to the extent such Compensation exceeds the annual compensation limit provided in Section 6.3.

2.10. "Default Investment Option" means the Investment Options selected by the Commission from time to time as provided in Section 8.2 of the Plan.

2.11. "Designated Beneficiary" means the individual which is designated as a Beneficiary under Section 9.2 of the Plan and is the Designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-1, Q&A-4 of the Treasury Regulations. An estate or revocable trust is not considered to be a Designated Beneficiary for purposes of Code Section 401(a)(9).

2.12. "Direct Rollover" means a payment by the Plan, as directed by the Distributee, to an Eligible Retirement Plan as defined in Code Section 402(c) and Section 2.20 of the Plan.

2.13. "Discretionary Employer Matching Contributions" means the contributions made by a Participating Employer on behalf of an Employee pursuant to Section 5.4.

2.14. "Discretionary Employer Matching Contribution Account" means the account into which shall be credited the Discretionary Employer Matching Contributions made on an Employee's behalf pursuant to Section 5.4 and earnings on those contributions.

2.15. "Distributee" means a Participant, Beneficiary, or Alternate Payee who is the owner of the Account. For Direct Rollover purposes, a Distributee means a Participant. In addition, a Participant's surviving spouse or a Participant's former spouse who is an Alternate Payee are Distributees with regard to the interest of the surviving spouse or former spouse. Effective January 1, 2007, a Designated Beneficiary who is not a surviving spouse is a Distributee with regard to the interest of the Designated Beneficiary.

2.16. "Distribution Calendar Year" means a calendar year for which a minimum distribution is required pursuant to Code Section 401(a)(9). For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 10.2. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

2.17. "Effective Date" means January 1, 2007, the effective date of this amended and restated Plan.

2.18. "Eligible Employee" or "Employee" means an individual employed by a Participating Employer; provided however, that "Employee" does not include an independent contractor or any individual covered by a collective bargaining agreement between employee representatives and a Participating Employer if retirement benefits were the subject of good faith bargaining between such employee representatives and the Participating Employer, and coverage under the Plan was not provided in said agreement.

Any Leased Employee shall be treated as an Employee of a Participating Employer only to the extent required by law; provided, however, that any contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient Participating Employer shall be treated as provided by the recipient Participating Employer.

2.19. "Eligible Retirement Plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts Eligible Rollover Distributions. An Eligible Retirement Plan shall also mean an annuity contract described in Code Section 403(b) and an eligible deferred compensation plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. Effective January 1, 2008, an Eligible Retirement Plan shall also mean a Roth IRA described in Code Section 408A.

2.20. "Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of a Distributee; except that an Eligible Rollover Distribution does not include:

(a) any installment payment that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Designated Beneficiary, or for a specified period of ten years or more;

(b) any distribution to the extent such distribution is a required minimum distribution under Code Section 401(a)(9) and Article X of the Plan; and

(c) any hardship distribution pursuant to Section 11.1 of the Plan.

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

Notwithstanding any other provisions of the Plan, and solely for purposes of applying the rollover provisions of the Plan, 2009 RMDs (amounts that would have been required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code) and Extended 2009 RMDs (one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant's designated Beneficiary, or for a period of at least 10 years), will be treated as Eligible Rollover Distributions.

2.21. "Employer" means the State of South Carolina, and any political subdivision thereof which has elected to participate in the Plan.

2.22. "Employer Matching Contributions" means the contributions made by a Participating Employer on behalf of a Participant pursuant to Section 5.3.

2.23. "Employer Matching Contribution Account" means the account into which shall be credited the Employer Matching Contributions made on a Participant's behalf pursuant to Section 5.3 and earnings on those contributions.

2.24. "Enrollment Form" means a form filed with the Administrator or Agent as provided in Section 3.1.

2.25. "Fiduciary" shall mean a person who, with respect to the Plan, (i) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control with respect to management or disposition of the Plan's assets, (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the Plan, or has any authority or responsibility to do so, or (iii) has any discretionary authority or discretionary responsibility in the administration of the Plan.

2.26. "Investment Options" means the shares of the regulated investment companies registered under the Investment Company Act of 1940, Insurance Policies, and Annuity Contracts, which are made available under the terms of the Plan.

2.27. "Leased Employee" means an individual who is treated as an Employee of the Employer solely by reason of Section 414(n) of the Code.

2.28. "Life Expectancy" means life expectancy as computed by use of the life expectancy tables in Treasury Regulation Section 1.401(a)(9)-9 as amended.

2.29. "Normal Retirement Date" means the first day of the month coincident with or next following the date a Participant reaches age 65.

2.30. "Participant" means an Eligible Employee or former Eligible Employee who has met the eligibility requirements set forth under this Plan and who may become eligible to receive or is receiving benefits under the Plan.

2.31. "Participant's Account Balance" means the balance of a Participant's Account as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year), increased by the amount of any contributions made and allocated or forfeitures allocated to the Participant's Account as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The Participant's Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

2.32. "Participating Employer" means the Employer and, if authorized by the Commission, any other employer that elects to participate in the Plan by completing and adopting a Participation Agreement to govern its participation in the Plan to an extent beyond any statutory mandates.

2.33. "Participation Agreement" means the most recent Participation Agreement for the Plan, including any Appendices to the Participation Agreement, adopted by a Participating Employer.

2.34. "Plan" means the Plan set forth in this document and amendments thereto. The name of the Plan is the **STATE OF SOUTH CAROLINA SALARY DEFERRAL [401(k)] AND SAVINGS PROFIT SHARING PLAN**.

2.35. "Plan Administrator" or "Administrator" means the Commission.

2.36. "Plan Year" means the twelve-month period from January 1 through December 31 of each year.

2.37. "Prior Plan" means the Plan as in effect immediately before the Effective Date of this amendment and restatement.

2.38. "Qualified Domestic Relations Order" or "QDRO" means a domestic relations order lawfully directed to this Plan that creates or recognizes the existence of the right of an Alternate Payee to receive all or a portion of any Account, and that meets the requirements of Code Section 414(p)(11).

An order does not fail to be a QDRO solely because the order directs a distribution or payment to be paid or payable to an Alternate Payee at a time that is earlier than the Participant's earliest retirement age.

2.39. "Required Beginning Date" (for minimum distribution requirements) is April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains age 70-½ or (ii) the calendar year in which the Participant retires or Terminates from employment with the Employer.

2.40. "Rollover Contribution Account" means the account credited with Rollover Contributions made by a Participant and earnings on those contributions.

2.41. "Rollover Contributions" means amounts contributed by a Participant to the Plan pursuant to Article XV.

2.42. "Roth Elective Deferral Contributions" means amounts contributed by a Participant that are designated by the Participant as Roth elective deferrals under Section 5.2 of the Plan.

2.43. "Roth Elective Deferral Contribution Account" means the account into which Roth Elective Deferral Contributions are credited and earnings on those contributions.

2.44. "Roth Elective Deferral Rollover Account" means the account credited with Roth Elective Deferral Rollover Contributions made by a Participant and earnings on those contributions.

2.45. "Roth Elective Deferral Rollover Contributions" means Roth Elective Deferral amounts contributed by a Participant to the Plan pursuant to Article XV.

2.46. "Salary Deferral Agreement" means a written agreement between an Eligible Employee and a Participating Employer, in which the Eligible Employee agrees to a reduction in his Compensation from the Participating Employer and to have the amount of the reduction contributed to the Plan as Salary Deferral Contributions, subject to the limitations set forth in this Plan.

2.47. "Salary Deferral Contributions" means amounts contributed by a Participating Employer on behalf of a Participant pursuant to the provisions of Section 5.1 of the Plan.

2.48. "Salary Deferral Contribution Account" means the record of assets held by the Trustee for an individual Participant or Beneficiary pursuant to the provisions of the Plan, derived from Salary Deferral Contributions, and earnings on those contributions.

2.49. "State" means the State of South Carolina.

2.50. "Termination" means the date that an Eligible Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). Termination shall not include an election by the Eligible Employee to participate in the Teacher and Employee Retirement Incentive Program ("TERI"), or a change of employment in which the Eligible Employee's new employer maintains the Plan or accepts a transfer of Plan assets and liabilities (within the meaning of Code Section 414(l)) with respect to such Eligible Employee.

2.51. "Trust" means the trust set forth in this document and amendments thereto. The Trust name shall be the Plan name, as stated in the Plan and the word "Trust."

2.52. "Trust Agreement" means the agreement contained herein between the State and the Trustee governing the administration of the Trust, as it may be amended from time to time.

2.53. "Trust Fund" means all assets of the Trust.

2.54. "Trustee" means the Commission who will administer the Trust, and includes the entity or person(s) holding the assets of a custodial account or holding an annuity contract in accordance with Code Section 401(f).

2.55. "Valuation Date" means each business day that is a trading day on the New York Stock Exchange and such other dates as shall be determined by the Plan Administrator.

## ARTICLE III.

### PARTICIPATION

#### 3.1. Entry Date

(a) Each Eligible Employee who was a Participant in the Prior Plan immediately prior to the Effective Date shall remain a Participant on the Effective Date, subject to the terms of the Plan. Each other Eligible Employee shall become a Participant as soon as administratively practicable after the first day of the first full payroll period commencing no later than thirty (30) days after the date the Eligible Employee executes an Enrollment Form with the Administrator or the designated Agent, in a manner approved by the Commission.

(b) All employees of the State are Eligible Employees and are immediately eligible to join the Plan by completing an Enrollment Form or other enrollment process in a manner approved by the Commission in accordance with State law.

(c) Employers other than the State, including political subdivisions, may complete a Participation Agreement defining eligibility standards and Plan terms. Unless such an agreement is completed by the entity, employees of the entity are not Eligible Employees. The Participation Agreement may prescribe limits on the applicability of certain sections of the Plan, e.g., it may make Plan loan provisions inapplicable.

(d) An Enrollment Form or other enrollment process approved by the Commission in accordance with State law will not be considered completed unless the Eligible Employee provides the following information:

- (i) his name, Social Security number, and current address;
- (ii) authorizes the Employer to reduce his Compensation pursuant to a Salary Deferral Agreement, if applicable;
- (iii) makes an investment election as provided in Section 8.2 of the Plan for Salary Deferral Contributions and Employer Matching Contributions; and
- (iv) such other information as the Commission may request to administer the Plan.

3.2. Binding Force. A Participant shall be conclusively deemed to have assented to the Plan, to any subsequent amendments, and shall be bound thereby with the same force and effect as if he had formally executed this Plan.

3.3. Suspension of Participation. In the event a Participant ceases to be an Eligible Employee, he shall cease to be a Participant for purposes of Article V, but shall remain a Participant for all other purposes of the Plan.



3.4. Reemployment. A Participant who is reemployed in a class of Employees otherwise eligible to participate in the Plan shall become a Participant as soon as administratively practicable after the Participant files a new Enrollment Form in accordance with Section 3.1.

## **ARTICLE IV.**

### **RETIREMENT DATES**

4.1. Retirement Date. A Participant's Retirement Date shall be the date of his actual retirement under Title 9 of the S.C. Code Ann. (Title 9, Chapter 1 for the SCRS; Title 9, Chapter 8 for the JSRS; Title 9, Chapter 9 for the GARS; Title 9, Chapter 11 for the PORs; or Title 9, Chapter, 20 for the State ORP, whichever is applicable to the Participant), and which may be his Normal, Early, Disability or Postponed Retirement Date, whichever is applicable to him pursuant to the following Sections of this Article.

4.2. Normal Retirement Date. A Participant's normal retirement age shall be his 65th birthday. Such Participant's Normal Retirement Date shall be the first day of the month coincident with or next following his 65th birthday.

4.3. Early Retirement Date. A Participant's Early Retirement Date shall be the first day of any month coincident with or next following his 55th birthday.

4.4. Postponed Retirement Date. A Participant may continue in the employ of an Employer beyond his Normal Retirement Date. The first day of any month coincident with or next following the date of his Termination after his Normal Retirement Date shall be known as his Postponed Retirement Date.

4.5. Disability Retirement Date. A Participant's Disability Retirement Date shall be the first day of any month coincident with or next following determination of disability by the Plan Administrator pursuant to Section 9.3.

## **ARTICLE V.**

### **CONTRIBUTIONS**

#### **5.1. Salary Deferral Contributions.**

(a) Subject to the limitations of Article VI and this Article, each Participant may elect to make Salary Deferral Contributions by executing a Salary Deferral Agreement with the Plan Administrator or the designated Agent, in a manner approved by the Commission. The Salary Deferral Agreement shall include the amount to be contributed, which shall not be less than \$10.00 per pay period nor more than one-hundred percent (100%) of the Participant's Compensation. An election must be made in increments of \$1.00 per pay period. All such Salary Deferral Contributions shall be made by payroll deduction and shall be paid by the Participating Employer to the Trustee or designated Agent.

(b) A Participant may defer his Compensation that is attributable to payments for bona fide sick, vacation, or other leave paid within 2½ months following his Termination only if

a Salary Deferral Agreement providing for such deferral has been entered into before the Termination.

(c) Unless a Salary Deferral Agreement election is otherwise revised, if a Participant is absent from work by leave of absence, Salary Deferral Contributions under the Plan shall continue to the extent that Compensation continues.

(d) For Federal tax purposes (and wherever permitted, for State tax purposes), an Employee's Salary Deferral Contributions shall be deemed Employer contributions to the Plan and are intended to qualify as elective contributions under Section 401(k) of the Code. A Participant's Salary Deferral Agreement shall constitute an election to have his Compensation reduced by the amount of all such deferrals.

(e) At such intervals as it shall deem proper, the Commission shall review each Participant's Salary Deferral Agreement in order to determine that Salary Deferral Contributions with respect to all Participants satisfy the limits as described in Article VI. In the event that the Commission determines that such limits are not satisfied, it may require that one or more Participants adjust their Salary Deferral Contributions for the next and subsequent payroll periods, so that such limitation is thereafter satisfied. In addition, Article VII shall apply if, at the end of the Plan Year, the limitations of Article VI are not satisfied or if the overall limitation of Section 6.2 has been violated.

(f) All Salary Deferral Contributions shall be forwarded by the Participating Employer to the Administrator or its designee on behalf of the Trustee as soon as administratively practicable after the contributions have been withheld but in no event later than thirty (30) days (or within a shorter period if prescribed by regulations issued by the Secretary of the Treasury) after the time such amounts would have otherwise been payable to the Participant as salary. The Commission shall have no duty to determine whether the funds paid to it by the Participating Employer are correct, nor to collect or enforce such payment.

(g) Subject to the limitations of Article VI, Salary Deferral Contributions made on behalf of a Participant for a Plan Year shall be allocated to his Salary Deferral Contribution Account. All sums allocated to each Participant's Salary Deferral Contribution Account shall be fully vested and non-forfeitable.

## 5.2. Roth Elective Deferrals.

(a) This Section 5.2 will apply to contributions beginning with February 16, 2007 (the "Roth Effective Date"). As of the Roth Effective Date, the Plan will accept Roth Elective Deferral Contributions made on behalf of Participants. A Participant's Roth Elective Deferral Contributions will be allocated to a separate Roth Elective Deferral Contribution Account maintained for such deferrals as described in Subsection 5.2(b). Unless specifically stated otherwise, Roth Elective Deferral Contributions will be treated as elective deferrals for all purposes under the Plan.

(b) Separate Accounting. Contributions and withdrawals of Roth Elective Deferral Contributions will be credited and debited to the Roth Elective Deferral Contribution Account maintained for each Participant. The Plan will maintain a record of the amount of Roth Elective

Deferral Contributions in each Participant's Account. Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Elective Deferral Contribution Account and the Participant's other Accounts under the Plan. No contributions other than Roth Elective Deferral Contributions and properly attributable earnings will be credited to each Participant's Roth Elective Deferral Contribution Account. The Roth Elective Deferral Contribution Account will also maintain a record of the Participant's "investment in the contract" in accordance with Code Section 72 and the Treasury Regulations issued thereunder.

(c) Direct Rollovers. Notwithstanding Section 15.1, a Direct Rollover of a distribution from a Roth Elective Deferral Contribution Account under the Plan will only be made to another Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) or to a Roth IRA described in Code Section 408A, and only to the extent the rollover is permitted under the rules of Code Section 402(c).

Notwithstanding Section 15.2, the Plan will accept a Rollover Contribution to a Roth Elective Deferral Contribution Account only if it is a Direct Rollover from another Roth elective deferral contribution account under an applicable retirement plan described in Code Section 402A(e)(1), and only to the extent the rollover is permitted under the rules of Code Section 402(c). A separate Roth account or subaccount may also be maintained to reflect any Direct Rollover to the Plan of an eligible Roth rollover as herein provided.

(d) Definition of Roth Elective Deferral. A Roth Elective Deferral Contribution is an elective deferral that is: (i) designated irrevocably by the Participant at the time of the cash or deferred election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax Participant Salary Deferral Contributions the Participant is otherwise eligible to make under the Plan, and (ii) treated by the Participating Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

(e) Payment of Roth Elective Deferral Contributions. A Participating Employer shall remit the Roth Elective Deferral Contributions to the Administrator or its designee on behalf of the Trustee as soon as administratively practicable after the contributions have been withheld but in no event later than thirty (30) days (or within a shorter period if prescribed by regulations issued by the Secretary of the Treasury) after the time such amounts would have otherwise been payable to the Participant as salary. The Commission shall have no duty to determine whether the funds paid to him by the Participating Employer are correct, nor to collect or enforce such payment.

### 5.3. Employer Matching Contributions.

(a) A Participating Employer may make Employer Matching Contributions to the Plan on behalf of an Employee who is a Participant and who was actively employed and making Salary Deferral Contributions pursuant to Section 5.1 during such Plan Year. The amount of any such Employer Matching Contributions shall be determined by the Participating Employer. These Employer Matching Contributions shall be promptly paid to the Administrator or the designated Agent by the Participating Employer within such time period as permitted by law.

(b) Subject to the limitations of Article VI, Employer Matching Contributions made on behalf of a Participant for a Plan Year shall be contributed as of each payroll date. Matching Contributions made on behalf of a Participant for a Plan Year shall be allocated to his Matching Contribution Account as soon as administratively practical following the date of receipt of such Matching Contribution from the Participating Employer. All sums allocated to each Participant's Employer Matching Contribution Account shall be fully vested and non-forfeitable.

#### 5.4. Discretionary Employer Matching Contributions

(a) A Participating Employer may make Discretionary Matching Contributions to the Plan. The Employer may make Discretionary Employer Matching Contributions to the Plan on behalf of each Employee who has not elected to make Salary Deferral Contributions and who has an annual salary of less than \$20,000 during such Plan Year in an amount to be determined by the Employer. These Discretionary Employer Matching Contributions shall be promptly paid to the Administrator or the designated Agent by the Participating Employer within such time periods permitted by law and shall be paid out of the Net Profits of the Participating Employer.

(b) Subject to the limitations of Article VI, Discretionary Employer Matching Contributions made on behalf of an Employee for a Plan Year shall be allocated to his Discretionary Employer Matching Contribution Account as of the last day of the Plan Year. All sums allocated to each Employee's Discretionary Employer Matching Contribution Account shall be fully vested and non-forfeitable. The Discretionary Employer Matching Contribution Account includes all Discretionary Employer Matching Contributions made on behalf of an Employee to the Employee's State of South Carolina 401(k) plan, State of South Carolina 457 plan or State of South Carolina 403(b) plan.

(c) Each Participating Employer electing to make a Discretionary Employer Matching Contribution will make such contribution pursuant to a formula that will comply with the definitely determinable requirements of Treasury Regulation Section 1.401-1(b)(1)(i) and will not violate the limits applicable to governmental plans under Code Sections 401(a)(17) and 415.

#### 5.5. Administrative Rules Governing Salary Deferral Agreements

(a) A Salary Deferral Agreement executed by a Participant and any amendment or revocation thereof, shall become effective as soon as administratively practicable after the receipt by the Plan Administrator or designated Agent of such Salary Deferral Agreement or amendment or revocation.

(b) A Participant may change his contribution amount or revoke his Salary Deferral Agreement at any time during any Plan Year. Any such change or revocation shall be made in a manner that is satisfactory to the Plan Administrator and shall be executed with the Plan Administrator or the designated Agent, in a manner approved by the Plan Administrator.

5.6. Exclusive Benefit Rule and Reversion of Contributions. Except as provided herein, all contributions made pursuant to the Plan shall be held by the Trustee, in accordance with the terms of the Trust Agreement, for the exclusive benefit of Participants and their Beneficiaries, and shall be applied to provide benefits under the Plan and to pay expenses of

administration of the Plan and the Trust, to the extent that such expenses are not otherwise paid. At no time prior to the satisfaction of all liabilities with respect to such Participants and their Beneficiaries shall any part of the Trust Fund (other than such part as may be required to pay administration expenses and taxes) be used for, or diverted to, purposes other than for the exclusive benefit of such Participants and their Beneficiaries.

(a) If any contribution (or any portion of a contribution) is made to the Plan by virtue of a good faith mistake of fact, this Section shall not prohibit the return of such contribution to the Participating Employer within one (1) year after the payment of the contribution, upon receipt of a proper request approved by the Administrator, without interest and reduced by any investment loss attributable to those contributions. Such mistaken contribution shall be returned directly to the Participating Employer who is then responsible for any appropriate payments to the Participant pursuant to the provisions of Subsection (d).

(b) If a Participating Employer contribution is conditioned upon qualification of the Plan under Section 401(a) of the Code, or any successor provision thereto, and if the Plan does not so qualify, then this Section shall not prohibit the return of such contribution to the Participating Employer within one (1) year after the date of denial of qualification of the Plan.

(c) In the event that Salary Deferral Contributions are returned to a Participating Employer in accordance with the provisions of Subsection (a), the elections to reduce Compensation which were made by Participants on whose behalf those contributions were made shall be void retroactively to the beginning of the period for which those contributions were made. The Salary Deferral Contributions so returned shall be distributed in cash to those Participants for whom those contributions were made; provided, however, that if the contributions are returned under the provisions of Subsection (a), the amount of Salary Deferral Contributions to be distributed to Participants shall be adjusted to reflect any investment gains or losses attributable to those contributions.

5.7. Protection of Persons Who Serve in a Uniformed Service. Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credits with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") and the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), including Code Section 457(g)(4) and Code Section 414(u).

For purposes of this section, "qualified military service" is defined by federal law but it generally means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purposes of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purposes of performing funeral honors duty as authorized by section 12503 or Title 10 to section 115 of Title 32 of the United States Code if such individual is entitled to reemployment rights under USERRA with respect to such service. Uniformed service means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of Public

Health Service, and any other category of persons designated by the President in the time of war or national emergency.

(a) An Eligible Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) shall be entitled to receive any employer contributions that he failed to receive under the Plan as a result of his military service, provided he returns to employment with a Participating Employer upon receiving an honorable discharge from military service and there is no intervening employment outside of the employment with the Participating Employer. Such Eligible Employee may also elect to make additional Salary Deferral Contributions upon resumption of employment with a Participating Employer equal to the maximum Salary Deferral Contributions that the Eligible Employee could have elected during that period if the Eligible Employee's employment with the Participating Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Salary Deferral Contributions, if any, actually made for the Eligible Employee during the period of the interruption or leave. If the Eligible Employee makes such additional Salary Deferral Contributions, the Employer shall also make any Employer Matching Contributions or Discretionary Employer Matching Contributions on behalf of the Eligible Employee on account of the additional Salary Deferral Contributions in the amount required, if any, under Section 5.3 or 5.4, provided he returns to employment with the Employer upon receiving an honorable discharge from military service and there is no intervening employment outside of the employment with the agency. This right to receive employer contributions and make Salary Deferral Contributions applies during the period of military service and for either (i) five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave), or (ii) the period as otherwise allowed by federal law.

(b) Effective January 1, 2009, an Eligible Employee whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from a Participating Employer will be treated as an Eligible Employee of the Participating Employer and the differential wage payment will be treated as Compensation.

(c) Effective January 1, 2009, notwithstanding subsection (b) above, an individual who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from a Participating Employer shall be treated as having a severance from employment during any period the individual is performing qualified military service (as defined in Code Section 414(u)) for purposes of taking a distribution from the Plan. In such a circumstance, the individual may not make an elective deferral during the 6-month period beginning on the date of the distribution.

(d) Effective January 1, 2007, death benefits payable under the Plan shall be paid in accordance with Code Section 401(a)(37), which provides that in the case of an Eligible Employee who dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Eligible Employee are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had

the Eligible Employee resumed and then terminated employment with the Participating Employer on account of death.

## ARTICLE VI.

### LIMITATIONS ON PLAN CONTRIBUTIONS

6.1. Maximum Amount of Roth 401(k) Elective Deferral Contributions and Salary Deferral Contributions. No Participant shall be permitted to have Roth 401(k) Elective Deferral Contributions and/or Salary Deferral Contributions made under this Plan, or any other qualified plan maintained by a Participating Employer during any taxable year, which, in the aggregate, are in excess of the dollar limitation contained in Section 402(g) of the Code in effect for such taxable year, except to the extent permitted under Section 6.4 of this Plan and Section 414(v) of the Code, if applicable.

6.2. Overall Limitation on Annual Additions. This Section shall be effective for Limitation Years beginning after December 31, 2001.

Except to the extent permitted under Section 6.4 of this Plan and Section 414(v) of the Code, if applicable, in no event shall the Annual Addition (as hereinafter defined) allocated to a Participant's Account under the Plan for any Limitation Year (as hereinafter defined), exceed the lesser of:

- (a) forty thousand dollars (\$40,000), as adjusted by the Adjustment Factor, or
- (b) one-hundred percent (100%) of the Participant's Compensation for the Limitation Year.

The Compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an Annual Addition.

6.3. Annual Compensation Limitation. The annual Compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual Compensation means Compensation during the Plan Year or such other consecutive 12-month period over which Compensation is otherwise determined under the Plan (the determination period). The cost-of living adjustment in effect for a calendar year applies to annual Compensation for the determination period that begins with or within such calendar year.

Payments made within the later of (i) 2½ months after Termination, or (ii) the end of the limitation year that includes the Termination date will be taken into account in determining Compensation for allocations if they are payments that, absent a Termination, would have been paid to the Participant while the Participant continued in employment with the Employer and are:

- (a) regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular work hours (such as overtime or

shift differential), commissions, bonuses, or other similar payments, and the Compensation would have been paid to the Participant prior to a Termination if the Participant had continued employment with the Employer; or

(b) payments for unused accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued; or

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

Any payments not described above are not considered Compensation if paid after Termination, even if they are paid within 2½ months following Termination, except for payments to the individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

6.4. Catch-up Contributions. All Employees who are eligible to make Salary Deferral Contributions under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make Catch-up Contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such Catch-up Contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Sections 402(g) and 415 of the Code. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Sections 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.

6.5. Special Rules and Definitions. For purposes of Section 6.2, the following special rules and definitions shall apply:

(a) "Annual Addition" shall mean the annual addition as defined in Code Section 415(c), which in general, is the sum of the employer contributions, employee contributions and forfeitures credited to a Participant's account for the Limitation Year under this Plan and any other qualified defined contribution plan maintained by a Participating Employer. Under this Plan, "Annual Additions" allocated to a Participant's Account during the Limitation Year constitutes:

- (i) Salary Deferral Contributions,
- (ii) Employer Matching Contributions,
- (iii) voluntary contributions,
- (iv) forfeitures,



- (v) amounts described in Section 415(l)(1) and 419(A)(d)(2) of the Code; and
- (vi) Discretionary Employer Matching Contributions.

Rollover Contributions and Catch-Up Contributions are not included in Annual Additions.

(b) "Limitation Year" shall mean the twelve (12) month period beginning on the first day of each calendar year.

(c) Participation in Other Defined Contribution Plan. The limitation of Section 6.2 with respect to any Participant who at any time has participated in any other qualified defined contribution plan (as defined Section 414(i) of the Code) maintained by a Participating Employer shall apply as if the total contributions allocated under all such defined contribution plans in which the Participant has participated were allocated under one plan.

## **ARTICLE VII.**

### **DISTRIBUTION OF EXCESS DEFERRALS AND EXCESS ANNUAL ADDITIONS**

#### 7.1. Distribution of Excess Deferrals

(a) Notwithstanding any other provision of the Plan, Excess Deferral Amounts (as hereinafter defined), plus the Allocable Income (as hereinafter defined), attributable thereto, determined in accordance with Code Section 401(k), 401(m), or 402(g), shall be distributed not later than April 15<sup>th</sup> to Participants who claim such allocable Excess Deferral Amounts for the preceding calendar year. For Plan Years beginning before December 31, 2007, "Allocable Income" shall include gains or losses for the period from the end of the year to the date of the distribution or correction, but only to the extent that the Excess Deferral Amounts are or will be credited with gains or losses for the period.

(b) For purposes of this Section, "Excess Deferral Amount" shall mean the amount of Roth 401(k) Elective Deferral Contributions and Salary Deferral Contributions for a calendar year that the Participant or the Participating Employer allocates to this Plan, which are elective deferrals defined by Code Section 402(g)(3), excluding, however, Catch-Up Contributions and any deferrals properly distributed as excess Annual Additions pursuant to Section 7.2, and which the Participant timely claims pursuant to the claim procedure set forth in Subsection (c), below.

(c) The Participant's claim shall be in writing, shall be submitted to the Plan Administrator no later than March 1; shall specify the Participant's Excess Deferral Amount for the preceding calendar year; and shall be accompanied by the Participant's written statement that if such amounts are not distributed, such Excess Deferral Amount, when added to amounts deferred under other plans or arrangements described in Sections 401(k), 408(k), or 403(b) of the Code, exceeds the limit imposed on the Participant by Section 402(g) of the Code for the year in which the deferral occurred.

7.2. Distribution of Excess Annual Addition. For Limitation Years on or after January 1, 2008, the Plan incorporates by reference the provisions of Section 415 of the Code and the regulations thereunder.

## **ARTICLE VIII.**

### **PARTICIPANT ACCOUNTS, INVESTMENTS AND TRUST FUND**

#### **8.1. Trust Fund**

(a) In order to fund the Plan, the State has entered into a Trust Agreement. All payments made pursuant to the Plan shall be paid to the Trust Fund established under the Trust Agreement. All such payments and increments thereon shall be held and disbursed in accordance with the provisions of the Plan and the Trust Agreement, as each shall be applicable in the circumstances. No person shall have any interest in, or right to, any part of the funds so held in the Trust Fund except as expressly provided in the Plan or Trust Agreement.

(b) The Plan Administrator shall maintain, or cause to be maintained, separate Accounts for each Participant, which Accounts shall reflect his interest in the Trust Fund provided for pursuant to this Article. With respect to each Participant's Accounts, the Commission shall maintain such subaccounts as may be necessary or appropriate to separately account for the Participant's Salary Deferral Contributions, Roth 401(k) Elective Deferral Contributions, Employer Matching Contributions, Discretionary Employer Matching Contributions, Roth Elective Deferral Rollover Contributions, or Rollover Contributions, and shall reflect: (i) contributions in each category, (ii) the earnings, losses and expenses, and (iii) distributions from each subaccount.

#### **8.2. Investments**

(a) Each Participant shall direct the investment of his Salary Deferral Contributions, in a manner approved by the Commission. The Participant's Employer Matching Contributions and Rollover Contributions automatically will be invested proportionately in the same investments as the Participant directs investment of his Salary Deferral Contributions. The Participant's Salary Deferral Contributions, Rollover Contributions, and Discretionary Employer Matching Contributions will be invested as determined by the Commission in a Default Investment Option unless and until such time as the Participant makes another investment election, in a manner approved by the Commission, regarding his Salary Deferral Contributions, Rollover Contributions, and Discretionary Employer Matching Contributions. The Commission shall establish rules specifying eligible investments, election of investments, and changes in elections. The Commission may also choose to offer investment advice in a manner consistent with the rules provided by Section 601 of the Pension Protection Act and its interpretive guidance.

(b) Each Participant (or his Beneficiary or Alternate Payee) assumes the risk in connection with any decrease in value of his Accounts, and the Trust Fund shall be the sole source of payments to be made to Participants (or their Beneficiaries or Alternate Payees) under the Plan.

(c) A Participating Employer, the Plan Administrator, and the Trustee may, but shall be under no duty, to question any investment direction of a Participant or to ascertain periodically whether a Participant wishes to change such direction, or to review any directed

investments or to make suggestions to the Participant, nor shall they be held responsible in any manner for investment or depreciation in asset value of any directed investment.

8.3. Valuation of Accounts. On each Valuation Date, the Plan Administrator shall determine the net increase or decrease in the fair market value of the Trust Fund, and shall allocate the result thereof to each Participant's Account. Such determination shall include realized and unrealized gains and losses, investment income, and expenses.

## **ARTICLE IX.**

### **BENEFITS AND DISTRIBUTIONS**

9.1. Deferral of Retirement Benefits. A Participant who attains his Normal Retirement Date and continues to be an Employee may continue to make Salary Deferral Contributions and/or Roth 401(k) Elective Deferral Contributions, may continue to receive Employer Matching Contributions and Discretionary Employer Matching Contributions, and may continue to participate under the Plan. Further, a Participant's right to his Account Balance is nonforfeitable as of his Normal Retirement Date.

#### 9.2. Death Benefit

(a) Upon the death of a Participant and after receipt of such information confirmed to its reasonable satisfaction of the Participant's death and the name of his Beneficiary, the Plan Administrator shall make payment of the Account Balance to the Participant's Beneficiary.

(b) Each Participant shall have the right to designate, by executing a designation with the Administrator or designated Agent, a person or persons or entity as Beneficiary to receive the death benefit provided under this Section or any installments under this Section remaining unpaid at the death of the Participant. Successive designations may be made, and the last designation received in good order by the Administrator or designated Agent prior to the death of the Participant shall be effective and shall revoke all prior designations. If a Participant designates multiple non-successive Beneficiaries, the Account Balance to be paid to such Beneficiaries shall be paid in equal shares to all such Beneficiaries who survive such Participant unless the Participant has designated otherwise. If a Participant has not designated 100% of his Account Balance, the percentage not designated shall be paid to the Participant's estate. The Participant shall have the right to revoke the designation of any Beneficiary without the consent of the Beneficiary.

(c) The Administrator may determine the identity of the Beneficiaries and, in so doing may act and rely upon any information it may deem reliable upon reasonable inquiry, and upon any affidavit, certificate, or other paper believed by it to be genuine, and upon any evidence believed by it to be sufficient.

(d) If a Participant shall fail to designate a Beneficiary, or if such designation shall for any reason be illegal or ineffective, including a designation of less than 100% of his Account Balance, or if no Beneficiary shall survive the Participant, his Account Balance shall be paid to his or her estate.

9.3. Disability Benefit. Upon a Participant's Termination by reason of a Disability (as hereinafter defined) and upon receipt and confirmation to its reasonable satisfaction of said disability Termination, the Plan Administrator shall make payment of the balance of the Participant's Account to the Participant in the form elected by the Participant under Section 9.8.

For purposes of this Section, "disability" means a physical or mental condition which is expected to render the Participant permanently unable to perform his duties or any comparable duties for any Participating Employer. The determination of the existence of such Disability shall be made by the Administrator and shall be final and binding upon the Participant and all other parties. The Administrator may require the submission of such medical evidence as it may deem necessary in order to arrive at its determination. The Administrator's determination of the existence of a Disability will be made with reference to the nature of the injury or condition without regard to the period the Participant is absent from work.

9.4. Other Termination of Employment Benefits. Upon a Participant's Termination with the Employer for any reason other than retirement, death or permanent disability, and upon receipt and confirmation to its reasonable satisfaction of said Termination, the Plan Administrator shall make payment of the Account Balance to the Participant in the form elected by the Participant under Section 9.8.

9.5. Hardship Distribution and Loans. The Plan shall permit hardship distributions and Plan loans in accordance with Article XI and such administrative rules and procedures as shall be established by the Commission from time to time.

9.6. Attainment at Age 59-1/2. A Participant who has attained the age of 59-1/2 may request to withdraw all or a portion of his Accounts.

9.7. In-Service Distributions of TERI Transfers and Rollover Contributions. A Participant who has not had a Termination but who has, pursuant to Section 15.3, transferred the funds accumulated in his TERI account to the Participant's Account, may request, for any reason, to withdraw those transferred amounts at any time. In addition, a Participant who has not had a Termination but who has established a Rollover Contribution Account with Rollover Contributions pursuant to Article XV, may request, for any reason, to withdraw those transferred amounts at any time. Such withdrawals may include the pro-rata portion of earnings in the Participant's Rollover Contributions Account attributable to the transferred TERI amounts and/or the Rollover Contributions being withdrawn.

9.8. Involuntary Cash-Outs

(a) The Plan does not have involuntary cash-outs regardless of the Account Balance in which the Participant has a non-forfeitable interest.

(b) All of the amounts in the Participant's Accounts shall be (i) retained in the Trust Fund, (ii) invested in accordance with Plan provisions and any investment directions filed pursuant to the Plan, and (iii) credited to the Participant's Accounts until

(i) the non-forfeitable amounts are distributed pursuant to the Plan on the Participant's Retirement Date,

(ii) the non-forfeitable amounts are distributed pursuant to the Plan prior to the Participant's Retirement Date, at the request of the Participant, or

(iii) the amounts must begin to be distributed pursuant to Article X.

9.9. Form of Distribution. When a Participant has a Termination, or otherwise becomes entitled to a distribution pursuant to this Article, the Plan Administrator shall determine his Account Balance, based upon the Valuation Date immediately following the date of such Termination or entitlement, and shall pay the Account Balance to or for the benefit of the Participant or his Beneficiary, in either or a combination of both of the following ways as the Participant or, if a deceased former Participant, his Beneficiary shall elect:

(a) In a lump sum cash payment, payable as soon as administratively practicable after the Participant's Termination, Retirement Date or death, whichever is applicable; or

(b) By an arrangement to provide monthly, quarterly, semi-annual, or annual installments; provided, however that a Participant's or Beneficiary's election of installment payments must be in a manner approved by the Plan Administrator, and in accordance with procedures established by the Plan Administrator, and no installment election may be made if it would cause a Plan benefit to be paid as an annuity or over a period longer than the reasonable joint life expectancy of the Participant and the Beneficiary the Participant has designated in accordance with Section 9.2(b) and (c).

Any payment made pursuant to this Section shall be in complete discharge of the Participating Employer's obligation therefor under the Plan.

9.10. Alienation. No benefit which shall be payable out of the Trust Fund to any Distributee shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law. Except, however, this provision shall not apply to the extent a Distributee is indebted to the Plan, for any reason, under any provision of this Plan and at the time a distribution is to be made to or for his benefit, such proportion of the amount distributed as shall equal such indebtedness shall be paid to the Trustee, to apply against or discharge such indebtedness. Prior to making a payment, however, the Distributee must be given written notice by the Trustee that such indebtedness is to be deducted in whole or part from the Participant's Account. If the Distributee does not agree that the indebtedness is a valid claim against his Account, he shall be entitled to review the validity of the claim in accordance with procedures established by the Plan Administrator.

In the event benefits are garnished or attached by order of any court, the Plan Administrator may bring an action for a declaratory judgment in a court of competent jurisdiction to determine the proper recipient of the benefits to be paid by the Plan. During the pendency of said action, any benefits that become payable shall be paid into the court at the

direction of the court as they become payable, to be distributed by the court to the recipient it deems proper at the close of said action.

Unless prohibited by state law, this Section shall not apply to prevent a distribution from the Plan directly to an insurer at the election of a Participant who is also an eligible retired public safety officer to pay qualified health insurance premiums for the eligible retired public safety officer, his spouse and/or his dependents as permitted under Section 845 of the Pension Protection Act of 2006. In no event may this amount exceed \$3,000 for the taxable year. For this purpose, all eligible retirement plans of the Employer shall be treated as a single plan.

9.11. Qualified Domestic Relations Orders. (a) Notwithstanding Section 9.9, the Plan will accept a Qualified Domestic Relations Order to transfer all or a portion of a Participant's Account to an Alternate Payee. The QDRO shall specify the manner in which the Account shall be partitioned, whether as a fixed amount or as a percentage of assets. The order will be honored only if it meets the following requirements:

- (1) does not require the Plan to provide any type or form of benefit, any option, or any distribution schedule not otherwise provided under the Plan;
- (2) does not require the Plan to provide increased benefits (determined on the basis of actuarial value);
- (3) does not require the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another order previously determined to be a valid domestic relations order; and
- (4) complies with rules adopted by the Commission.

(b) The QDRO may direct immediate distributions or payments to the Alternate Payee without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the QDRO.

(c) The Administrator will create a separate segregated Account for an Alternate Payee. All distributions made to an Alternate Payee pursuant to a QDRO will be taxed to the Alternate Payee. Alternate Payees may not obtain loans under the Plan.

9.12. IRS Levy. Notwithstanding Section 9.9, the Administrator may pay from a Participant's, Alternate Payee's or Beneficiary's Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant, Alternate Payee or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant, Alternate Payee or Beneficiary.

9.13. Federal Restitution Orders and Garnishments. Notwithstanding Section 9.9, the Administrator may pay from a Participant's, Alternate Payee's or Beneficiary's Account the amount that the Administrator finds is lawfully demanded under a federal restitution order or garnishment issued by the federal government with respect to that Participant, Alternate Payee or

Beneficiary or is sought to be collected by the United States Government under a judgment against the Participant, Alternate Payee or Beneficiary.

9.14. Forfeiture. Except as expressly provided in Sections 9.9, 9.10 or .11, nothing in this Plan shall be construed as a "bad boy clause" allowing the Account, or any part thereof, of a Participant to be forfeited by reason of misfeasance or malfeasance on the part of the Participant.

9.15. Qualified Reservist Distribution. Notwithstanding anything in the Plan to the contrary, a Participant who is a reservist or national guardsman (as defined in 37 U.S.C. § 101(24)), and who was ordered or called to active duty, after September 11, 2001, for a period in excess of 179 days or for an indefinite period may request, during the period beginning on the date of the order or call to duty and ending at the close of the active duty period, a distribution of all or part of his Account attributable to Salary Deferral Contributions. The distribution shall be paid to the Participant as promptly as practicable after the Plan Administrator receives the Participant's request. If the Participant's interest in the Trust Fund is invested in more than one of the separate Investment Options maintained under the Plan, a withdrawal of less than the complete balance of his interest shall be withdrawn pro rata from each applicable Investment Option.

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

9.17. Distribution for Incompetents. If a Participant, Alternate Payee or Beneficiary entitled to receive any benefits hereunder is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such representative appointed under local law for the benefit of such Participant, Alternate Payee or Beneficiary. Such payments shall be considered a payment to such Participant, Alternate Payee or Beneficiary and shall, to the extent made, be a full and complete discharge of any liability for such payments under the Plan.

9.18. Procedure when Distributee Cannot Be Located. If a distribution check is returned, the Administrator shall make all reasonable attempts to determine the identity and address of a Distributee entitled to benefits under the Plan. For this purpose, a reasonable attempt means: (a) the mailing by certified mail of a notice to the last known address shown on the Administrator's records and/or a commercial search program, (b) notification sent to the Internal Revenue Service or Social Security Administration forwarding programs, and (c) the payee has not responded within six months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits within three years of the date he first becomes entitled to a distribution from the Trust any amounts being held on his behalf shall be forfeited out of the Participant's Account, but the Plan shall place the forfeited amounts in a separate suspense account under the Plan specifically designated

for this purpose. If the Distributee is located subsequent to such forfeiture, the Plan Administrator shall distribute the Account Balance to him in accordance with the Plan.

## ARTICLE X.

### MINIMUM DISTRIBUTION REQUIREMENTS

For the calendar year beginning January 1, 2002, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the regulations under Code Section 401(a)(9) that were proposed in January 2001, notwithstanding any provision of the Plan to the contrary. For calendar years beginning on or after January 1, 2003, the Plan will apply the minimum distribution requirements in accordance with the final regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G). This Article X constitutes a reasonable good faith interpretation of Code Section 401(a)(9) for purposes of Section 823 of the Pension Protection Act of 2006.

#### 10.1. General Rules

(a) Effective Date of Final Regulations. The provisions of the Final Regulations under Code Section 401(a)(9) will apply for purposes of determining required minimum distributions for calendar years beginning January 1, 2003.

(b) Precedence. The requirements of this Article will take precedence over any inconsistent provisions of the Plan.

(c) Requirements of Treasury Regulations Incorporated. All distributions required under this Article will be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9).

#### 10.2. Time and Manner of Distribution

(a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

(b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.
- (2) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by



December 31 of the calendar year immediately following the calendar year in which the Participant died.

- (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (4) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section, other than (b)(1), will apply as if the surviving spouse were the Participant.

### 10.3. Required Minimum Distributions During Participant's Lifetime

(a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

- (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year (e.g., if the Participant's age is less than age 70 the distribution period is 27.4 plus the number of years that the Participant's age is less than 70); or
- (2) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death. At the Participant's election, the annual required minimum distributions can be made in monthly, quarterly, semi-annual or annual installments.

### 10.4. Required Minimum Distributions After Participant's Death

(a) Death On or After Date Distributions Begin

- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution

Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

- (A) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - (B) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
  - (C) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) Death Before Date Distributions Begin
- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary.
  - (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of

September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse, this Section will apply as if the surviving spouse were the Participant.

10.5. Required Minimum Distribution Waiver of 2009. Notwithstanding any other provisions of Article X of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those 2009 distributions unless the Participant or Beneficiary elects to receive such distribution. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. However, those Participants and Beneficiaries who receive required minimum distributions through the automatic payment system will continue to receive 2009 RMDs unless he or she elects not to receive the 2009 RMDs.

## **ARTICLE XI.**

### **HARDSHIP WITHDRAWALS AND LOANS**

#### 11.1. Hardship Withdrawals

(a) The Plan Administrator shall make a distribution to a Participant from his Salary Deferral Contributions Account in accordance with this Section in the event of the Participant's "hardship." For purposes of this Section, a distribution will be on account of hardship if the distribution is necessary in light of immediate and heavy financial needs of the Participant. A distribution based upon hardship cannot exceed the amount required to meet the immediate financial need created by the hardship and not reasonably available from other resources of the Participant. The determination of the existence of financial hardship and the amount required to be distributed to meet the need created by the hardship must be made in accordance with uniform and nondiscriminatory standards established by the Plan Administrator and in accordance with Code Section 401(k) and the Treasury Regulations promulgated thereunder.

(b) A distribution will be deemed to be necessary to satisfy an immediate and heavy financial need of a Participant if all of the following requirements are satisfied:

- (1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant and is reasonably necessary to satisfy the need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution),
- (2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the Participating Employers or has borrowed from commercial sources (if any such distribution or loan in and of itself would not create a financial hardship),
- (3) The hardship cannot be relieved by reimbursement or compensation by insurance, or otherwise,
- (4) The hardship cannot be relieved through liquidation of assets reasonably available to the Participant (if the liquidation in and of itself would not cause a financial hardship), and
- (5) The hardship cannot be relieved by canceling his Salary Deferral Contributions to the Plan.

(c) The following situations are deemed to meet the requirements for an immediate and heavy financial need:

- (1) Expenses incurred for, or necessary to obtain, medical care as described in Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income) for the Participant, Participant's spouse, or Participant's dependents (as defined in Code Section 152), or the Participant's primary Beneficiary,
- (2) Costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments),
- (3) Payments of tuition, related educational fees and room and board expenses for the next 12 months of post-secondary education, including expenses for the then current semester or quarter, for the Participant or the Participant's spouse, children, dependents as defined in Code Section 152, without regard to Section 152(b)(1), (b)(2) and (d)(1)(B), or primary Beneficiary,
- (4) Payments necessary to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage on that residence,
- (5) Payments for funeral or burial expenses for the Participant's deceased parent, spouse, child, or dependent (as defined in Code Section 152, without regard to Code Section 152(d)(1)(B)), or primary Beneficiary,

- (6) Expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income), or
- (7) Such other financial circumstances as declared by the Commissioner of Internal Revenue to constitute immediate and heavy financial need under Code Section 401(k) or the regulations thereunder.

(d) In the event a Participant's Salary Deferral Contribution Account is invested in more than one of the separate Investment Options maintained under the Plan, a withdrawal of less than the complete balance of his Salary Deferral Contribution Account shall be withdrawn pro rata from each applicable Investment Option.

(e) The Plan Administrator may require the submission of such evidence as it may reasonable deem necessary to confirm the existence of such a "hardship." In making this determination, the Administrator as well as its designated agent for processing may rely on the Participant's representation that the need cannot be met by any of the aforementioned resources or from any other resources that are reasonably available to the Participant. For purposes of this Section, the resources of the Participant include those assets of the Participant's spouse and minor children that are reasonably available to the Participant. A request for distribution pursuant to this Section shall be approved or denied by written instrument given by the Plan Administrator to the Participant at his address as provided to the Plan Administrator, within sixty (60) days after the date the written request, complete with all evidence with respect thereto requested by the Plan Administrator, is given to the Plan Administrator by the Participant. In the event that such request is approved, the distribution shall be made within thirty (30) days after notice of a approval is given by the Plan Administrator to the Participant from such portions of the Participant's Salary Deferral Contributions Account as he shall designate; provided, however that, under no circumstance may earnings on the Participant's Salary Deferral Contributions be distributed pursuant to this Section.

(f) A Participant who receives a distribution of Salary Deferral Contributions after December 31, 2001, on account of hardship shall be prohibited from making Salary Deferral Contributions under this and all other plans of the Employer for six (6) months after receipt of the distribution.

#### 11.2. Loans to Participants

(a) The Plan Administrator may make loans to any Participant. Each loan shall be made to the Participant in a manner approved by the Commission, and shall be subject to the approval of the Plan Administrator. The Participant shall be permitted no more than two (2) outstanding loans from this Plan and the State of South Carolina Public Employee 457 Deferred Compensation Plan and Trust at any time. The Administrator may require a waiting period of up to thirty (30) days after repayment of a loan before issuance of another loan. If Participant does not repay a loan when due, resulting in the outstanding balance of such loan being treated as in default, such Participant will not be eligible for a new loan until a period of thirty-six (36) months has elapsed following the date the loan was due to be paid in full (i.e., the loan's original

maturity date) and will not be eligible for a new loan unless in accordance with the Code and Treasury Regulation 1.72(p)-I, repayments will be made by payroll withholding.

(b) Terms of Loans. All loans shall be made on such terms and conditions as the Plan Administrator may determine, provided that all loans shall:

(i) Be made pursuant to a promissory note and such other documents required by the Administrator which are subject to default rules which are not inconsistent with those described in (e) and which are secured by the Participant's Accounts and such other collateral as may be required by the Administrator;

(ii) Be amortized on a substantially level basis, with payments to be made not less frequently than quarterly throughout the repayment period, except that the loan may be prepaid fully, and except that alternative arrangements for repayment may apply in the event the borrower is on a bona fide unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of Code Section 414(u) or for the duration of a leave which is due to qualified military service.

(iii) Bear a reasonable rate of interest (which may be a fluctuating rate), which shall in no event be lower than the prime interest rate, as published in the Wall Street Journal on the last business day of the month, plus two percentage points; and

(iv) Provide for repayment in full on or before the earlier of (A) 5 years after the date when the loan is made (twenty (20) years after the date the loan is made if the loan is used to acquire a dwelling which, within a reasonable period of time, is to be used as the principal residence of the Participant) or (B) the date when distribution of the Participant's Plan benefit is fully distributed (including payments after retirement out of Plan distributions).

The Accounts of a Participant who elects to borrow may be charged with a loan fee in an amount reasonably determined by the Plan Administrator to represent the cost to the Plan of processing the loan.

(c) Amount of Loan. The minimum amount of any new loan made to a Participant shall be \$2,500.00. The maximum amount of any new loan made to a Participant shall be offset by the balance (principal plus accrued interest) due on any outstanding loans to the Participant from the Plan (and from any other plans of the Commission that are qualified employer plans under Section 72(p)(4) of the Code). In accordance with Section 72(p)(2) of the Code, the principal amount of the new loan shall not exceed the lesser of:

(1) \$50,000.00, reduced by the greater of (i) the outstanding balance on any loan from the Plan (and from any other plans of the Commission that are qualified employer plans under Section 72(p)(4) of the Code) to the Participant on the day the loan is made or (ii) the highest outstanding loan balance on loans from the Plan (and from any other plans of the Commission that are qualified employer plans under Section 72(p)(4) of the Code) to the Participant during the twelve (12) month period ending on

the day before the date on which the new loan is made (not taking into account any payments made during such 12-month period); or

- (2) The greater of (i) fifty percent of the value of the Participant's vested Accounts (as of the Valuation Date immediately preceding the date on which such loan is approved by the Plan Administrator), or (ii) \$10,000.

(d) Source of Loans. The amount to be borrowed by the Participant shall come from assets held in the Participant's Salary Deferral Contribution Account, Employer Matching Contribution Account, Discretionary Employer Matching Contribution Account, or Rollover Account, and any loan shall be considered an asset of such Account.

(e) Withholding and Application of Loan Payments. Principal and interest payments shall be made (i) whenever possible through periodic payroll deductions from the Participant's Compensation from the Employer or (ii) by bank or cashier's check or money order whenever payroll withholding is not possible. A Participant may continue to repay a loan during the period he is receiving installment payments under Subsection 9.8(b) of the Plan. Principal and interest payments first shall be credited to the Participant's Salary Deferral Contribution Account, then to his Employer Matching Contribution Account, and then to his Discretionary Employer Matching Contribution Account (any loss caused by nonpayment of such loan shall be borne solely by such Account in the same order of preference as principal and interest payments) to be invested as otherwise provided in the Plan. Withholding and Application of Loan Payments. Principal and interest payments shall be made (i) whenever possible through periodic payroll deductions from the Participant's Compensation from the Employer or (ii) by bank or cashier's check or money order whenever payroll withholding is not possible. A Participant may continue to repay a loan during the period he is receiving installment payments under Subsection 9.8(b) of the Plan. Principal and interest payments shall be credited in accordance with procedures established by the Commission and invested as otherwise provided in the Plan.

(f) Default. Prior to repayment, a promissory note shall be considered in default in the event the borrower fails to make a payment when due and subsequently fails to make up such payment by the last day of the calendar quarter following the calendar quarter in which the payment was missed, dies or terminates his or her participation in the Plan, the borrower files for relief under the United States Bankruptcy Code, the loan becomes a deemed distribution under Section 72(p) of the Code, or the Plan is terminated. In the event a default occurs and is not cured within the Cure Period, the full amount due under the note shall become immediately due and payable. In such event, the Plan Administrator shall report the loan as a taxable distribution under the Plan. In reporting this taxable distribution, it shall recognize the distribution as coming pro rata from the following sources, as applicable, the Participant's Salary Deferral Account, his Employer Matching Contribution Account, and his Discretionary Employer Matching Contribution Account, whether or not the withdrawal would be permitted under the Plan on a voluntary basis; provided that an involuntary withdrawal from the Participant's Accounts shall be made only in circumstances under which a withdrawal would not cause the Plan to violate the requirements of 401(a) or 401(k) of the Code.

(g) Administrative Rules and Procedures. The Plan Administrator may adopt such administrative rules and procedures applicable to the administration of this Section as it may

deem necessary or appropriate. Such rules and procedures may be more restrictive than the provisions of this Section provided that these rules and procedures are nondiscriminatory in effect, prospectively applied and permitted under the Code and regulations thereunder.

## **ARTICLE XII.**

### **ADMINISTRATION OF THE PLAN**

12.1. Plan Administrator. Except as otherwise provided in the Plan, the Commission shall control and manage the operation and administration of the Plan and shall be considered the “named fiduciary” of the Plan for the purposes of the Code.

12.2. Powers of the Commission. The Commission, subject to the limitations herein contained and to such other restrictions as the State of South Carolina may make, shall have the power and the duty to take all action and to make all decisions necessary or proper to carry out the provisions of Plan. The determination of the Commission as to any question involving the general administration and interpretation of the Plan shall be final, conclusive and binding. Any discretionary actions to be taken under the Plan by the Commission with respect to the classification of Employees, Participants, Beneficiaries, contributions, or benefits shall be uniform in their nature and applicable to all persons similarly situated. Without limiting the generality of the foregoing, the Commission shall have the following powers and duties:

(a) To require any person to furnish such information as it may request for the purpose of the proper administration of the Plan as a condition of receiving any benefits under the Plan;

(b) To make and enforce such rules and regulations and prescribe the use of such forms as it shall deem necessary for the efficient administration of the Plan;

(c) To interpret the Plan, and to resolve ambiguities, inconsistencies and omissions, which findings shall be binding, final and conclusive;

(d) To decide on questions concerning the Plan and the eligibility of any Employee to participate in the Plan, in accordance with the provisions of the Plan;

(e) To determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan. The Commission may require claims for benefits to be filed in writing, on such forms and containing such information as the Commission may deem necessary. Adequate notice shall be provided in writing to any Participant or Beneficiary thereof whose claim for benefits under the Plan has been wholly or partially denied. Such notice shall set forth; (i) the specific reasons for such denial, (ii) specific reference to the pertinent Plan provisions on which the denial is based, (iii) a description of any additional material or information necessary for the claimant to obtain review of his claim, and (iv) an explanation of the Plan's claim review procedures. Such notice shall be written in a manner calculated to be understood by the Participant or his Beneficiary and shall afford reasonable opportunity to the Participant or his Beneficiary whose claim for benefits has been denied for a full and fair review of the decision denying the claim;



(f) To allocate any such powers and duties to or among individual members of the Commission; and

(g) To designate persons other than Commission members to carry out any duty or power which would otherwise be a fiduciary responsibility of the Commission, under the terms of the Plan.

(h) To retain a third party administrator to carry out the provisions of the Plan as directed by the Commission; and to delegate to the third party administrator all or such portion of their duties under the Plan.

12.3. Selection of Professional Counselors Other Than Investment Manager. The Commission may employ a counsel, a qualified public accountant, a qualified actuary, consultant and such clerical, medical and other accounting services as it may require in carrying out the provisions of the Plan or in complying with requirements imposed by the Code.

12.4. Appointment of Investment Manager. The Commission may appoint an investment manager or managers to manage any assets of the Plan, including the power to acquire and dispose of Trust Fund assets and to perform such other services as the Commission shall deem necessary or desirable in connection with the management of the Trust Fund. Anything in this Article or elsewhere in the Plan to the contrary notwithstanding, the Commission shall be relieved of the authority and discretion to manage and solely control the assets of the Plan to the extent that authority to acquire, dispose of, or otherwise manage the assets of the Plan is delegated to one or more investment managers in accordance with this Section.

12.5. Reliance on Professional Counselors. To the extent permitted by law, the Commission and any person to whom it may delegate any duty or power in connection with administering the Plan, and a Participating Employer shall be entitled to rely conclusively upon, and shall be fully protected in any action taken or suffered by them in good faith in reliance upon, any counsel, accountant, other specialist, or other person selected by the Commission, or in reliance upon any tables, valuations, certificates, opinions or reports which shall be furnished by any of them. Further, to the extent permitted by law, no member of the Commission, nor any Participating Employer shall be liable for any neglect, omission or wrongdoing of the other or any other member of the Commission.

12.6. Source of Payment of Expenses. All expenses prior to the termination of the Plan that shall arise in connection with the administration of the Plan, including but not limited to administrative expenses and proper charges and disbursements of the Commission and compensation and other expenses and charges of any counsel, accountant, specialist or other person who shall be employed by the Commission in connection with the administration thereof, shall be paid from the Trust Fund to the extent not paid by the Participating Employer.

12.7. Compensation of the Commission. The members of the Commission shall serve without additional compensation for the performance of their duties related to the Plan, but shall only receive the compensation, if any, provided for by state law for service as a member of the Commission. The members of the Commission may be reimbursed from the Trust for

reasonable expenses incurred in the performance of their duties related to the Plan to the extent not paid by an Employer and to the extent allowed under the Commission's policies and state law. Unless otherwise determined by the Commission or unless required by any Federal or State law, no member of the Commission shall be required to give any bond or other security in any jurisdiction.

## **ARTICLE XIII.**

### **THE TRUSTEE**

13.1. Custody of Assets. The Trustee or the custodian appointed by the Commission shall be the custodian of all of the assets and funds of this Trust, shall accept and receive all sums of money paid to it from time to time by the Employer pursuant to the terms of this Agreement, and shall hold, reinvest, manage and administer those moneys and the increment, earnings and income thereof as the Trust Fund for the exclusive benefit of Participants and their Beneficiaries.

13.2. Payment of Benefits. The Trustee or the Administrator on behalf of the Trustee shall pay benefits to such persons, at such times, and in such amounts as shall be determined by the Trustee; provided, however, that in no event shall the Trustee be under any obligation to make any payment other than from the funds in this Trust.

13.3. Investments Authorized. The Trustee shall collect the income of the Trust Fund, and the assets of the Trust Fund without distinction between principal and income, except such amounts as may be estimated from time to time to be required for current payments and expenses.

13.4. Power of Trustee.

The Trustee shall have the following powers, rights and duties in addition to those vested in it elsewhere in this Trust Agreement or by law:

(i) to retain agents, attorneys, custodians, investment managers, auditors, depositories, with or without discretionary powers, and to pay them reasonable compensation out of the Trust Fund; and

(ii) to perform any and all acts in its judgment necessary or desirable for the proper and advantageous administration and distribution of the Trust Fund.

13.5. Administration. In performing its duties for the Plan, the Trustee shall take action in accordance with, and in the manner provided for in, the bylaws and other governance documents adopted by the Commission.

13.6. Expenses and Compensation. The Trustee is authorized and directed to pay from the Trust Fund all of its expenses, taxes and charges, including reasonable fees and expenses of its attorneys, managers, auditors, depositories, and agents, incurred in connection with collection, administration, management, investment, protection and distribution of the Trust Fund, to the extent that such amounts are not paid by a Participating Employer. The Trustee shall serve without compensation for its services as such.

13.7. Reports and Audits. The Trustee shall render an annual report to the Participating Employers containing information concerning the Trust and its administration by the Trustee. The Trustee shall also render such further reports as the Employer may request from time to time. The approval by the Participating Employers of any report or accounting by the Trustee, including, but not limited to, an accounting by a resigned or removed Trustee, shall be a complete release and discharge of the Trustee or such resigned or removed Trustee, as the case may be, which release and discharge shall be binding upon the Participating Employers and all Participants and persons claiming in their place and stead except to the extent that the provisions of federal law may grant rights to Participants. The Employer may designate auditors to examine the audit the accounts of the Trustee annually and at such other times as the Employer may designate.

13.8. Limitation on Duties and Liabilities. The Trustee shall have no duty to examine the records of the Participating Employers to determine whether the amount of any contribution to the Plan has been correctly computed, or to compel the performance of any duty imposed upon the Participating Employer by this Agreement. The Trustee shall be fully protected in relying and acting upon any notice, instruction, certification or other document in writing which was made or purports to have been made in accordance with this Agreement, and the Trustee shall be under no duty to make any investigation or inquiry as to the trust and accuracy of the statements contained therein. The Trustee shall not be liable for the acts or omissions of any other Trustee, if without knowledge of such act or omission, or for the acts or omissions of any attorney, agent or assistant of such other Trustee.

The Trustee may require any person involved in the administration of the Plan, and any person having interest under the Plan, to furnish such certifications of facts as shall permit the Trustee to perform its duties under the Plan or under any applicable law. For purposes of this Article person means, any corporation, limited liability company, unincorporated association, partnership, joint venture, business, trust, the Plan Administrator, or any other individual or entity that is a person within the meaning of any law of the United States or the State of South Carolina that is applicable to the governance or administration of the Plan.

The Trustee shall be fully protected in relying and acting upon any notice, instruction, certification or other document in writing which was made or purports to have been made in accordance with this Plan, and the Trustee shall be under no duty to make any investigation or inquiry as to the truth and accuracy of the statements contained therein.

13.9. Succession of Trustee. Upon resignation or removal of a Trustee, a successor Trustee shall be appointed as provided under the applicable law. Upon the appointment of a successor Trustee, written notice of such appointment shall be delivered promptly to any remaining individuals acting as Trustee, to the retiring Trustee, and to the successor Trustee. Any successor Trustee shall execute an instrument accepting the appointment and agreeing to be bound by this Agreement, one executed copy to be delivered to the State, one to the remaining Trustees, if any, and one to the retiring Trustee. At the request of the Commission, upon the removal or resignation of any Trustee, such Trustee shall file with the Commission a final account to which the provisions relating to annual accounts shall be applicable.

13.10. Rights of Successor Trustee. In the event of the appointment of a successor Trustee, such successor Trustee will succeed as of the effective date of its appointment to all the rights, title and estate of the succeeded Trustee, and no instrument of transfer, conveyance or assignment or order of any court shall be necessary in connection therewith. Notwithstanding the foregoing, however, the succeeded Trustee or Trustees such instruments of transfer, conveyance, assignment and further assurance as it may reasonably require. No successor Trustee or Trustees shall be personally liable for any act or omission which occurred prior to the time it became a Trustee.

13.11. Indemnification of Trustee. The State shall indemnify and defend each person acting as Trustee against any and all claims, loss, damages, expenses (including reasonable attorney's fees), and liability arising in connection with the administration of the Plan or the Trust, except when the same is judicially determined to be due to the gross negligence or willful misconduct of such person.

13.12. Incapacity of Administrator and State. If at any time the State shall be incapable of giving the Trustee directions, instructions or authorizations as herein provided, the Trustee may act as it, in its sole discretion, deems appropriate and advisable in the circumstances for the carrying out of the provisions of the Plan and Trust.

13.13. Plan Audits. At any time the Trustee may (but is not required to) engage an independent public accountant to examine a Participating Employer's financial statements or internal control procedures. If the Plan Administrator engages an independent accountant, the Plan Administrator must require that such engagement provide that the examination be made according to generally accepted auditing principles (or according to agreed upon procedures that the Trustee approves in writing), and that the Trustee is entitled to rely upon the accountant's examination and opinion and all reports relating to the examination.

## **ARTICLE XIV.**

### **AMENDMENT OR TERMINATION**

14.1. State's Right to Amend. The Commission shall have the right at any time and from time to time (and retroactively if deemed necessary or appropriate to meet the requirements of Section 401(a) of the Code and any similar provisions of subsequent revenue or other laws, or the rules and regulations from time to time in effect under any of such laws or to conform with governmental regulations or other policies), to modify or amend, by resolution, any or all of the provisions of the Plan and all Participating Employers, Employees and persons claiming any interest hereunder shall be bound thereby.

No modification or amendment, however, shall make it possible for any part of the corpus or income of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries under the Plan prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries under the Plan. Moreover, no amendment or modification shall make it possible to deprive any Participant of a previously accrued benefit, including an optional form of benefit, except to the extent permitted by Section 412(c)(8) of the Code.

In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant shall be entitled to receive a benefit if the Plan were to terminate immediately after the merger, consolidation, or transfer, which is not less than the benefit he would have been entitled to receive if the Plan had terminated immediately before the merger, consolidation, or transfer.

14.2. Voluntary Termination of or Permanent Discontinuance of Contributions to the Plan. The Employer expects the Plan to be permanent, but since future conditions affecting the Employer cannot be anticipated, the Employer shall have the right to terminate the Plan in whole or in part, or to permanently discontinue contributions to the Plan, at any time by resolution of its Commission and be giving written notice of such termination or permanent discontinuance to the Trustee. Such resolution shall specify the effective date of termination or permanent discontinuance, which shall not be earlier than the first day of the Plan Year that includes the date of the resolution.

14.3. Payments on Termination or Permanent Discontinuance of Contributions to the Plan. If the Plan is terminated as herein provided, or if it should be partially terminated, or upon the complete discontinuance of Employer contributions to the Plan, the following procedure shall be followed; except that in the event of a partial termination it shall be followed only in case of those Participants and Beneficiaries directly affected:

- (a) The Administrator may continue to function,
- (b) The Account Balance of any Participant so affected shall be nonforfeitable to the extent funded, and
- (c) Distribution to Participants, Alternate Payees and Beneficiaries shall be made at such time after termination of or discontinuance of contributions to the Plan and by such of the methods provided under this Plan, as the Administrator in its discretion shall determine (except that distribution shall be made not later than the time specified under this Plan).

## **ARTICLE XV.**

### **ROLLOVERS AND TRANSFERS**

#### 15.1. Direct Rollover of Funds to Other Plans.

(a) This Subsection (a) applies to distributions made on or after December 31, 2001. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The Plan shall provide written information to the Distributee regarding Eligible Rollover Distributions no more than 180 days prior to payment of the Eligible Rollover Distribution, to the extent required by Code Section 402(f).

(b) Effective January 1, 2007, and notwithstanding anything in the Plan to the contrary that otherwise would limit a Distributee's election under this Section, and to the extent

allowed under the applicable provisions of the Code and the Treasury regulations, a Distributee who is a Designated Beneficiary, but not a surviving spouse, spouse or former spouse Alternate Payee may elect, at the time and in the manner prescribed by the Administrator, to have all or any part of the Account that qualifies as an Eligible Rollover Distribution paid in a direct trustee-to-trustee transfer to an Eligible Retirement Plan that is an individual retirement plan described in clause (i) or (ii) of Code Section 402(c)(8)(B). If such a transfer is made, (i) the transfer shall be treated as an Eligible Rollover Distribution, (ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code Section 408(d)(3)(C), and (iii) Code Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such individual retirement plan.

15.2. Rollover of Funds From Other Plans

- (a) In the event that an individual
  - (1) is an Employee or former Employee and a Participant in the Plan or the State of South Carolina Public Employee 457 Deferred Compensation Plan and Trust, and
  - (2) shall have been a participant in an employer's trust described in Section 401 (a) of the Code, which is exempt from tax under Section 501 (a) of the Code (and under which the Participant was not an employee within the meaning of Section 401(c)(1) of the Code), and
  - (3) received from such trust the balance to his credit as a lump sum distribution within the meaning of subsection 401(e)(4)(A) of the Code (determined without reference to subsection 402(e)(4)(B)), and
  - (4) such property consist of money,

then, with the consent of the Commission, the Participant may transfer any portion of the distribution, to the extent it exceeds the amount referred to in subsection 402(e)(4)(D)(i) of the Code, to this Plan on or before the sixtieth (60th) day after the day on which he received such property, and upon receipt by the Plan, such amount shall be credited to the Participant Rollover Account established under the Plan. The Participant shall have a one hundred percent (100%) nonforfeitable right to all amounts credited to his Participant Rollover Account as a result of such rollover. Amounts received by the Plan pursuant to this Section, and any gains or losses allocable thereto, shall be accounted for separately from amounts otherwise allocable to the Eligible Employee under the Plan.

(b) The Plan will accept Participant Rollover Contributions and/or Direct Rollovers of Eligible Rollover Distributions made after December 31, 2001, as described below:

- (1) pre-tax contributions from a qualified plan described in Section 401 (a) or 401(k) or 403(a) of the Code, an annuity contract

described in Section 403(b) of the Code and an eligible governmental deferred compensation plan described in Section 457(b) of the Code.

- (2) a Direct Rollover of after-tax contributions from a qualified plan described in Section 401(a), 401(k) or 403 (a) of the Code.
- (3) A Participant rollover of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is an Eligible Rollover Distribution (excluding after-tax contributions).

15.3. Transfers Directly From Other Plans. There may be transferred directly from the trustee of any other qualified plan to the trustee, subject to the approval of the Employer and the Trustee, all or any of the assets, including voluntary contributions, if any, held (whether by Trustee, custodian or otherwise) on behalf of any other plan which is maintained for the benefit of any Eligible Employees who are or are about to become Participants of this Plan.

Any Participant who is participating in the Teacher and Employee Retention Incentive Program ("TERI") under the State Budget and Control Board-Division of Retirement Systems may, at the end of the TERI period, may transfer directly from the trustees of any retirement plan administered by the State Budget and Control Board-Division of Retirement Systems, the funds accumulated in the participant's TERI account to the Participant's Accounts.

Any Participant who terminates an account with any of the South Carolina Retirement Systems may, at the time of termination of the account, transfer directly from the trustees of the South Carolina Retirement Systems, all or any of the assets held by the South Carolina Retirement Systems for the benefit of the Participant.

Notwithstanding the foregoing, an Eligible Employee may not transfer any amount which, if transferred into this Plan would cause the Plan to be a direct or indirect transferee plan, within the meaning of Section 401(a)(11)(B)(iii)(III) of the Code and any regulations or rulings effective thereunder, of a plan described in Section 401(a)(11)(B)(i) or (ii) of the Code. Transfers pursuant to this section may be made regardless of whether the Eligible Employee has satisfied the service requirements of this Plan.

15.4. Transfers Directly to the South Carolina Retirement System, the South Carolina Police Officers Retirement System, the Retirement System for Members of the General Assembly of the State of South Carolina, and the Retirement System for Judges and Solicitors of the State of South Carolina. A Participant may elect to transfer a portion of the balance of his Salary Deferral Contribution Account, Employer Matching Contribution Account, Discretionary Employer Matching Contribution Account, and Rollover Account to the South Carolina Retirement System, the South Carolina Police Officers Retirement System, the Retirement System for Members for the General Assembly of the State of South Carolina, or the Retirement System for Judges and Solicitors of the State of South Carolina in order to purchase prior service credits, additional service credits, or credits for out-of-state service or federal civilian service under such applicable Retirement System. In no event may the transfer include any portion of

the Participant's Roth Elective Deferral Contribution Account or Roth Elective Deferral Rollover Account. The Trustee of this Plan shall transfer such amount to the trustee of the applicable Retirement System, who shall hold such transferred amount in trust.

## ARTICLE XVI.

### GENERAL PROVISIONS

16.1. Duty to Furnish Information and Documents. Participating Employers, Participants and their Beneficiaries must furnish to the Administrator such evidence, data or information as the Administrator considers necessary or desirable for the purpose of administering the Plan, and the provisions of the Plan for each person are upon the condition that he will furnish promptly full, true, and complete evidence, data, and information requested by the Administrator. All parties to, or claiming any interest under, the Plan hereby agree to perform any and all acts, and to execute any and all documents and papers necessary or desirable for carrying out the Plan and the Trust. (Administrator and Trustee are synonymous in this context)

16.2. Available Information. The Administrator shall advise all Employees of the eligibility requirements and benefits under the Plan. No Participant, except one or more Trustees acting as such, shall have the right to inspect the records reflecting the account of any other Participant. The Administrator shall make available for inspection at reasonable times by Participants and Beneficiaries copies of the Plan, any amendments thereto, and all reports of Plan and Trust operations required by law.

16.3. Form of Notices and Elections. The Administrator shall designate and furnish the appropriate forms to make an election or provide a notice required by the Plan. To the extent permitted by the Code and the Treasury Regulations thereunder, the Administrator may prescribe an oral, electronic, or telephonic form in lieu of, or in addition to, a paper form.

IN WITNESS WHEREOF, the undersigned has executed this amended and restated Plan this 27<sup>th</sup> day of September, 2013.

By:

  
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Dale M. Rhodes, CPA, Vice Chairman  
South Carolina Deferred Compensation Commission