

**AMENDMENT ONE TO THE STATE OF SOUTH CAROLINA  
457 DEFERRED COMPENSATION PLAN AND TRUST**

WHEREAS, the Board of Directors of the South Carolina Public Employee Benefit Authority ("Board") 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 457 Deferred Compensation Plan and Trust ("Plan"); and,

WHEREAS, the Plan was last amended and restated effective January 1, 2013; and,

WHEREAS, the Board adopted amendments to the Plan at its meeting on December 17, 2014, to be effective January 1, 2015, and directed that the Plan document be amended and authorized the Chairman of the Board to execute the amendment to the Plan on its behalf.

NOW, THEREFORE, BE IT RESOLVED that the Plan, effective January 1, 2015, shall be amended as follows:

Part I. In-Plan Roth Rollovers

A. Subsection (c) of Section 3.12, regarding Roth Deferrals, is amended to be and read as follows:

(c) Direct Rollovers. Notwithstanding Sections 4.1 and 4.7, a Direct Rollover of a distribution from a Roth Deferral Contribution Account under the Plan will only be made to another Roth 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). Pursuant to Section 4.3, the Plan will accept a Rollover Contribution to a Roth Elective Deferral Rollover Account if it is a Direct Rollover from another Roth deferral contribution account under another eligible retirement plan maintained by 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 Roth rollover as herein provided.

B. Section 4.7, In-Plan Roth Rollover, shall be added to be and read as follows:

**4.7 IN-PLAN ROTH ROLLOVER.**

(a) Any vested amount held in an Account for a Participant (other than an amount held in a Roth Deferral Contribution Account under Section 2.46) is eligible for direct rollover to the Participant's Roth Elective Deferral Rollover Account under the Plan, even if the vested amount is not otherwise distributable (pursuant to Code Section 402A(c)(4)(E) under Article IV of the Plan, and the transfer shall be treated as a qualified rollover contribution (within the meaning of Code Section 408A(e)) to such Account.

(b) A Participant's election under this Section 4.7 shall be subject to the reasonable administrative procedures established by the Plan Administrator, Code Section 402A(c)(4) and the regulations thereunder, and subsequent guidance from the Internal Revenue Service.

(c) The taxable portion of the Participant's Account transferred to a Roth Elective Deferral Rollover Account under this Section 4.7 shall be included in the Participant's gross income in the tax year in which the transfer occurs.

(d) The Plan shall provide written information regarding In-plan Roth rollovers under this Section 4.7, for amounts that are otherwise distributable under Article IV to the extent required by Code Section 402(f).

## Part II. Loans

A. Section 9.1, regarding Loans to Participants, is amended to be and read as follows:

### **9.1 LOANS TO PARTICIPANTS.**

(a) A Participant may apply for and receive a loan from his Account balance as provided in this Section 9.1. Any such loan may not be for an amount less than the minimum amount specified by the Commission. If not specified by the Commission, the minimum loan amount shall be \$2,500. Each loan shall be made to the Participant upon application by the Participant, in a manner approved by the Commission, and shall be subject to the approval of the Plan Administrator. A Participant is not eligible for a loan unless repayments will be made by payroll deduction as provided in Section 9.6. A Participant shall be permitted no more than one outstanding loan at any time from this Plan and the State of South Carolina Salary Deferral [401(k)] and Savings Profit Sharing Plan and Trust. The Administrator may require a waiting period of up to thirty (30) days after repayment of a loan before issuance of another loan.

(b) Any outstanding loan made to a Participant prior to January 1, 2015, shall be subject to the terms and conditions for such loans as of the date the loan was issued, including, but not limited to, all terms and conditions regarding the issuance and repayment of the loan. In addition, notwithstanding Section 9.1(a), if a Participant has two outstanding loans from this Plan and/or the State of South Carolina Salary Deferral [401(k)] and Savings Profit Sharing Plan and Trust as of December 31, 2014, the Participant may continue to repay both loans under the terms and conditions for the loans as of the dates the loans were issued, provided, however, that the provisions of Section 9.1(a) shall apply to any new loans issued on or after January 1, 2015.

B. Section 9.6, regarding Withholding and Application of Loan Payments, is amended to be and read as follows:

**9.6 WITHHOLDING AND APPLICATION OF LOAN PAYMENTS.** Principal and interest payments for a loan issued on or after January 1, 2015, shall be made by payroll

deduction from the Participant's Compensation from his or her Employer while the Participant is a Public Employee. If, after the issuance of a loan, a Participant becomes no longer eligible to make payments by payroll deduction, the Participant may make principal and interest payments in a method approved by the Plan Administrator. A Participant may continue to repay a loan during the period he is receiving installment payments under Subsection 7.1(g) of the Plan. Principal and interest payments shall be credited to the Participant's Account to be invested as otherwise provided in the Plan.

Part III. In all other respects, the Plan shall be and remain unchanged.

IN WITNESS WHEREOF, the undersigned has executed this amendment to the Plan this 17<sup>th</sup> day of December, 2014.

By: Arthur M. Bjontegard, Jr.  
Arthur M. Bjontegard, Jr., Chairman  
South Carolina Public Employee Benefit Authority Board of Directors

**AMENDMENT TO THE STATE OF SOUTH CAROLINA  
457 DEFERRED COMPENSATION 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 457 Deferred Compensation 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, 2009; 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  
457 DEFERRED COMPENSATION 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 deferment plans.” As part of its administration of that Program, the South Carolina Deferred Compensation Commission has established the “South Carolina 457 Deferred Compensation Plan and Trust,” pursuant to Section 457(b) of the Internal Revenue Code (“Code”).

The Plan was most recently restated effective January 1, 2009. 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.

The Plan and Trust consists of the provisions set forth in this document and is applicable to each Public Employee who elects to participate upon the date he becomes a Participant by signing and filing the Participation Agreement referred to herein with the Commission. The terms of the Plan are contained solely within this document.

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## ARTICLE I

### DESIGNATION, PURPOSE AND ACCEPTANCE OF PLAN

- 1.1 **DESIGNATION OF PLAN.** The deferred compensation plan and the trust established herein shall be known as the “457 Deferred Compensation Plan and Trust” (hereinafter referred to collectively as the “Plan”). The Plan is a revision, amendment, restatement and continuation of the prior plan as in effect immediately before the effective date of this Plan. This document will serve as the Plan document and Trust for purposes of compliance with applicable laws.
- 1.2 **PURPOSE OF PLAN.** The Plan is established and proposed to be continued to provide benefits under the Plan to Participants and their Beneficiaries upon retirement, disability or death, and in certain events, upon Separation from Service, upon the terms and conditions, and subject to the limitations, contained in the Plan. The Plan has been created for the exclusive benefit of eligible Participants and their Beneficiaries, of any Employer electing to participate in the Plan. The Plan is intended to qualify under Code Section 457 and is intended to be tax-exempt under Code Section 501(a). The Plan may allow its assets to be held in custodial accounts and group trusts as permitted under Revenue Ruling 2011-1, and/or in annuity contracts treated as qualified trusts under Section 457(g).

The Commission has entered into related trust agreements to hold the assets of the Plan in a group trust that meets the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, as amended by Revenue Ruling 2013-12. Any group trust shall be operated or maintained exclusively for the commingling and collective investment of funds from other trusts that it holds. Notwithstanding any contrary provisions in the group trust, the Trustee shall be permitted, unless instructed in writing by the fiduciary, to hold in this group trust funds that consist exclusively of trust assets held under plans qualified under Code Section 401(a), individual retirement accounts that are except under Code Section 408(e), and eligible governmental plans that meet the requirements of Code Section 457(b). For this purpose, trust includes a custodial account under Code Section 401(f) or under Code Section 457(g)(3).

- 1.3 **ACCEPTANCE OF PLAN.** The Commission hereby accepts the Plan and agrees to hold, administer and disburse all property received by it in trust hereunder for the uses and purposes and upon the terms and conditions set forth herein.

## ARTICLE II

### DEFINITIONS

The following terms shall have the meaning set forth herein for purposes of this Plan.

- 2.1 **ACCOUNT.** Account means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the

Participant, including the Participant's Salary Deferral Contributions, the earnings or loss of the Trust (net of Trust expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant dies, a separate Account shall be established and maintained for each Beneficiary. If the Beneficiary is an irrevocable trust one separate Account may be established for the trust regardless of the number of beneficiaries of the trust, at the Administrator's discretion, or the Administrator may establish separate Accounts for each separate beneficiary of the trust. The Account includes Rollover Contributions and plan-to-plan transfers made into this Plan for a Participant from another 457(b) plan. A separate Account shall be established and maintained for an Alternate Payee.

- 2.2 **AGENT.** 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.

- 2.3 **ALTERNATE PAYEE.** Alternate Payee means a person who is an alternate payee (within the meaning of IRC 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).
- 2.4 **BENEFICIARY.** Beneficiary means the person, persons or entity properly designated by a Participant as set forth in Section 7.2, or determined pursuant to the provisions of the Plan to receive the Participant's benefits under the Plan, in the event of the Participant's death.
- 2.5 **CODE OR IRC.** Code or IRC means the Internal Revenue Code of 1986, and Treasury Regulations promulgated thereunder, as amended from time to time.
- 2.6 **COMMISSION.** 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.

- 2.7 **COMPENSATION.** Compensation means all cash compensation for services paid by the Employer to the Public Employee, including salary, wages and fees, commissions, bonuses, and overtime, that is includible in the Public Employee's gross income for the calendar year. Compensation shall include amounts that would be cash compensation for services to the Employer includible in the Public Employee's gross income for the calendar year but for a compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under Article III). 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 Separation From Service are Compensation.
- 2.8 **DESIGNATED BENEFICIARY.** Designated Beneficiary means the individual which is designated as a Beneficiary under Section 7.2 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).
- 2.9 **DIRECT ROLLOVER.** 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 2.12 of the Plan.
- 2.10 **DISTRIBUTE.** 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.
- 2.11 **DISTRIBUTION CALENDAR YEAR.** 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 8.2. 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.

- 2.12 **ELIGIBLE RETIREMENT PLAN.** 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.
- 2.13 **ELIGIBLE ROLLOVER DISTRIBUTION.** 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 VIII of the Plan; and
  - (c) any hardship distribution.

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.

- 2.14 **EFFECTIVE DATE.** Effective Date means January 1, 2007, the effective date of this amended and restated Plan.
- 2.15 **EMPLOYER.** Employer means the State of South Carolina, and any political subdivision thereof which has elected to participate in the Plan.
- 2.16 **FIDUCIARY.** Fiduciary means 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, directly or indirectly, 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.
- 2.17 **INCLUDIBLE COMPENSATION.** Includible Compensation means, for the purposes of the limitations on deferrals, Compensation within the meaning of IRC Section 415(c)(3) and Section 2.7 of the Plan. Includible Compensation shall be subject to a maximum of \$200,000, as adjusted for cost-of-living increases in accordance with IRC Section 401(a)(17)(B).
- 2.18 **INVESTMENT OPTIONS.** Investment Options mean the various investments approved by the Commission in which a Participant may invest his Account pursuant to the terms of the Plan.
- 2.19 **INVESTMENT SPECIFICATION.** Investment Specification means the direction submitted by the Participant in a form approved by the Commission that instructs the Commission as to the allocation of the Participant's Account to the various Investment Options made available by the Plan.
- 2.20 **LIFE EXPECTANCY.** 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.
- 2.21 **MATCHING CONTRIBUTIONS.** Matching Contributions means the nonelective employer contributions made in any year by an Employer on behalf of a Participant pursuant to the provisions of the Plan. The Participant may not have any choice to receive the amounts contributed as Matching Contributions as cash or property.
- 2.22 **MATCHING CONTRIBUTION ACCOUNT.** Matching Contribution Account means the account into which shall be credited the Matching Contributions made on a Participant's behalf pursuant to Article III and earnings on those contributions.
- 2.23 **NORMAL RETIREMENT AGE.** Normal Retirement Age means
- (a) For a Participant who is not a qualified policeman or firefighter but is a participant in the Employer's Retirement System, Normal Retirement Age shall mean any age designated by the Participant that is on or after the earlier of age 65 or the age at which the Participant has the right to retire under the Employer's Retirement



System and to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and which is no later than age 70½.

(b) For a Participant who is a qualified policeman or firefighter as defined under Code Section 415(b)(2)(H)(ii)(I), Normal Retirement Age shall mean the age designated by the Participant that is between age 40 and age 70½.

(c) In the case of all other Participants, their Normal Retirement Age shall be age 65.

2.24 **PARTICIPANT.** Participant means any Public Employee who is currently deferring Compensation under the Plan and who participates under this Plan by entering into the Participation Agreement, or who has previously deferred Compensation, who may become eligible to receive or is receiving benefits under the Plan, and who fulfills the eligibility and enrollment requirements of Article III.

2.25 **PARTICIPANT'S ACCOUNT BALANCE.** 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.

2.26 **PARTICIPATION AGREEMENT.** Participation Agreement means the application to the Employer or the Administrator in a manner approved by the Commission made by a Public Employee to participate in the Plan.

2.27 **PLAN.** Plan means the 457 Deferred Compensation Plan and Trust as set forth in this document and as it may be amended from time to time, and, for Employers, the Service Agreement adopted by the Employer.

2.28 **PLAN ADMINISTRATOR OR ADMINISTRATOR.** Plan Administrator or Administrator means the Commission.

2.29 **PLAN YEAR.** Plan Year means the calendar year in which the Plan becomes effective, and each succeeding calendar year during the existence of this Plan.

2.30 **PRIOR PLAN.** Prior Plan means the Plan as in effect immediately before the Effective Date of this amendment and restatement.

2.31 **PUBLIC EMPLOYEE.** Public Employee means an employee or independent contractor of an Employer who earns Compensation for his or her services, including elected or appointed officials, but excluding any employee who is included in a unit of employees

covered by a collective bargaining agreement that does not specifically provide for participation in the Plan.

- 2.32 **QUALIFIED DOMESTIC RELATIONS ORDER OR QDRO.** 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.

- 2.33 **REQUIRED BEGINNING DATE.** Required Beginning Date means (for minimum distribution requirements) April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains age 70½ or (ii) the calendar year in which the Participant retires under his Employer's Retirement System or has a Separation From Service with the Employer.

- 2.34 **SALARY DEFERRAL CONTRIBUTIONS.** Salary Deferral Contributions means the amount of Compensation deferred in any year by the Employer on behalf of a Participant pursuant to a salary reduction agreement and the provisions of the Plan. Salary deferral contributions are subject to FICA tax.

- 2.35 **SALARY DEFERRAL CONTRIBUTION ACCOUNT.** 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.

- 2.36 **SEPARATION FROM SERVICE.** Separation From Service means the date that the Public 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). An independent contractor is considered to have separated from service of their Employer upon the expiration of the contract(s) under which services are performed for the Employer, if the expiration constitutes a good faith and complete termination of the contractual relationship, with no anticipation by the Employer of either a renewal of a contractual relationship or the employment of the independent contractor. Whether a Separation From Service has occurred shall be determined in accordance with this definition and the provisions of Treasury Regulation § 1.457-6(b).

- 2.37 **SERVICE AGREEMENT.** Service Agreement means the most recent service agreement for the Plan, including any appendices to the Service Agreement, adopted by an Employer.

- 2.38 **STATE.** State means the State of South Carolina.

- 2.39 **TAXABLE COMPENSATION.** Taxable Compensation means the remuneration for service performed for the Employer which is currently includible in gross income.

- 2.40 **TRUST.** Trust means the trust fund established by this document and amendments thereto, in which all assets of the Plan are held. The Trust name shall be the Plan name, the "457 Deferred Compensation Plan and Trust," as stated in the Plan.
- 2.41 **TRUST AGREEMENT.** Trust Agreement means the agreement contained herein between the State and the Commission, as Trustee, which governs the administration of the Trust, as it may be amended from time to time.
- 2.42 **TRUSTEE.** 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 the annuity contract in accordance with Code Section 457(b).
- 2.43 **UNFORESEEABLE EMERGENCY.** Unforeseeable Emergency means severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's spouse, the Participant's dependent (as defined in IRC Section 152(a)), or the Participant's primary beneficiary; loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay the funeral expenses of the Participant's spouse, dependent (as described in IRC Section 152(a)), or primary beneficiary; or other similar or extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, or as determined by Treasury Regulations. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an Unforeseeable Emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an Unforeseeable Emergency. Except as otherwise specifically provided in this Section, neither the purchase of a home nor the payment of college tuition is an Unforeseeable Emergency.
- 2.44 **VALUATION DATE.** Valuation Date means each business day that is a trading day in the New York Stock Exchange, and such other dates as shall be determined by the Plan Administrator.
- 2.45 **ROTH DEFERRAL CONTRIBUTIONS.** Roth Deferral Contributions means amounts contributed by a Participant that are designated by the Participant as Roth deferrals under Section 3.12 of the Plan.
- 2.46 **ROTH DEFERRAL CONTRIBUTION ACCOUNT.** Roth Deferral Contribution Account means the account into which Roth Deferral Contributions are credited and earnings on those contributions.
- 2.47 **ROTH DEFERRAL ROLLOVER CONTRIBUTIONS.** Roth Deferral Rollover Contributions mean Roth Deferrals amounts contributed by a Participant to the Plan pursuant to Article IV.

- 2.48 **ROTH ELECTIVE DEFERRAL ROLLOVER ACCOUNT.** Roth Elective Deferral Rollover Account means the account credited with a Roth Elective Deferral Rollover made by a Participant and earnings on those contributions.

### **ARTICLE III**

#### **PARTICIPATION AND ELECTION TO DEFER COMPENSATION**

##### **3.1 ELIGIBILITY AND ENROLLMENT.**

- (a) A Public Employee may enroll in the Plan and become a Participant by executing a Participation Agreement with the Commission or the designated Agent, in a manner approved by the Commission. This Participation Agreement shall state the amount of Compensation to be deferred pursuant to the Plan, shall be prospective only, shall defer only Compensation not yet earned at the date of enrollment, shall defer Compensation for any calendar month only if the Participation Agreement has been entered into before the beginning of such month, and shall bind the Public Employee to all the terms and conditions of the Plan.
- (b) All employees and independent contractors of the State are Public Employees and are immediately eligible to join the Plan by completing a Participation Agreement.
- (c) Employers other than the State, including political subdivisions, may complete a Service Agreement defining eligibility standards and Plan terms. Unless such an agreement is completed by the entity, employees of the entity are not Public Employees. The Service Agreement may prescribe limits on the applicability of certain sections of the Plan, e.g., it may make Plan loan provisions inapplicable.

- 3.2 **EFFECTIVE DATE OF ENROLLMENT.** Salary Deferral Contributions shall be deferred as soon as administratively practicable after the next calendar month following execution of the Participation Agreement providing for such deferral. However, with respect to a new Public Employee, Compensation may be deferred for the calendar month during which the Participant first becomes a Public Employee, if a Participation Agreement providing for such deferral is entered into on or before the first day on which Participant performs services for the Employer.

##### **3.3 ELECTION TO DEFER COMPENSATION.**

- (a) Upon signing the Participation Agreement, the Participant elects to participate in this Plan and consents to the Employer deferring the amount specified in the Participation Agreement from the Participant's gross Compensation for each pay period. The dollar amount of the Salary Deferral Contributions deferred must be in accordance with any minimums specified by the Investment Option provider or the Commission.

- (b) A Participant may defer his Compensation that is attributable to payments for bona fide sick or vacation leave paid within 2½ months following his Separation From Service only if a Participation Agreement providing for such deferral has been entered into before the Separation From Service.
- (c) Unless a Participation Agreement election is otherwise revised, if a Participant is absent from work by leave of absence, Salary Deferral Contributions under the Plan may continue to the extent that Compensation continues.
- (d) A disabled Participant who has not had a Separation From Service may elect to make Salary Deferral Contributions during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan.
- (e) For Federal tax purposes (and wherever permitted, for State tax purposes), a Public Employee's Salary Deferral Contributions are intended to qualify as eligible deferred compensation contributions under Section 457(b) of the Code. A Participant's Participation Agreement shall constitute an election to have his Compensation reduced by the amount of all such deferrals. All deferrals are subject to applicable federal employment taxes.
- (f) Each Participant enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including, without limitation, whether the Participant is a participant in any other eligible plan under Code Section 457(b). At such intervals as it shall deem proper, the Commission shall review each Participant's Participation Agreement in order to determine that Salary Deferral Contributions with respect to all Participants satisfy the limits as described in this Article. 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.
- (g) All Salary Deferral Contributions shall be forwarded by the 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 fifteen (15) days following the end of the month (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.
- (h) Subject to the limitations of this Article, 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.

3.4 **REVOCATION AND REVISION OF DEFERRAL ELECTIONS.** A Public Employee may at any time revoke his deferral election by notifying the Plan Administrator prior to the effective date of the revocation; however, the Account is available for distribution only as provided in the Plan. Subject to other provisions of the Plan, a Participant may at any time revise his or her Participation Agreement, including a change of the amount of his or her Salary Deferral Contributions, his or her Investment Specification, and his or her Designated Beneficiary. A change in the amount of the Salary Deferral Contributions shall take effect as of the first day of the next following month or as soon as administratively practicable, if later. A change in the Investment Specification shall take effect as of the date provided by the Administrator on a uniform basis for all Participants. A change in the Beneficiary designation shall take effect when the election is received and accepted by the Administrator, and it must be received before the Participant's death.

3.5 **BENEFICIARY AND ALTERNATE PAYEE INVESTMENT SPECIFICATIONS.** After the death of the Participant or after an Account has been established for an Alternate Payee, his Beneficiary or Alternate Payee shall have the right to amend the Participant's Investment Specification by executing an amendment with the Commission in a manner approved by the Commission. Any change in an Investment Specification by a Beneficiary or Alternate Payee shall be effective on a date consistent with the rules and specifications of the Investment Option provider. The right of a Beneficiary or Alternate Payee to amend an Investment Specification shall terminate on the last day available for an election concerning the form of payment pursuant to Section 7.1 below.

**Notice to All Participants to Read These Provisions Providing Deferral Limitations and "Catch-up" Deferrals Under the Plan.**

3.6 **EMPLOYER MATCHING CONTRIBUTIONS.**

- (a) The Employer may make 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 3.3 during such Plan Year. The amount of any such Matching Contributions shall be determined by the Employer Actions taken in accordance with this provision prior to January 1, 2009, are hereby ratified. These Matching Contributions shall be promptly paid to the Commission or the designated Agent by the Employer within such time period as permitted by law and shall be paid out of the net profits of the Employer.
- (b) Subject to the limitations of this Article, 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 Employer. All sums allocated to each Participant's Matching Contribution Account shall be fully vested and non-forfeitable.

- 3.7 **LIMITATION ON ANNUAL DEFERRAL AMOUNTS.** Except as provided in Section 3.8 or 3.9, the maximum amount that may be deferred under the Plan, whether by Salary Deferral Contributions or by Matching Contributions, for the Participant's taxable year shall not exceed the lesser of (a) \$15,000 (or as may be adjusted for cost of living by the Secretary of the Treasury) or (b) 100% of the Participant's Includible Compensation for the year as provided in IRC Section 457(e)(15). Salary Deferral Contributions in excess of the limits in the preceding sentence, and any earnings attributable thereto, shall be distributed to the Participant as soon as administratively practicable after the Administrator determines that the amount is an excess annual deferral.

Pursuant to Section 457(e)(15) of the Code, the applicable dollar limit shall be in accordance with the following table:

For taxable years beginning in the calendar year:	The applicable dollar limit:
2002.....	\$11,000
2003.....	\$12,000
2004.....	\$13,000
2005.....	\$14,000
2006.....	\$15,000
Thereafter – adjusted as prescribed by the Secretary of the Treasury and according to Code Section 457(e)(15)	Indexed in \$500 increments
2007	\$15,500

- 3.8 **SPECIAL 457 CATCH-UP PROVISION.** For one or more of the Participant's last three calendar years ending before the year in which he attains his Normal Retirement Age under the Plan, the maximum deferral that may be deferred under the Plan for the taxable year shall be the lesser of:

- (a) twice the applicable dollar limit set forth in IRC Section 457(e)(15) for the taxable year; or
- (b) the sum of:
  - (1) an amount equal to (i) the aggregate limit for the current year plus each prior calendar year beginning after December 31, 2001, during which the Participant was eligible to participate under the Plan, minus (ii) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
  - (2) an amount equal to (i) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was eligible to participate under the Plan (determined without

regard to Sections 3.7 and 3.8), minus (ii) the aggregate contributions to Pre-2002 Coordination Plans for such years.

However, in no event can the maximum that may be deferred under the Plan for the taxable year be more than the Participant's Compensation for that year. The special IRC 457 catch-up provision, as described in this Section, may only be used once under this Plan.

- 3.9 **AGE 50 CATCH-UP CONTRIBUTIONS.** All Participants who have attained age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with IRC Section 414(v). The age 50 catch-up contributions provided for in this Section are available in the last three (3) years before the Participant attains Normal Retirement Age only if the age 50 catch-up amount provided for in this Section is larger than the special IRC 457 catch-up provision provided for in Section 3.7.

Pursuant to section 414(v) of the Code, the applicable catch-up dollar limit shall be in accordance with the following table:

For the taxable years beginning in:	The applicable dollar amount:
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 (adjusted thereafter for cost of living to the extent provided under the Code)	\$5,000
2007	\$5,000
2008	\$5,000
2009	\$5,500

- 3.10 **MISTAKEN CONTRIBUTIONS.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Employer who is then responsible for any appropriate payments to the Participant.

- 3.11 **PROTECTION OF PERSONS WHO SERVE IN A UNIFORMED SERVICE.** Notwithstanding any provisions of the Plan to the contrary, contributions, benefits, and service credits with respect to any 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 Force 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) A Participant 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) may elect to make additional Salary Deferral Contributions upon resumption of employment with the Employer equal to the maximum Salary Deferral Contributions that the Participant could have elected during that period if the Participant's employment with the 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 Participant during the period of the interruption or leave. This right to 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, a Participant 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 the Employer will be treated as an employee of the Employer and the differential wage payment will be treated as Compensation.
- (c) Effective January 1, 2009, notwithstanding subsection (b) above, an individual 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) and, therefore, may take 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 a Participant who dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified

military service) provided under the Plan had the Participant resumed and then terminated employment with the Employer on account of death.

### **3.12 ROTH DEFERRALS.**

- (a) This Section 3.12 will apply to contributions beginning with January 1, 2011 (the “Roth Effective Date”). As of the Roth Effective Date, the Plan will accept Roth Deferral Contributions made on behalf of Participants. A Participant’s Roth Deferral Contributions will be allocated to a separate Roth Deferral Contribution Account maintained for such deferrals as described in Subsection 3.12(b). Unless specifically stated otherwise, Roth Deferral Contributions will be treated as elective deferrals for all purposes under the Plan.
- (b) Contributions and withdrawals of Roth Deferral Contributions will be credited and debited to the Roth Deferral Contribution Account maintained for each Participant. The Plan will maintain a record of the amount of Roth 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 Deferral Contribution Account and the Participant’s other Accounts under the Plan. No contributions other than Roth Deferral Contributions and properly attributable earnings will be credited to each Participant’s Roth Deferral Contribution Account. The Roth 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 4.1, a Direct Rollover of a distribution from a Roth Deferral Contribution Account under the Plan will only be made to another Roth 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). Pursuant to Section 4.3, the Plan will accept a Rollover Contribution to a Roth Deferral Contribution Account if it is a Direct Rollover from another Roth deferral contribution account under another eligible retirement plan maintained by 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) A Roth 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.

All places that refer to Salary Deferral Contributions shall be interpreted as referring to Salary Deferral Contributions and Roth Deferral Contributions, in accordance with federal law and Internal Revenue Service guidance.

## **ARTICLE IV**

### **PLAN TRANSFERS**

#### **4.1 TRANSFERS AND DIRECT ROLLOVERS FROM THE PLAN TO ANOTHER 457 PLAN.**

- (a) If a Participant has a Separation from Service with the Employer and accepts employment with another employer which maintains an eligible deferred compensation plan (as defined in IRC Section 457) and the new employer's plan accepts transfers, the Participant may transfer his Account from the Plan to the plan maintained by the new employer. The Participant's election to transfer shall be submitted to the Commission or the designated Agent, in a manner approved by the Commission, before the date for any benefit distributions.
- (b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section and to the extent allowed under the applicable provisions of the Code and Treasury regulations, a Distributee who is a Participant, or who is a Designated Beneficiary and who is a spouse, surviving spouse or Alternate Payee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The Plan shall provide written information to the Distributee regarding the Eligible Rollover Distribution no more than 180 days prior to payment of the Eligible Rollover Distribution, to the extent required by Code Section 402(f).
- (c) 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 who is an Alternate Payee may elect, at the time and in the manner prescribed by the Administrator, to have all or any part of his or her 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.

- (d) No Separation from Service is required for a plan-to-plan transfer if the entire Plan's assets for all Participants and Beneficiaries are transferred to another eligible governmental plan within South Carolina.

4.2 **TRANSFERS TO ANOTHER 457 PLAN OF AN EMPLOYER.** If an Employer offers an eligible deferred compensation plan (as defined in IRC Section 457) other than the Plan, and such other plan accepts transfers, the Participant may transfer his Account from the Plan to the other plan. A transfer under this Section 4.2 may be made before the Participant has had a Separation from Service. The Participant's election to transfer shall be submitted to the Commission or the designated Agent, in a manner approved by the Commission.

4.3 **TRANSFERS AND DIRECT ROLLOVERS TO THE PLAN FROM 457 PLANS.** Transfers and Direct Rollovers from other eligible deferred compensation plans (as defined in IRC Section 457) maintained by an eligible employer (as defined in IRC Section 457(e)(1)(A)) to the Plan will be accepted at the Participant's request, but only if such transfers are in cash or non-annuity products currently offered under the Plan and are Eligible Rollover Distributions. Any such transferred amount shall not be subject to the limitations of Section 3.6 provided, however, that the actual amount deferred during the calendar year under both plans shall be taken into account in calculating the deferral limitation for that year. For purposes of determining the deferral limitation set forth in Section 3.7, years of eligibility to participate in the Participant's former plan and deferrals under that plan shall be considered.

4.4 **ROLLOVER CONTRIBUTIONS AND DIRECT ROLLOVERS FROM NON-457 PLANS.** The Plan will not accept Participant rollover contributions and/or Direct Rollovers of Eligible Rollover Distributions from any 401(a) qualified plan, 403(b) plan, 401(k) plan or IRA.

4.5 **SERVICE CREDIT PURCHASES.** A Participant who is also a participant in a tax-qualified defined benefit governmental plan (as defined in IRC Section 414(d)), that provides for the acceptance of plan-to-plan transfers with respect to the Participant, may elect to transfer a portion of the balance of his Salary Deferral Contribution Account either for the purchase of permissive service credit (as defined in IRC Section 415(n)(3)(A)) under such plan or for a repayment to which IRC Section 415 does not apply by reason of IRC Section 415(k)(3). A transfer under this Section 4.5 may be made before the Participant has had a Separation From Service.

4.6 **TRANSFERS DIRECTLY FROM OTHER 457(B) PLANS.** In accordance with Treasury Regulation Section 1.457-10(b), cash or non-annuity assets may be directly transferred to this Plan from the trustee of any other eligible governmental 457(b) plan. Any such transferred asset shall not be subject to the provisions of Sections 3.7 or 3.9 to

the extent the transferred amount was deferred for the calendar year before the transfer. For purposes of determining the deferral limitation set forth in Section 3.8, the participant's years of eligibility to participate in the transferred plan and deferrals under the transferred plan shall be considered. Further, the participant and beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer.

Transfers pursuant to this section may be made regardless of whether the Employer has been dissolved or whether the employee has satisfied the service requirements of this Plan.

## **ARTICLE V**

### **ACCOUNTS AND REPORTS**

- 5.1 **TRUST FUND.** In order to fund the Plan, the Employer has entered into this Plan and Trust Agreement with the Commission. All payments made pursuant to the Plan shall be paid to the Trust established and incorporated into the Plan. All such payments and increments thereon shall be held and disbursed in accordance with the provisions of the Plan, 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 except as expressly provided in the Plan.
- 5.2 **PAYMENT OF SALARY DEFERRAL CONTRIBUTIONS.** An Employer shall remit the Salary Deferral Contributions to the Commission or the designated Agent for payment to the Trust as soon as administratively practicable after the contributions have been withheld but in no event later than fifteen (15) days following the end of the month (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. The Commission shall have no duty to determine whether the funds paid to him by the Employer are correct, nor to collect or enforce such payment.
- 5.3 **ACCOUNTS AND SALARY DEFERRAL CONTRIBUTION ACCOUNT.** For convenience and to facilitate an orderly administration of the Plan, the Trustee shall maintain, or cause to be maintained, a separate Account, including a separate Salary Deferral Contribution Account with respect to each Participant. The Account shall reflect the Participant's: (i) contributions or transfers, (ii) the earnings, losses and expenses, and (iii) distributions from the Account.
- 5.4 **PARTICIPANT STATEMENTS.** Upon a receipt of Salary Deferral Contributions or transfers under Section 4.3 by the provider of the designated Investment Option made pursuant to this Plan, the Participant's Account shall be credited with the amount received. A written report of the status of the Participant's Account shall be furnished to the Participant, at least quarterly and within forty-five (45) days after the end of each quarter.

- 5.5 **REPORTS.** Within ninety (90) days after the end of each Plan Year, the Commission shall file with the Employer a written report of the assets of the Plan, a schedule of all receipts and disbursements and a report of all material transactions of the Plan during the preceding year.
- 5.6 **RECORDS.** The Commission's records shall be open to inspection during normal business hours by an Employer or any Participant, or their designated representatives.

## **ARTICLE VI**

### **INVESTMENT OF ACCOUNTS**

- 6.1 **INVESTMENTS.** The Salary Deferral Contributions, transfers under Section 4.3 and Direct Rollovers under Sections 4.3 and 4.4 shall be submitted to the Commission or the designated Agent for investment as designated by the Participant or, when applicable, the Beneficiary or Alternate Payee in a manner approved by the Commission. The Employer Matching Contributions shall automatically be invested proportionately in the same investment as the Participant directs investment of his Salary Deferral Contributions.
- (a) Each Participant or, when applicable, Beneficiary or Alternate Payee shall direct, in a manner approved by the Commission, the Investment Specifications of his Salary Deferral Contributions, transfers and Direct Rollovers. In this event, the Commission shall establish rules specifying eligible investments, election of investments, and changes in election.
  - (b) Each Participant, Beneficiary or Alternate Payee assumes the risk in connection with any decrease in value of his Account, and the Trust shall be the sole source of payments to be made to Participants, Beneficiaries or Alternate Payees under the Plan.
  - (c) The Employer and Commission may, but shall be under no duty, to question any Investment Specifications of a Participant, Beneficiary or Alternate Payee or to ascertain periodically whether a Participant, Beneficiary or Alternate Payee wishes to change such specification, or to review any Investment Specifications 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 Investment Specification.
- 6.2 **VALUATION OF ACCOUNTS.** The Commission shall use the Participant's, Beneficiary's or Alternate Payee's Investment Specifications so as to determine the value of the Account maintained with respect to the Participant and shall invest the Account according to such specification.
- 6.3 **METHOD OF VALUATION.** All interest, dividends, charges for premiums and administrative expenses, and changes in value due to market fluctuations applicable to each Participant's Account shall be credited or debited to the Account as they occur. All

reports to the Participant shall be based on fair market value of the Account as of the applicable Valuation Date.

- 6.4 **ESTABLISHMENT OF TRUST AND EXCLUSIVE BENEFIT RULE.** All assets of the Plan, including all amounts transferred to the Plan, Accounts, Salary Deferral Contributions and transfers, property and rights purchased with Salary Deferral Contributions and transfers, and all income attributable to such Salary Deferral Contributions and transfers, property or rights, shall be held and invested in the Trust in accordance with the provisions of Section 5.1 and the Trust Agreement, and shall be held by the Trustee, until made available to the Participant, Beneficiary or Alternate Payee, for the exclusive benefit of Participants and their Beneficiaries. Contracts and other evidence of the investments of all assets under this Plan shall be registered in the name of the Trustee, who shall be the owners thereof. The Trust is intended to be a valid trust under State law, and is intended to be exempt from taxation under Code Sections 457(g), 501(a) and 115, as amended. It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Trust to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

## **ARTICLE VII**

### **BENEFITS**

- 7.1 **RETIREMENT BENEFITS.** Subject to Article VIII, benefits shall be paid in accordance with this Article. Notwithstanding subsections (a) through (h) below, the payment of benefits from the Plan will commence no later than the latter of:
- (1) 60 days after the close of the Plan Year in which the Participant or former Participant attains (or would have attained) age 70½; or
  - (2) 60 days after the close of the Plan Year in which the Participant has a Separation from Service with the State.
- (a) **Normal Retirement.** Upon the Participant attaining Normal Retirement Age, he may retire in accordance with the applicable Employer's Retirement System and receive the balance of his Account under this Plan. Such benefits shall be paid in accordance with the payment option selected by the Participant.
  - (b) **Early Retirement.** The Participant may select early retirement in accordance with the applicable Employer's Retirement System and receive the balance of his Account under this Plan. Such benefits shall be paid in accordance with the payment option selected by the Participant.
  - (c) **Late Retirement.** If the Participant continues his employment with the Employer after attaining Normal Retirement Age, all benefits payable under this Plan will be deferred, whether or not the Participant continues to defer additional sums under

this Plan, until the Participant retires in accordance with the applicable Employer's Retirement System. Upon the Participant's retirement, his Account under the Plan shall be paid in accordance with the payment option selected by the Participant.

- (d) **Separation from Service.** If the Participant has a Separation from Service with the Employer, his Account shall be paid (or shall begin to be paid) upon any date elected by the Participant that is after Separation from Service in accordance with the payment options elected by the Participant.

Notwithstanding this subsection, a Participant may elect to commence benefit payments in the calendar year in which the Participant reaches age 70½ regardless of whether the Participant has a Separation from Service. If a Participant so elects, no further Salary Deferral Contributions may be made during a period of continuous service after the Participant reaches age 70½.

- (e) **Death.** If the Participant dies before the benefits to which he is entitled under this Plan have been fully distributed, the benefits payable under this Plan shall be paid to his designated Beneficiary.

- (f) **Benefit Options.** When a Participant has a Separation From Service, or otherwise becomes entitled to a distribution pursuant to this Article, the Plan Administrator shall determine the value of his Account, based upon the Valuation Date coincident with or immediately following the date of such Separation From Service or entitlement, and shall pay the Account 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, as his Beneficiary) shall elect:

- (1) In a lump sum cash payment, payable within a reasonable time after the Participant's Separation From Service, retirement date or death, whichever is applicable; or
- (2) 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 Participant's Designated Beneficiary.

- (g) **Latest Distribution Date.** In no event shall any distribution under this section begin later than the later of (a) April 1 of the year following the calendar year in which the Participant attains age 70 ½ or (b) April 1 of the year following the year in which the Participant retires or otherwise has a Separation From Service. If



distributions commence in the calendar year following the later of the calendar year in which the Participant attains age 70 ½ or the calendar year in which the Separation From Service occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the Participant has a Separation From Service determined under paragraph (f)(2) of this section and an amount equal to the annual installment payment for the year after Separation From Service determined under paragraph (f)(2) of this section must also be paid before the end of the calendar year of commencement.

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

- 7.2 **BENEFICIARIES.** The Participant shall have the right to make a Beneficiary or change of Beneficiary designation, in a manner approved by the Commission, designating the person or persons who shall receive the benefits payable under this Plan in the event of the Participant's death. The designation will have no effect until it is properly executed with the Commission or the designated Agent by the Participant, and accepted by the Commission or the designated Agent. The decision of the Commission with respect to form interpretation is final. 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 Plan or any installments under this Plan 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, his Account 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, 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.

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.

The Participant accepts and acknowledges that he has the burden for executing with the Commission, a proper Beneficiary designation. 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, or if no Beneficiary shall survive the Participant, the Participant's Account shall be paid to his or her estate.

- 7.3 **UNFORESEEABLE EMERGENCY WITHDRAWALS.** Notwithstanding any other provisions herein, if the Participant has an Unforeseeable Emergency before retirement of other Separation From Service, the Participant may elect to receive a lump sum

distribution equal to the amount requested or, if less, the maximum amount determined by the Commission to be permitted to be distributed under this Section 7.3. If the application for payment is approved by the Commission, the payment shall be made within 45 days of such approval. The payment may not exceed the amount reasonably necessary to satisfy the Unforeseeable Emergency (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution). A distribution on account of Unforeseeable Emergency may not be made to the extent that such Unforeseeable Emergency is or may be relieved:

- (a) through reimbursement or compensation by insurance or otherwise;
- (b) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause financial hardship; or
- (c) by cessation of deferrals of Salary Deferral Contributions under the Plan.

Any remaining amounts in the Participant's Account shall be paid in accordance with Section 7.1 of this Plan. The Commission may require the submission of such evidence as it may reasonably deem necessary to confirm the existence of such an Unforeseeable Emergency. The decision of the Commission concerning the payment of an Unforeseeable Emergency withdrawal under this section shall be final.

7.4 **SMALL BENEFITS.** The Plan does not have involuntary cash-outs regardless of the value of the Participant's Account.

7.5 **ALIENATION.** No benefit which shall be payable out of the Trust 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.

7.6 **QUALIFIED DOMESTIC RELATIONS ORDERS.** (a) Notwithstanding Section 7.5, 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.

7.7 **IRS LEVY.** Notwithstanding Section 7.5, 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.

7.8 **FEDERAL RESTITUTION ORDERS AND GARNISHMENTS.** Notwithstanding Section 7.5, 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.

- 7.9 **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.
- 7.10 **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.
- 7.11 **PROCEDURE WHEN DISTRIBUTEES 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 VIII**

### **MINIMUM DISTRIBUTION REQUIREMENTS**

The provisions of this Article shall be interpreted and applied in a manner consistent with the provisions of Section 7.1(g) and Code Section 457(d)(1). 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 constitutes a reasonable good faith interpretation of Code Section 401(a)(9) for purposes of Section 823 of the Pension Protection Act of 2006.

#### 8.1 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).

#### 8.2 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 70½, 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.

### 8.3 **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.

### 8.4 **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.

- 8.5 **REQUIRED MINIMUM DISTRIBUTION WAIVER OF 2009.** Notwithstanding any other provisions of Article VIII 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.

## **ARTICLE IX**

### **LOANS TO PARTICIPANTS**

- 9.1 **LOANS TO PARTICIPANTS.** A Participant may apply for and receive a loan from his Account balance as provided in this Section 9.1. Any such loan may not be for an amount less than the minimum amount specified by the Commission. If not specified by the Commission, the minimum loan amount shall be \$2,500. Each loan shall be made to the Participant upon application by 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 at any time from this Plan and the State of South Carolina Salary Deferral [401(k)] and Savings Profit Sharing Plan and Trust. The Administrator may require a waiting period of up to thirty (30) days after repayment of a loan before issuance of another loan. If a 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)-1, repayments can be made through payroll withholding.
- 9.2 **MAXIMUM LOAN AMOUNT.** No loan to a Participant hereunder may exceed the lesser of:



- (a) \$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 IRC Section 72(p)(4)) to the Participant on the day the loan is made or (ii) the Participant's highest outstanding loan balance on loans from the Plan (and from any other plans of the Commission that are qualified employer plans under IRC Section 72(p)(4)) 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
- (b) The greater of (i) fifty percent of the value of the Participant's Account as of the Valuation Date immediately preceding the date on which such loan is approved by the Plan Administrator, or (ii) \$10,000.

For purposes of this Section 9.2, any loan from any other plan maintained by an Employer shall be treated as if it were a loan made from this Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied to as to allow the amount of a loan under this Section 9.2 to exceed the amount that would otherwise be permitted in the absence of this paragraph.

**9.3 TERMS OF LOANS.** All loans shall be made on such terms and conditions as the Plan Administrator may determine, provided that all loans shall:

- (a) Be made pursuant to a promissory note and such other documents as may be required by the Administrator which are subject to default rules which are not inconsistent with those described in Section 9.5 and which are secured by the Participant's Accounts and such other collateral as may be required by the Administrator;
- (b) 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 (1) 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.
- (c) 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;
- (d) Provide for repayment in full on or before the earlier of (i) 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 (ii) the date when distribution

of the Participant's Plan benefit is totally distributed (including payments after retirement 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.

9.4 **SOURCE OF LOANS.** The amount to be borrowed by the Participant shall come from assets held in the Participant's Account, and any loan shall be considered an asset of such Account.

9.5 **SECURITY FOR LOAN; DEFAULT.**

(a) **Security.** Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.

(b) **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 (the "Cure Period"), 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 IRC, 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 from the Participant's 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 Account shall be made only in circumstances under which a withdrawal would not cause the Plan to violate the requirements of Section 401(a) or 457 of the IRC.

9.6 **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 7.1(g) of the Plan. Principal and interest payments shall be credited to the Participant's Account to be invested as otherwise provided in the Plan.

9.7 **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 IRC and regulations thereunder.

## **ARTICLE X**

### **TRUSTEE**

- 10.1 **DESIGNATION OF TRUSTEE.** The Trustees shall be, at any time, the duly appointed and authorized members of the Commission. Resignation, removal, and appointment of the Commission shall be conducted and governed by provisions of South Carolina law applicable to resignation, renewal, and appointment of such Commission members. The Commission shall serve without additional compensation for duties as Trustees.
- 10.2 **DESIGNATION OF INVESTMENT OPTIONS.** The Commission shall adopt various Investment Options for the investment of Accounts by Participants or their Beneficiaries, and shall monitor and evaluate the appropriateness of continued offering by the Plan.
- 10.3 **FIDUCIARIES.** The State and the Commission (as Administrator and Trustees) and the persons they designate to carry out or to assist in carrying out their duties or responsibilities are Fiduciaries under the Plan. Each Fiduciary has only those duties or responsibilities specifically assigned to him under the Plan or delegated to him by another Fiduciary. Each Fiduciary may assume that any direction, information or action of another Fiduciary is proper and need not inquire into the propriety of any such action, direction or information. Except as provided by law, no Fiduciary will be responsible for the malfeasance, misfeasance or nonfeasance of any other Fiduciary.
- 10.4 **FIDUCIARY STANDARDS.**
- (a) The Commission and all other Fiduciaries shall discharge their duties with respect to this Trust solely in the interest of the Participants and Beneficiaries of the Plan. Such duties shall be discharged for the exclusive purpose of providing benefits to the Participants and Beneficiaries and defraying expenses of the Plan.
  - (b) All Fiduciaries shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and as defined by South Carolina law.
- 10.5 **POWERS AND DUTIES OF TRUSTEE.** The Trustee's powers and duties shall be those defined for the Commission members under applicable South Carolina State Statutes and Regulations.
- 10.6 **LIMITATION ON DUTIES AND LIABILITIES.** The Trustee shall have no duty to examine the records of the Employers participating under the Plan 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 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.

- 10.7 **INDEMNIFICATION OF TRUSTEE.** The State shall indemnify and defend each person acting as Trustee against any and all claims, loss, damages, expenses (including reasonable attorneys fees), and liability arising in connection with the administration of the Plan, except when the same is judicially determined to be due to the gross negligence or willful misconduct of such person.
- 10.8 **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 XI**

### **ADMINISTRATION OF PLAN**

- 11.1 **PLAN ADMINISTRATOR.** The Commission shall control and manage the operation and administration of the Plan and shall be considered the "named fiduciary" of the Plan for purposes of the Code. The Commission, subject to the limitations herein contained and to such other restrictions as State law may impose, 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 the 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 Public Employees, Employers, Participants, Beneficiaries, Salary Deferral 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 appoint Agents to act for and in the administration of this Plan;
- (b) To select depositories for the assets of this Plan;
- (c) 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;
- (d) 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;
- (e) To interpret the Plan, and to resolve ambiguities, inconsistencies and omissions, which findings shall be binding, final and conclusive;
- (f) To decide on questions concerning the Plan and the eligibility of any Public Employee or Employer to participate in the Plan, in accordance with the provisions of the Plan;
- (g) 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 a reasonable 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;
- (h) To allocate any such powers and duties to or among individual members of the Commission; and
- (i) 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.

- 11.2 **SELECTION OF PROFESSIONALS 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 IRC.
- 11.3 **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 assets and to perform such other services as the Commission shall deem necessary or desirable in connection with the management of the Trust. Anything in this 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.
- 11.4 **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 any 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 an Employer shall be liable for any neglect, omission or wrongdoing of a member or any other member of the Commission.
- 11.5 **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 to the extent not paid by an Employer.
- 11.6 **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.
- 11.7 **INVESTMENT PROVIDERS NOT PARTIES TO THE PLAN.** Any companies that may issue any policies, contracts, or other investment media adopted by the Commission or specified by the Participant, are not parties to this Plan and such companies shall have

no responsibility or accountability to the Participant or his Beneficiary with regard to the operation of this Plan.

## **ARTICLE XII**

### **AMENDMENT OR TERMINATION OF PLAN**

- 12.1 **RIGHT TO AMEND.** The State or the Commission shall have the right at any time, and from time to time (with retroactive application if deemed necessary or appropriate to meet the requirements of IRC Section 457, 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 amend, or modify this Plan, in whole or in part, with or without the consent of the Participant (or any Beneficiary thereof) provided:
- (a) That all amendments shall become effective on the first day of the month following the giving of not less than forty-five (45) days prior notice of the amendment. Notice shall be deemed given when the amendment is posted in the office of the Commission and each Employer. To the extent it is possible to do so, the Commission shall mail a copy of all amendments that become effective during the quarter to the Participant with his quarterly report. No amendments shall deprive the Participant of any of the benefits to which he is entitled under this Plan with respect to Salary Deferral Contributions or transfers credited to his Account prior to the effective date of the amendment; and
  - (b) No amendment which affects the rights, duties or responsibilities of the Trustee shall be made without the Trustee's consent.
- 12.2 **TERMINATION OF PLAN.** The State or the Commission shall have the right at any time to terminate the Plan. Upon such termination of the Plan, the Trustee may direct either:
- (a) Complete distribution of the assets in the Trust to the Distributees, in cash or kind, in one "lump-sum payment" (as such term is defined in the Code) as soon as the Trustee deems it to be administratively feasible; or
  - (b) Continuation of the Trust created by this Plan and the distribution of benefits at such time and in such manner as though the Plan had not terminated.
- 12.3 **TERMINATION AND AMENDMENT OF EMPLOYER PARTICIPATION.** An Employer may amend its Service Agreement to eliminate future deferrals for existing Participants or to limit participation to existing Participants and Public Employees. The Plan, as an eligible plan, may also permit plan terminations and permit amounts deferred to be distributed on termination. If the Plan is terminated, all amounts deferred under the Plan will be paid as soon as administratively practicable pursuant to Treasury Regulation § 1.457-10. Treasury Regulation § 1.457-10(a)(1) further provides that for a plan to be

considered terminated, amounts deferred under an eligible plan must be distributed to all plan participants and beneficiaries as soon as administratively practicable after termination of the eligible plan; and that the mere provision for, and making of, distributions to participants and beneficiaries upon a plan termination will not cause an eligible plan to cease to satisfy the requirements of IRC Section 457(b) or the regulations thereunder. Treasury Regulation § 1.457-10(a)(2)(i) provides that an eligible employer that ceases to be an eligible employer may no longer maintain an eligible plan. If such employer was a governmental entity and the plan is neither terminated as permitted under Section 1.457-10(a)(2)(ii) of the Treasury Regulations nor transferred to another eligible plan of that State as permitted under Section 1.457-10(b) of the Treasury Regulations, the tax consequences to participants in the previously eligible governmental plan of an ineligible employer, the assets of which are held in trust pursuant to Section 1.457-8(a) of the Treasury Regulations, are determined in accordance with Section 402(b) of the Code (Section 403(c) of the Code in the case of an annuity contract) and the trust is no longer to be treated as a trust that is exempt from tax under Section 501(a) of the Code.

- 12.4 **NO REVERSION.** No modification or amendment shall make it possible for any part of the corpus or income of the Trust 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.
- 12.5 **MERGER AND CONSOLIDATION.** 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.

## **ARTICLE XIII**

### **POWERS AND SAFEGUARDS**

#### **Notice to All Participants to Read These Provisions Providing Broad Powers and Absolute Safeguards to the Employer and Commission.**

- 13.1 **INTERPRETATION OF PLAN.** The Commission or its authorized Agent shall be authorized to resolve any questions of fact necessary to decide the Participant's rights under this Plan and such decision shall be binding on the Participant and any Beneficiary thereof. The Commission or its authorized Agent shall be authorized to construe the Plan and to resolve any ambiguity in the Plan.
- 13.2 **RIGHT OF RECOVERY.** The Participant specifically agrees not to seek recovery against any Employer, the Commission or the Trustee, or any other employees, contractee, or agent of the Employer, the Commission or Trustee or any Endorser for any loss sustained by the Participant or his Beneficiary, for the non-performance of their



duties, negligence, or any other misconduct of the above named persons except that this paragraph shall not excuse fraud or a wrongful taking by any person.

- 13.3 **SUSPENSION OF PAYMENTS.** The Commission or the Trustee, or their Agents, if in doubt concerning the correctness of any action in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the person to receive the payment or allow the filing in any state court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them. The Commission or the Trustee shall comply with the final orders of the court in any such suit and the Participant, for himself and his Beneficiary, consents to be bound thereby insofar as it affects the benefits payable under this Plan or the method or manner of payment.
- 13.4 **INDEMNIFICATION.** The Employer, the Commission and the Trustee, and their Agents are hereby held harmless from all court costs and all claims for attorney's fees arising from any action brought by the Participant or any Beneficiary thereof under this Plan or to enforce his rights under this Plan, including any amendments hereof.
- 13.5 **LITIGATION.** The Commission or Trustee shall not be required to participate in any litigation concerning the Plan except upon written demand from an Employer. The Commission may compromise, adjust or effect settlement of litigation.

## **ARTICLE XIV**

### **GENERAL PROVISIONS**

- 14.1 **ENTIRE AGREEMENT.** This Plan, and any properly adopted amendment, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. The headings in this Plan are inserted for convenience of reference only and are not to be considered in construction of the provisions thereof. **No oral statement regarding the Plan may be relied upon by the Participant or his Beneficiary.**
- 14.2 **NO CONTRACT OF EMPLOYMENT.** Participation in this Plan by a Participant shall not be construed to give a contract of employment to the Participant or to alter or amend an existing employment contract of the Participant, nor shall participation in this Plan be construed as affording to the Participant any representation or guarantee regarding his continued employment.
- 14.3 **BINDING EFFECT.** This Plan and any properly adopted amendment, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assignees and on all designated Beneficiaries of the Participant.
- 14.4 **GENDER AND NUMBER.** Whenever used herein, the masculine gender shall include the feminine and the singular shall include the plural unless the provisions of the contract specifically require a different construction.

- 14.5 GOVERNING LAW.** The laws of the State of South Carolina shall apply in determining the construction, administration, and validity of this Plan except to the extent superseded by federal law.
- 14.6 SEVERABILITY.** In case any provision of the Plan or Trust shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining parts of the Plan or Trust, and the Plan or Trust shall be construed and enforced as if such illegal and invalid provision had never been inserted herein.
- 14.7 TAX CONSEQUENCES.** The Commission and the Employer do not represent or guarantee that any particular Federal or State income, payroll, personal property, or other tax consequence will occur because of the Participant's participation in this Plan. The Participant should consult with his own representative regarding all questions of Federal or State income, payroll, personal property, or other tax consequences arising from participation in this Plan.
- 14.8 COMPLIANCE WITH CODE.** This Trust is intended to be exempt from taxation under IRC Section 501 (a) and is intended to comply with Section 457(g) of the IRC. The Commission shall be empowered to submit or designate appropriate agents to submit this Plan to the Internal Revenue Service for a determination of the eligibility of the Plan under Code Section 457, and the exempt status of the Trust under Code Section 501(a), if the Commission concludes that such a determination is desirable.

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

By:



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