

**STATE EMPLOYEES' DEFINED
CONTRIBUTION PLAN AND TRUST**

*Established effective January 1, 2019, pursuant to Act of June 12, 2017, P.L. 11,
No. 5
Title 71, Pa. C.S. §5101 et seq.*

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State Employees' Defined Contribution Plan and Trust

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania established the State Employees' Retirement System of Pennsylvania ("System"), effective June 27, 1923;

WHEREAS, the statutory basis for the System currently is set forth in the State Employees' Retirement Code, Title 71, Pa. C.S. § 5101 *et seq.* ("Retirement Code");

WHEREAS, the System includes a defined benefit pension plan that is intended to: (1) be a governmental "qualified" plan under section 401(a) of the Internal Revenue Code of 1986, as amended ("IRC") and (2) provide retirement benefits to the eligible employees of the Commonwealth;

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania amended the Retirement Code by the Act of June 12, 2017, (P.L. 11, No. 5) ("Act 5");

WHEREAS, Act 5 establishes and sets forth the structure of the State Employees' Defined Contribution Plan ("Plan") and the State Employees' Defined Contribution Trust ("Trust") pursuant to which the assets of the Plan are to be held for the funding and payment of benefits under the Plan;

WHEREAS, the Plan is a defined contribution plan that is intended to be a governmental "qualified" plan under IRC § 401(a) for the exclusive benefit of employees who participate in this Plan on or after January 1, 2019, and their beneficiaries and the Trust is intended to be tax-exempt under IRC § 501(a);

WHEREAS, although the State Employees' Defined Contribution Plan is a separate "plan" under IRC § 401(a), nevertheless Act 5 is part of the Retirement Code and establishes a participation, contribution, benefit, and administrative structure under the Plan that imports many of the Retirement Code's terms, its application, and interpretation as developed under applicable law and also used by the System;

WHEREAS, section 5801 of the Retirement Code provides that the members of the State Employees' Retirement Board ("Board") shall be the trustees of the Trust;

WHEREAS, section 5801 of the Retirement Code provides that the Board shall set forth the terms and provisions of the Plan and the Trust not inconsistent with the IRC, the Retirement Code, and other applicable law;

WHEREAS, in consideration of the foregoing, the Board has duly resolved to establish the terms and provisions of the Plan as set forth herein; and

WHEREAS, in consideration of the foregoing, the Board has duly resolved to establish the terms and provisions of the Trust as set forth herein.

NOW, THEREFORE, the Board hereby sets forth the terms and provisions of the State Employees' Defined Contribution Plan, which shall be effective as of January 1, 2019.

ARTICLE I
DEFINITIONS

Unless the context clearly indicates otherwise, the following words and phrases when used in this Plan shall have the meanings given to them in this Article.

1.01 “**Accumulated Catch-up Contributions**” means the total of the Catch-up Contributions paid into the Trust on account of a Participant’s State service, together with any investment earnings and losses and adjustments for fees, costs and expenses credited or charge thereon and reduced by Distributions

1.02 “**Accumulated Employer Defined Contributions**” means the total of the Employer Defined Contributions paid into the Trust on account of a Participant’s State Service, together with any investment earnings and losses and adjustments for fees, costs and expenses credited or charged thereon and reduced by Distributions.

1.03 “**Accumulated Mandatory Participant Contributions**” means the total of the Mandatory Pickup Participant Contributions paid into the Trust on account of a Participant’s State Service, together with any investment earnings and losses and adjustments for fees, costs and expenses credited or charged thereon and reduced by Distributions.

1.04 “**Accumulated Total Defined Contributions**” means the total of the Accumulated Mandatory Participant Contributions, Accumulated Employer Defined Contributions, Accumulated Catch-up Contributions and Accumulated Voluntary Contributions standing to the credit of a Participant in the Individual Investment Account in the Trust.

1.05 “**Accumulated Voluntary Contributions**” means the total of Voluntary Contributions paid into the Trust by a Participant and any amounts rolled over by a participant or transferred by a direct trustee-to-trustee transfer into the Trust, together with any investment earnings and losses and adjustment for fees, costs and expenses credited or charge thereon and reduced by Distributions.

1.06 “**Active Member**” means a State Employee, or a member on leave without pay, for whom pickup contributions are being made to the fund or for whom such contributions otherwise required for current State Service are not being made solely by reason of any provision of the Retirement Code relating to the limitations under section 401(a)(17) or 415 of the IRC.

1.07 “**Active Participant**” means State Employee or Participant for whom Mandatory Pickup Participant Contributions are being made to the Trust or for whom contributions otherwise required for State Service required to be credited in the Plan are not being made solely by reason of any provision of Plan relating to the limitations under section 401(a)(17) or 415 of the IRC.

1.08 “**Administrator**” means the Board acting pursuant to its authority under the Retirement Code and the Plan Document in administration of the Plan. As appropriate, the term Administrator shall include any delegate performing administrative functions on behalf of the Board.

1.09 **“Alternate Payee”** means any spouse, former spouse, child or dependent of a Participant who is recognized by a Domestic Relations Order as having a right to receive all or a portion of the moneys payable to that Participant under this Plan.

1.10 **“Approved Domestic Relations Order”** means any Domestic Relations Order that has been determined to be approved in accordance with the provisions of 71 Pa. C.S. § 5953.1 and this Plan.

1.11 **“Approved Leave of Absence”** means any of the following forms of approved leaves from State Service:

(a) Leave for service as an elected officer or appointed business agent of a Statewide employee collective bargaining organization pursuant to section 5302(b)(2);

(b) Sabbatical leave pursuant to the sabbatical policy of the State System of Higher Education, the Pennsylvania State University, a community college or another educational Employer;

(c) Medical leave for which payment of full salary is received under the Act of June 28, 1935, P.L. 477, No. 193, §1, as amended, 53 P.S. §637, popularly known as the “Heart and Lung Act,” and for which a Class A-5 participant would receive credited State Service in the System; or

(d) Medical leave for which payment of full salary is received under the Act of Dec. 8, 1959, P.L. 1718, No. 632, as amended, 61 P.S. §951, or 61 Pa. C.S. §1101, and for which a Class A-5 Participant would receive credited State Service in the System;

1.12 **“Board”** means the State Employees’ Retirement Board. Use of the term “Board” in this Plan generally, but not necessarily, is in reference to the State Employees’ Retirement Board functioning as representative of the Employer. As indicated in the Plan, the Board also serves as the Administrator and the Trustee, as appropriate.

1.13 **“Catch-up Contributions”** means elective after-tax contributions made by an Active Participant for purposes of accruing Eligibility Points for a period of actual or deemed State Service with respect to which a Participant had not previously made Mandatory Pickup Participant Contributions.

1.14 **“Class A-5 Exempt Employee”** means any of the following:

(a) A sworn police officer.

(b) An enforcement officer.

(c) A wildlife conservation officer or other commissioned law enforcement personnel employed by the Pennsylvania Game Commission who has and exercises the same law enforcement powers as a wildlife conservation officer. The term shall not include a deputy wildlife conservation officer.

- (d) A Delaware River Port Authority policeman.
- (e) A park ranger.
- (f) A Capitol Police officer.
- (g) A campus police officer employed by a State-owned educational institution, community college or The Pennsylvania State University.
- (h) An installation police officer at Fort Indiantown Gap or other designated Commonwealth military installation or facility commissioned under 51 Pa. C.S. § 711 (relating to installation of police officers for Fort Indiantown Gap and other designated Commonwealth military installations and facilities).
- (i) A corrections officer.

1.15 “**Class A-5 Participant**” means a State Employee designated to Class A-5 participation pursuant to section 5306 of the Retirement Code.

1.16 “**Class A-6 Participant**” means a State Employee designated to Class A-6 participation pursuant to section 5306 of the Retirement Code.

1.17 “**DC-only Participant**” means a State Employee designated to Plan Participation membership pursuant to section 5306 of the Retirement Code.

1.18 “**Class of Service**” means Class A, Class AA, Class A-3, Class A-4, Class A-5, Class A-6, Class D-4, Class E-1 and Class E-2 as mandated or elected by a State Employee under the Retirement Code.

1.19 “**Compensation**” means:

(a) **Base Definition.** Any remuneration received as a State Employee before reductions for Pickup Contributions and Mandatory Pickup Participant Contributions, provided that excluded forms of remuneration do not constitute Compensation.

(b) **Excluded Forms of Remuneration.** Compensation shall not include the following:

- (1) reimbursements for expenses incidental to employment;
- (2) contingency and accountable expense allowance;
- (3) Severance payments;
- (4) payments for unused sick leave or vacation leave; and
- (5) payments for military leave and any other payments made by an Employer while on USERRA leave, leave of absence granted under 51 Pa. C.S. § 4102 (relating to leaves of absence for certain government employees), military leave of absence granted under

51 Pa. C.S. § 7302 (relating to granting military leaves of absence), or other types of military leave, including other types of leave payments, stipends, differential wage payments as defined in IRC § 414(u)(12) and any other payments.

(6) Any payments that are not recognized as Compensation under the Retirement Code for purposes of determining contributions and benefits under the System

(c) **IRC § 401(a)(17) Dollar Limitation**. The annual Compensation of each Active Participant taken into account in determining allocations provided under this Plan for any determination period shall not exceed the annual compensation limit under IRC § 401(a)(17) as in effect on the first day of the determination period (e.g. \$275,000 was the annual compensation limit for a determination period beginning in 2018), as adjusted for cost-of-living increases in accordance with IRC § 401(a)(17)(B). Annual Compensation means Compensation during the calendar year or such other consecutive 12-month period over which Compensation is otherwise determined under this Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to “annual compensation” for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than 12 months, the “annual compensation limit” is an amount equal to the otherwise applicable “annual compensation” limit multiplied by a fraction, the numerator of which is the number of full months in the short determination period, and the denominator of which is 12.

If Compensation for any prior determination period is taken into account in determining a Participant’s allocations for the current calendar year, the Compensation for such prior determination period is subject to the applicable “annual compensation limit” in effect for that prior period.

1.20 **“Default Investment Alternative”** means an investment alternative so designated by the Board into which the balance of an Individual Investment Account will be invested if no effective investment direction has been made for the Individual Investment Account.

1.21 **“Designated Beneficiary”** means the individuals or trust designated by the Participant (or the Participant’s surviving spouse) (or by this Plan if applicable) as the beneficiary of the Participant’s interest under this Plan and who is the Designated Beneficiary under IRC § 401(a)(9) and Treasury Regulation § 1.401(a)(9)-4.

1.22 **“Distributee”** means a Participant, Nominated Beneficiary, and the Participant’s spouse or former spouse who is the Alternate Payee under an Approved Domestic Relations Order. A Distributee includes a deceased Participant’s non-spouse Designated Beneficiary, in which case, the distribution can only be transferred to an Eligible Retirement Plan described in the last sentence of this Plan’s definition of Eligible Retirement Plan.

1.23 **“Distribution”** means payment of all or any portion of an interest in the Trust as set forth in an Individual Investment Account.

1.24 **“Distribution Calendar Year”** means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first “distribution calendar year” is the calendar year immediately preceding the calendar year that 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 9.08 (b). 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.”

1.25 **“Domestic Relations Order”** means any judgment, decree or order, including approval of a property settlement agreement, entered by a court of competent jurisdiction pursuant to a domestic relations law which relates to the marital property rights of the spouse or former spouse of a Participant, including the right to receive all or a portion of the moneys payable to that Participant under this Plan in furtherance of the equitable distribution of marital assets. The term includes orders of support as that term is defined by 23 Pa. C.S. § 4302 (relating to definitions) and orders for the enforcement of arrearages as provided in 23 Pa. C.S. § 3703 (relating to enforcement of arrearages).

1.26 **“Eligible Retirement Plan”** means: (1) an eligible Plan under IRC § 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, and in the case of a transfer from this Plan agrees to separately account for amounts transferred into such Plan from this Plan; (2) a traditional IRA; (3) a Roth IRA; (4) an annuity Plan described in IRC § 403(a); (5) an annuity contract described in IRC § 403(b); or (5) a qualified Plan described in IRC § 401(a), and in the case of a transfer from this Plan accepts the Distributee’s Eligible Rollover Distribution. This definition of Eligible Retirement Plan shall also apply to a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under an Approved Domestic Relations Order. If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth account, an “Eligible Retirement Plan” with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual. If the Distributee is a non-spouse Designated Beneficiary, the direct rollover may be made only to a traditional or Roth individual retirement account or an annuity described in IRC § 408(b) that is established on behalf of the non-spouse Designated Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of IRC § 402(c)(11). The determination of any required minimum distribution required under IRC § 401(a)(9) that is eligible for rollover shall be made in accordance with applicable IRS guidance, including IRS Notice 2007-7, Q & A 17 and 18.

1.27 **“Eligible Rollover Distribution”** means any distribution of all or any portion of the balance to the credit of the Distributee, except that an “eligible rollover distribution” does not include: (1) any distribution 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; (2) any distribution to the extent such

distribution is required under IRC § 401(a)(9); and (3) any other distribution(s) that is/are reasonably expected to total less than \$200 or such other amount prescribed by applicable law during a year.

Any portion of a distribution that consists of after-tax employee contributions which are not includible in gross income may be transferred only to: (1) a traditional individual retirement account or annuity described in IRC § 408(a) or (b) (a "traditional IRA") or a Roth individual retirement account or annuity described in IRC § 408A (a "Roth IRA"); or (2) to a qualified plan or an annuity contract described in IRC § 401(a) and IRC § 403(b), respectively, that agrees to separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

1.28 **"Eligibility Point"** means a point which is accrued by an Active Member, Active Participant or a multiple service member who is an active member in the Public School Employees' Retirement System for a year of credited service or by a Participant who has been re-employed from USERRA leave or a Participant who dies while performing USERRA leave and is used in the determination of eligibility for benefits.

1.29 **"Employer"** means the Commonwealth of Pennsylvania, or any agency or instrumentality as identified in Schedule B thereof directly responsible for the employment and payment of a State Employee.

1.30 **"Employer Defined Contributions"** means a contribution equal to a percentage of an Active Participant's Compensation that is made by an Employer to the Trust to be credited to the Participant's Individual Investment Account as follows:

(a) for a Class A-5 Participant, contributions equal to 2.25% of the Active Participant's Compensation;

(b) for a Class A-6 Participant, contributions equal to 2.0% of the Active Participant's Compensation; and

(c) for a DC-only Participant, contributions equal to 3.5% of the Active Participant's Compensation.

1.31 **"Forfeiture Laws"** means the Public Employee Pension Forfeiture Act, as enacted by the General Assembly of the Commonwealth of Pennsylvania in the Act of July 8, 1978, (P.L. 752, No. 140), as it may be amended as it is applied to the Plan under 71 Pa. C.S. §5953 and, with respect to the forfeiture or loss of pensions of members of the judiciary, regardless of how earned, Art. 5 § 16(b) of the Pennsylvania Constitution and 42 Pa. C.S. § 3352.

1.32 **"Forfeiture Account"** means the ledger account to which monies forfeited under the Forfeiture Laws are credited and any investment experience thereon.

1.33 **"Fund"** means State Employees' Retirement Fund.

1.34 **“Inactive Participant”** means a Participant whose Employer is not required to make Mandatory Pickup Participant Contributions to the Trust, but excluding an Active Participant for whom the Mandatory Pickup Participant Contributions otherwise required for current State Service are not being made solely by reason of the limitation under IRC § 401(a)(17) or 415, but who has vested Accumulated Total Defined Contributions standing to the Participant’s credit in the Trust and who has not filed an application for a Distribution. In addition, the term “Inactive Participant” also includes any individual who would be an Inactive Participant but for having filed an application for a distribution that has not begun. An individual who would otherwise be an Inactive Participant shall cease to be an Inactive Participant if the Participant has no amount standing to the Participant’s credit in an Individual Investment Account. The term does not include a Class A-5 Exempt Employee who is an Active Member on leave without pay unless the Class A-5 Exempt Employee concurrently is employed in an office or position in which the Class A-5 Exempt Employee is a Participant in the Plan and on leave without pay.

1.35 **“Individual Investment Account”** means the ledger account in the Trust to which are credited the amounts of the contributions made by a Participant and the Participant’s employer in accordance with the provisions of this part, together with all interest and investment earnings after deduction for fees, costs, expenses and investment losses and charges for distributions. The Board may establish and maintain separate sub-accounts within a Participant’s Individual Investment Account for Voluntary Contributions, Catch-up Contributions, Employer Defined Contributions, Mandatory Pickup Participant Contributions, and Rollover Contributions.

1.36 **“Investment Policy”** means the policy pursuant to which a Participant may direct the investment of amounts allocated to the Individual Investment Account.

1.37 **“IRC”** means the Internal Revenue Code of 1986, as amended. A reference to “IRC§” or “section of the IRC” shall be deemed to refer to the identically numbered section and subsection or other subdivision of such section in 26 U.S.C.

1.38 **“Life Expectancy”** means the period of time computed by using the appropriate table set forth in Treasury Regulations under IRC § 401(a)(9), including by way of example: (i) Single Life Table; (ii) Uniform Life Table; or (iii) Joint and Last Survivor Table found in Treasury Regulation § 1.401(a)(9)-9.

1.39 **“Mandatory Pickup Participant Contributions”** means contributions equal to a percentage of Compensation that are made by the Commonwealth or other Employer for an Active Participant for current State Service that are picked up by the Employer and credited in the Plan as set forth in section 3.02.

1.40 **“Member”** means an individual who is a Member of the System under the terms of the Retirement Code.

1.41 **“Nominated Beneficiary”** means the person, persons and/or trust last designated in writing to the Administrator by the Participant to receive the Participant’s vested Accumulated Total Defined Contributions or a lump sum benefit upon the death of the Participant.

1.42 **“Non-Vested Contributions”** means the Accumulated Employer Defined Contributions credited to a Participant’s Individual Investment Account that are not vested by reason of insufficient Eligibility Points.

1.43 **“Non-Vested Account”** means the ledger account established under this Plan for purposes of accounting for and administering forfeited Non-Vested Contributions.

1.44 **“Participant”** means an Active Participant, Inactive Participant, or Participant Receiving Distributions. An individual shall cease to be a Participant if the individual has no amount standing to the individual’s credit in an Individual Investment Account notwithstanding that the former State Employee may continue to be a Member of the System, or may contract to receive an annuity or other form of payment from a provider retained by the Board for such purpose.

1.45 **“Participant Receiving Distributions”** means a Terminated Participant who has commenced receiving Distributions from the Participant’s Individual Investment Account, but who has not received a total distribution of the vested interest in their Individual Investment Account.

1.46 **“Participant’s Account Balance”** means the account balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year” (the “valuation calendar year”) increased by the amount of any contributions made and allocated or forfeitures allocated to the 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 account balance for the valuation calendar year includes any amounts rolled over or transferred to this Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

1.47 **“Payroll Period Compensation”** means the amount of Compensation paid by an Employer during a payroll period to a State Employee who is an Active Participant.

1.48 **“Pickup Contributions”** means regular or joint coverage member contributions and shared risk member contributions, as applicable for participation in the System, which are made by the Employer to the Fund for Active Members for current service.

1.49 **“Plan”** means the State Employees’ Defined Contribution Plan as established in the Plan Document by the Board pursuant to the Retirement Code.

1.50 **“Plan Document”** means the documents created by the Board under section 5802 of the Retirement Code (relating to plan document) that contain the terms and provisions of this Plan and Trust as adopted by the Board for the establishment, administration (and investment of amounts contributed to) this Plan and Trust, including, but not limited to, the within Plan.

1.51 **“Rate Change Deadline”** means the first payroll period following the month in which the Board notifies an Employer that a State Employee elected a Class of Service that changes the rate of Mandatory Pickup Participant Contributions and Employer Defined Contributions.

1.52 **“Reemployed from USERRA Leave”** or **“Reemployment from USERRA Leave”** means resumption of active participation (resumption of the status as an Active Participant in this Plan) as a State Employee after a period of USERRA Leave, if the resumption of active participation was within the time period and under conditions and circumstances such that the State Employee was entitled to reemployment rights under 38 U.S.C. Ch. 43 (relating to employment and reemployment rights of members of the uniformed services).

1.53 **“Required Beginning Date”** means April 1 of 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 Participant retires.

1.54 **“Retirement Code”** means the State Employees’ Retirement Code, Title 71, Pa. C.S. §§ 5101 *et seq.*, as amended. A reference in this part to “section of the Retirement Code” shall be deemed to refer to the identically numbered section and subsection or other subdivision of such section in 71 Pa. C.S. § ____.

1.55 **“Rollover Contribution”** means: (1) an amount transferred to this Plan directly from another Eligible Retirement Plan; (2) a distribution received by a Participant from another Eligible Retirement Plan that is eligible for tax-free rollover to an Eligible Retirement Plan and that is transferred to this Plan within sixth (60) days following receipt thereof; and (3) any other amount that is eligible to be rolled over to this Plan under the IRC. The above notwithstanding, “Roth” contributions held under a Roth individual retirement account or an Eligible Retirement Plan shall not be accepted as a Rollover Contribution.

1.56 **“Service Forfeiture”** means the Participant’s interest in Employer Defined Contributions that is forfeited due to Termination of Service prior to earning sufficient Eligibility Points as required under Article V.

1.57 **“Severance Payments”** means any payments for unused vacation or sick leave and any additional compensation contingent upon retirement or termination including payments in excess of the scheduled or customary salaries provided for a Participant within the same Employer with the same educational and experience qualifications who is not terminating service.

1.58 **“State Employee”** means any person holding a State office or position under the Commonwealth, employed by the State Government of the Commonwealth, in any capacity whatsoever, except an independent contractor or any person compensated on a fee basis or any person paid directly by an entity other than a State Employees’ Retirement System employer, and shall include members of the General Assembly, and any officer or employee of the following:

- (a) (1) The Department of Education.
- (2) State-owned educational institutions.
- (3) Community colleges.

(4) The Pennsylvania State University, except an employee in the College of Agriculture who is paid wholly from Federal funds or an employee who is participating in the Federal Civil Service Retirement System. The university shall be totally responsible for all employer contributions under section 5507 (relating to contributions to the system by the Commonwealth and other employers) and all Employer Defined Contributions to the Trust under section 5806 (relating to employer defined contributions).

(b) The Pennsylvania Turnpike Commission, the Delaware River Port Authority, the Port Authority Transit Corporation, the Philadelphia Regional Port Authority, the Delaware River Joint Toll Bridge Commission, the State Public School Building Authority, The General State Authority, the State Highway and Bridge Authority, the Delaware Valley Regional Planning Commission, and the Susquehanna River Basin Commission any time subsequent to its creation, provided the commission or authority agrees to contribute and does contribute to the Fund or Trust, from time to time, the moneys required to build up the reserves necessary for the payment of the annuities or other benefits of such officers and employees without any liability on the part of the Commonwealth to make appropriations for such purposes.

(c) Any separate independent public corporation created by statute, not including any municipal or quasi-municipal corporation, so long as he remains an officer or employee of such public corporation, and provided that such officer or employee of such public corporation was an employee of the Commonwealth immediately prior to his employment by such corporation, and further provided such public corporation shall agree to contribute and contributes to the Fund or Trust, from time to time, the moneys required to build up the reserves necessary for the payment of the annuities or other benefits of such officers and employees without any liability on the part of the Commonwealth to make appropriations for such purposes.

(d) any agency or instrumentality of the Commonwealth as set forth in Appendix B that is not included in paragraphs (a), (b) and (c) whose employees are authorized for membership in the System.

1.59 **“State Service”** means service rendered by a State Employee to an Employer.

1.60 **“Suspense Account”** means an account in the general ledger in which amounts are temporarily recorded because the proper account could not be determined at the time that the transaction was recorded.

1.61 **“System”** means the State Employees’ Retirement System of Pennsylvania, a defined benefit pension plan established by and pursuant to the Retirement Code, as codified by the Act of March 1, 1974 (P.L. 125, No. 31) and as amended.

1.62 **“Terminated Participant”** means an individual who has accrued a benefit under this Plan, has an amount standing to such individual’s credit in an Individual Investment Account, and has experienced a Termination of Service.

1.63 **“Termination of Service.”** The latest of the following:

(a) The cessation of Pickup Contributions for an Active Member or for which the contributions otherwise required for service were not made solely by reason of any provision

of this part relating to the limitations under sections 401(a)(17) or 415 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 401(a)(17) or 415);

(b) in the case of an inactive member on leave without pay or an Inactive Participant on leave without pay, the date of his resignation or the date of his employment is formally discontinued by this employer; or

(c) the last day of service for which Mandatory Pickup Participant Contributions are made for an Active Participant.

1.64 **“Trust”** means the State Employees’ Defined Contribution Trust established under section 5801 of the Retirement Code and that is comprised of the Individual Investment Accounts, all assets and moneys in those accounts together with all investment earnings thereon, less deductions for fees, costs, expenses, investment losses and distributions, and any assets and moneys held by the Trustee that are not allocated to the Individual Investment Accounts.

1.65 **“Trustee”** means the Board acting pursuant to its authority under the Retirement Code and the Plan (including but not limited to Article XVIII) in its capacity as trustee of the Trust.

1.66 **“USERRA”** means the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Ch. 43 (relating to employment and reemployment rights of members of the uniformed services), as amended.

1.67 **“USERRA Leave”** means any period of time for service in the uniformed services commencing on or after January 1, 2013, as defined in USERRA, by a State Employee or former State Employee who terminated State Service to perform the service in the uniformed services, if the current or former State Employee is entitled to reemployment rights under 38 U.S.C. Ch. 43 with respect to the uniformed service.

1.68 **“Valuation Date”** means December 31st and any date(s) during the calendar year as the Board deems necessary or appropriate for the valuation of the assets in the Trust and/or the valuation of all Accumulated Total Defined Contributions (the interests of all parties for whom an Individual Investment Account is maintained under this Plan). A Valuation Date may include any day that any transfer agent appointed by the Board or any stock exchange used by such agent conducts business.

1.69 **“Voluntary Contributions”** means after-tax contributions made by an Active Participant to the Trust in excess of Mandatory Pickup Participant Contributions and Catch-up Contributions, either by salary deductions paid through the Commonwealth or other Employer, an eligible rollover or a direct trustee-to-trustee transfer.

ARTICLE II
ELIGIBILITY AND PARTICIPATION

2.01 **Eligibility**

(a) **Mandatory Participation.** A State Employee who is a Member of the System as a member of Class A-5 or Class A-6 shall be a Class A-5 Participant or Class A-6 Participant in the Plan for that State Service as of the effective date of Class A-5 or Class A-6 membership in the System except for service as a Class A-5 Exempt Employee. A State Employee who elected to be solely a DC-only Participant in the Plan shall be a mandatory Participant in the Plan for all service except for service as a Class A-5 Exempt Employee.

(b) **Optional Participation.** A State Employee who is an optional member of the System as a Member of Class A-5 or Class A-6 also is an optional Participant in the Plan. The State Employees who elect membership in the System as members of Class A-5 or Class A-6, including the employees who elect to become members of Class A-5 or Class A-6 under section 5306.5 of the Retirement Code shall be Class A-5 or A-6 Participants in the Plan as of the date they elect membership in the System, except for State Service as a Class A-5 Exempt Employee. A State Employee can elect participation in as a DC-only Participant without also electing membership in the System under section 5306.4 of the Retirement Code.

(c) **Prohibiting Participation.** State Employees who: (1) are listed in subsection (a)(11), (12), (13), (14) and (15) of section 5301 of the Retirement Code; (2) first become a Member of the System before January 1, 2019; or (3) could have elected membership in the System but did not do so in the required time period, shall not be eligible to become an Active Participant in the Plan unless an election is made under section 5306.5 of the Retirement Code. Class A-5 Exempt Employees shall not be eligible to participate in the Plan for service performed as a Class A-5 Exempt Employee. State Employees who are not mandatory Participants in the Plan under subsection (a) or eligible for optional participation in the Plan under subsection (b) shall not be eligible to participate in the Plan unless an election is made under section 5306.5 of the Retirement Code.

(d) **Notification.** The System shall notify this Plan of any Members who elect to become a Participant under section 5306.5 of the Retirement Code. The System shall further certify to the Plan the following information:

(1) whether the Member elected to be a Class A-5 Participant, a Class A-6 Participant or a DC-only Participant;

(2) the Member's Eligibility Points; and

(3) the Member's prior Class of Service.

(e) **Irrevocability.** An election to participate in this Plan shall be irrevocable.

(f) **System Determinations.** All determinations regarding a Member's eligibility or election to opt out of the current Class of Service to participate in the Plan shall be subject to the sole jurisdiction of the Board and shall be final and binding.

2.02 **Participation Upon Reemployment.** A Participant Receiving Distributions who returns to service as a State Employee on or after January 1, 2019, if an Active Member of Class -5 or Class A-6, shall be an Active Participant in the Plan as of the effective date of employment, except as otherwise provided in section 5706(a), regardless of the optional membership or Participant category of the position.

2.03 **Error and Omission of Participants:** If, in any calendar year, an individual, who should have been a Participant, is erroneously omitted or an individual, who should not have been a Participant, is erroneously included, then the Administrator may take appropriate corrective action under section 17.06.

ARTICLE III PARTICIPANT AND EMPLOYER CONTRIBUTIONS

3.01 **Contributions Subject to Limitations.** All contributions made to this Plan under this Article III are subject to the limitations contained in Article IV.

3.02 **Mandatory Pickup Participant Contributions.**

(a) **Mandatory Pickup Participant Contribution.** A Participant under section 2.01(a) or (b), except a Participant who made an election under section 5306.5 of the Retirement Code, shall make Mandatory Pickup Participant Contributions to the Trust through payroll deductions equal to: (1) 3.25% of Compensation for current State Service if a Class A-5 Participant; (2) 3.5% of Compensation for current State Service as a Class A-6 Participant; or (3) 7.5% of Compensation for current State Service as a DC-only Participant. A Participant under section 2.01(b) who made an election under section 5306.5 of the Retirement Code shall make Mandatory Pickup Participant Contributions as provided under Schedule A.

(b) **Time for Making Mandatory Pickup Participant Contributions.** The Employer shall cause Mandatory Pickup Participant Contributions to be deducted from an Active Participant's Compensation through payroll deductions and remitted to the Trust, pursuant to the terms as established by the Board and in accordance with section 3.05.

(c) **Allocation to Individual Investment Account.** The Administrator shall cause all Mandatory Pickup Participant Contributions received from an Employer to be allocated to the subaccount established for Mandatory Pickup Participant Contributions under the Individual Investment Account of the Participant for whom such contributions have been made on the schedule and terms as established by the Administrator.

(d) **Treatment for Purposes of IRC § 414(h).** The contributions to the Trust required to be made under this section shall be picked up by the Commonwealth or other employer and shall be treated as the Employer's contribution for purposes of IRC § 414(h).

3.03 **Voluntary Contributions and Catch-up Contributions.**

(a) **Election to Make Voluntary Contributions and Catch-up Contributions.** In accordance with procedures established by the Administrator, an Active

Participant may make Voluntary Contributions and Catch-up Contributions through payroll deductions and if allowed by the Administrator and permitted under the IRC, by direct payments.

(b) **Time for Making Voluntary Contributions and Catch-up**

Contributions. In the case of a Participant electing payment through payroll deductions, the Employer shall cause Voluntary Contributions and Catch-up contributions to be deducted from an Active Participant's Payroll Period Compensation through payroll deductions and remitted to the Trust on such schedule and terms as established by the Board and in accordance with section 3.05.

(c) **Allocation to Individual Investment Account.** The Administrator shall cause all Voluntary Contributions and Catch-up Contributions that it receives from an Employer to be allocated to the subaccounts established for Voluntary Contributions and Catch-up Contributions under the Individual Investment Account of the Active Participant for whom such contributions have been made on the schedule and terms as established by the Administrator subject to section 3.05.

3.04 **Rollover Contributions.**

(a) **Participant's Option to Contribute Rollover Contributions.** Subject to the consent of and compliance with the procedures established by the Administrator, a Participant may make a Rollover Contribution to this Plan, provided the Rollover Contribution will not adversely affect the qualified Plan status of this Plan under IRC section 401(a).

(b) **Allocation to Individual Investment Account.** The Administrator shall cause all Rollover Contributions that it receives with respect to a Participant to be allocated to the subaccount established for Rollover Contributions under the Individual Investment Account of the Participant for whom such contributions have been received subject to section 3.05.

(c) **Treatment of Rollover Contributions under this Plan.** Rollover Contributions shall be distributable only when a distribution is otherwise permitted with respect to the other amounts allocated to the Participant's Individual Investment Account.

3.05 **Procedures Relating to Participant Contributions.** The Administrator shall establish contribution procedures that address Catch-up Contributions, Voluntary Contributions and Rollover Contributions as the Board may deem appropriate.

3.06 **Employer Defined Contributions.**

(a) **Obligation to Make Employer Defined Contributions.** An Employer shall cause Employer Defined Contributions to be paid and remitted to the Trust with respect to such schedule and terms as established by the Board but no less frequent than on a monthly basis. With regard to each Employer under this Plan, the Board shall maintain records to track amounts of Employer Defined Contributions that are due, the payment history, and the allocation thereof to the subaccount established for Employer Defined Contributions under the Individual Investment Account of the Active Participant for which such contributions have been received. Employer Defined Contributions shall be made to the Trust and credited to an Active Participant's Individual Investment Account as follows:

- Participant;
- (1) 2.25 % of Compensation for State Service as a Class A-5
- and
- (2) 2% of Compensation for State Service as a Class A-6 Participant;
- Participant.
- (3) 3.5% of Compensation for service performed as a DC-only

(b) **Allocation to Individual Investment Account.** The Administrator shall cause all Employer Defined Contributions that it receives from an Employer to be allocated to the subaccount established for Employer Defined Contributions under the Individual Investment Account of the Participant for whom such contributions have been received on the schedule and terms as established by the Board.

3.07 **Adjustments to Mandatory Pickup Participant Contributions/Employer Defined Contributions.** In accordance with procedures as may be established by the Administrator, the rates of future Mandatory Pickup Participant Contributions and Employer Defined Contributions shall be adjusted as of the Rate Change Deadline to be consistent with a Participant's Class of Service certified by the Administrator. Additionally, the Administrator shall establish procedures as necessary to facilitate transfers between the Trust and the Fund as of the Rate Change Deadline to be consistent with a Participant's Class of Service as certified by the Administrator.

ARTICLE IV

LIMITATIONS ON CONTRIBUTIONS

4.01 **Special Definitions.** For purposes of this Article, the following definitions shall apply:

(a) **"Annual Additions"** means the sum of the following amounts credited to a Participant's Individual Investment Account for the Limitation Year: (1) 415 Employer contributions; (2) employee contributions (including mandatory employee contributions (as defined in IRC § 411(c)(2)(C) and regulations promulgated under IRC § 411) (for this purpose, Pickup Contributions do not constitute employee contributions) and voluntary employee contributions) allocated under a qualified defined contribution plan or a qualified defined benefit plan maintained by the 415 Employer if separate accounts are maintained with respect to such Participant under the defined benefit plan; (3) forfeitures allocated under a qualified defined contribution plan maintained by the 415 Employer; (4) amounts allocated to an individual medical benefit account as defined in IRC § 415(l)(2) which is part of a pension or annuity plan maintained by the 415 Employer; (5) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee, as defined in IRC § 419A(d)(3), under a welfare benefit fund maintained by the 415 Employer; and (6) allocations to a Participant under a simplified employee pension.

Annual Additions shall not include: (1) the direct transfer of a benefit or employee contributions from another qualified plan to this Plan; (2) rollover contributions (as described in

IRC §§ 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(c)(16); and (3) repayment of contributions as described in IRC § 415(k)(3), as well as the restoration of benefits which are required pursuant to such repayment.

(b) **“Defined Contribution Dollar Limitation”** means the dollar limit, as adjusted under IRC § 415(d).

(c) **“415 Compensation”** means with respect to any Participant, such Participant’s wages, within the meaning of IRC § 3401(a), and all other payments of compensation to an employee by the 415 Employer (in the course of the 415 Employer’s trade or business) for which the 415 Employer is required to furnish the employee a written statement under IRC §§ 6041(d), 6051(a)(3), and 6052. 415 Compensation shall be determined without regard to any rules under IRC § 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC § 3401(a)(2)).

Except as provided herein, 415 Compensation for a Limitation Year is the 415 Compensation actually paid or made available during such Limitation Year. 415 Compensation for a Limitation Year shall not include amounts earned but not paid during the Limitation Year. 415 Compensation shall be based on the full Limitation Year regardless of when participation in the Plan commences.

415 Compensation for a Limitation Year shall also include 415 Compensation paid by the later of 2½ months after an employee’s severance from employment with the 415 Employer or the end of the Limitation Year that includes the date of the employee’s severance from employment with the 415 Employer, if:

(1) the payment is regular compensation for services during the employee’s regular working hours, or compensation for services outside the employee’s regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the 415 Employer;

(2) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or

(3) the payment is received by the employee pursuant to a nonqualified unfunded deferred compensation Plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered 415 Compensation if paid after severance from employment, even if they are paid by the later of 2 ½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment.

Back pay, within the meaning of Treasury Regulation § 1.415(c)-2(g)(8), shall be treated as 415 Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

415 Compensation paid or made available during a Limitation Year shall include amounts that would otherwise be included in 415 Compensation but for an election under IRC § 125(a), IRC § 132(f)(4), IRC § 402(e)(3), IRC § 402(h)(1)(B), IRC § 402(k), or IRC § 457(b).

415 Compensation shall also include deemed IRC § 125 compensation. Deemed IRC § 125 compensation is an amount that is excludable under IRC § 106 that is not available to a Participant in cash in lieu of group health coverage under an IRC § 125 arrangement solely because the Participant is unable to certify that the Participant has other health coverage. Amounts are deemed IRC § 125 compensation only if the 415 Employer does not request or otherwise collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(d) **"415 Employer"** means the Employer that pays the underlying Compensation on which 415 Compensation is based.

(e) **Limitation Year:** The 12-consecutive month period that begins on January 1. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(f) **Maximum Annual Additions:** Except for catch-up contributions described in IRC § 414(v), the Annual Addition that may be contributed or allocated to a Participant's Individual Investment Account under this Plan for any Limitation Year shall not exceed the lesser of:

- (1) The Defined Contribution Dollar Limitation, or
- (2) 100 percent of the Participant's 415 Compensation for the Limitation Year.

The compensation limit referred to in (2) shall not apply to any contribution for medical benefits after separation from service (within the meaning of IRC § 401(h) or IRC § 419A(f)(2)) which is otherwise treated as an Annual Addition. If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the Maximum Annual Additions will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

| |
|--|
| Number of months in the short limitation year/12 |
|--|

If this Plan is terminated as of a date other than the last day of the Limitation Year, this Plan is deemed to have been amended to change its Limitation Year and the Maximum Annual Additions shall be prorated for the resulting short Limitation Year.

4.02 **IRC § 415 Limitations.** Notwithstanding any other provision of this Plan to the contrary, the following limitations shall apply:

(a) **Maximum Annual Additions if a Participant is not in more than one Plan.** If a Participant does not participate in, and has never participated in another qualified plan maintained by the 415 Employer, or a welfare benefit fund (as defined in IRC § 419(e)) maintained by the 415 Employer, or an individual medical account (as defined in IRC § 415(l)(2)) maintained by the 415 Employer, or a simplified employee pension (as defined in IRC § (408(k)) maintained by the 415 Employer which provides Annual Additions, the amount of Annual Additions which may be credited to the Participant's Individual Investment Account for any Limitation Year shall not exceed the lesser of the Maximum Annual Additions or any other limitation contained in this Plan. If the 415 Employer contribution that would otherwise be contributed or allocated to the Participant's Individual Investment Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Annual Additions, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Annual Additions, and any amount in excess of the Maximum Annual Additions.

(b) **Maximum Annual Additions if a Participant is in more than one Plan.** This subsection applies if, in addition to this Plan, a Participant is covered under another qualified defined contribution plan maintained by the 415 Employer, a welfare benefit fund (as defined in IRC § 419(e)) maintained by the 415 Employer, an individual medical account (as defined in IRC § 415(i)(2)) maintained by the 415 Employer, or a simplified employee pension (as defined in § 408(k)) maintained by the 415 Employer, that provides an Annual Addition during any Limitation Year. The Annual Additions which may be credited to the Participant's Individual Investment Account under this Plan for any such Limitation Year shall not exceed the Maximum Annual Additions reduced by the Annual Additions credited to the Participant's accounts under the other qualified defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions for the same Limitation Year. If the Annual Additions with respect to the Participant under other qualified defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the 415 Employer are less than the Maximum Annual Additions and the 415 Employer contribution that would otherwise be contributed or allocated to the Participant's Individual Investment Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Annual Additions. If the Annual Additions with respect to the Participant under such other qualified defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the Maximum Annual Additions, no amount will be contributed or allocated to the Participant's Individual Investment Account under this Plan for the Limitation Year.

(c) **Estimates.** Before determining the Participant's actual 415 Compensation for the Limitation Year the 415 Employer may determine the Maximum Annual Additions for a Participant on the basis of a reasonable estimate of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

(d) **Final Determination.** As soon as administratively feasible after the end of the Limitation Year, the Maximum Annual Additions for the Limitation Year shall be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(e) **Determining Excess Maximum Annual Additions.** If pursuant to section 4.02(b), a Participant's Annual Additions under this Plan and such other plans would result in an excess amount for a Limitation Year, the excess amount will be deemed to consist of the Annual Addition last allocated, except that Annual Additions attributable to a simplified employee pension will be deemed to have been allocated first, followed by Annual Additions to a welfare benefit fund or individual medical benefit account, and then by Annual Additions to this Plan. If an excess amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the excess amount attributed to this Plan will be the product of: (i) the total excess amount allocated as of such date, times (ii) the ratio of (A) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (B) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans.

(f) **Time when Annual Addition Credited.** An Annual Addition is credited to the Individual Investment Account of a Participant for a particular Limitation Year if it is allocated to the Participant's Individual Investment Account under this Plan as of any date within that Limitation Year. However, an amount is not deemed allocated as of a date within a Limitation Year if such allocation is dependent upon participation in this Plan as of any date subsequent to such date. For purposes of this subsection (f), employer contributions are treated as credited to a Participant's Individual Investment Account for a Limitation Year only if the contributions are actually made to this Plan no later than the 15th day of the tenth calendar month following the end of the calendar year with or within which the particular Limitation Year ends.

(g) **Plan Based Business Rules.** The Administrator shall apply the provisions of this Article IV in accordance with and as permitted under IRC § 415 and the guidance issued thereunder, including, but not limited to, Treasury Regulations issued under IRC § 415. Compliance with IRC § 415 shall be determined with respect to a Participant: (1) using total 415 Compensation received by a Participant from all 415 Employers; and (2) considering Annual Additions with respect to a Participant from all 415 Employers.

4.03 **Adjustment for Excess Annual Additions.** Notwithstanding any provision of this Plan to the contrary, if the Annual Additions are exceeded for any Participant, then this Plan may only correct such excess in accordance with the IRS' Employee Plans Compliance Resolution System, any other compliance program established by the IRS, or as otherwise permitted under applicable law.

ARTICLE V

VESTING AND FORFEITURE

5.01 Participant's Vested Interest in Individual Investment Account.

(a) **Participant Sourced Contributions.** Subject to section 5.01(f), a Participant shall have a 100% vested interest in the subaccount(s) created under the Individual Investment Account for the following contributions, as adjusted for interest and investment gains or losses thereon, and reduced by investment fees and administrative charges: (1) Mandatory Pickup Participant Contributions; (2) Catch-up Contributions; and (3) Voluntary Contributions.

(b) **Employer Defined Contributions.** Subject to section 5.01(f), a Participant's vested interest in Employer Defined Contributions paid to the Trust and allocated to the Participant's Individual Investment Account, as adjusted for interest and investment gains or losses, and reduced by investment fees and administrative charges shall be determined in accordance with the following schedule:

| Vesting Schedule Employer Defined Contributions | |
|--|------------|
| Currently Credited Eligibility Points | Percentage |
| Less than 3 Eligibility Points | 0% |
| 3 or more Eligibility Points | 100% |

(c) **Credit for Eligibility Points Earned prior to or after Optional Participation.** Only Eligibility Points currently credited to a Participant who elects participation in this Plan (and makes appropriate Catch-up Contributions, if required) as referenced and certified pursuant to section 2.02(d) herein or earned as a member of the System as a Class A-5 exempt employee shall be credited in this Plan for purposes of determining the vested interest in the Participant's Individual Investment Account.

(d) **Credit for Eligibility Points after Approved Leave of Absence.** A Participant on Approved Leave of Absence shall be credited with Eligibility Points during such leave of absence for purposes of determining the vested interest in the Participant's Individual Investment Account provided that the Participant makes the required Mandatory Pickup Participant Contributions or Catch-up Contributions to the Plan.

(e) **USERRA Leave.** A Participant who is Reemployed from USERRA Leave or who dies while performing USERRA Leave shall be granted the Eligibility Points that the Participant would have accrued had the Participant continued in employment instead of performing USERRA Leave, without regard to whether the Participant makes the Mandatory Pickup Participant Contributions or Catch-up Contributions for the USERRA Leave. A Participant who is Reemployed from USERRA Leave and remits Mandatory Pickup Participant Contributions or Catch-up Contributions for such USERRA Leave under Article XI shall not receive additional Eligibility Points.

(f) **Forfeiture and Vesting Rules.**

(1) **Preemption of Vesting by Permitted Forfeiture.** Notwithstanding the otherwise vested right of a Participant in any subaccount maintained under the Individual Investment Account, the balance in each such subaccount is subject to forfeiture and attachment under the Forfeiture Laws, and other applicable law, which shall take priority over any vesting in the Individual Investment Account.

(2) **Eligibility Points Credited as a Member of the System.** Except as provided in section 5.01(c), no Participant shall accrue an Eligibility Point for purposes of this Plan other than as provided in the definition of Eligibility Point or as otherwise provided under the Retirement Code.

5.02 **Administration of Forfeitures.** If all or a portion of the amount standing to the credit in a Participant's Individual Investment Account becomes forfeited under the Forfeiture Laws, the Administrator shall credit those amounts to the Forfeiture Account to be used for the payment of expenses of the Plan. If all or a portion of the amount standing to the credit in a Participant's Individual Account become forfeited as a Service Forfeiture under subsection 5.01(b), the Administrator shall credit such amount (and any attributable earnings) to the Participant's Employer's contribution obligation under Article III. The Administrator shall maintain an appropriately titled account for each such forfeitures and credit the amounts accordingly, including the investment gains, losses and earnings thereon. No amount of or attributable to a forfeiture under Forfeiture Laws or a Service Forfeiture shall be subject to reinstatement to the Individual Investment Account except as may be required as a result of a claim made under Article XI or as otherwise required by law.

ARTICLE VI

INDIVIDUAL INVESTMENT ACCOUNTS

6.01 **Individual Investment Accounts.** The Board shall establish and maintain an Individual Investment Account for each Participant. The Board shall establish and maintain such other accounts, subaccounts, and records as it determines in its sole discretion to be reasonably required or appropriate in furtherance of its duties under the Retirement Code and this Plan.

6.02 **Valuation of Individual Investment Accounts.** The Board shall cause the Individual Investment Accounts to be valued at their fair market value on each Valuation Date in accordance with a method consistently followed and uniformly applied, and on such date earnings, expenses, administrative fees, costs, gains, and losses on investments made with amounts in each Participant's Individual Investment Account shall be allocated to such Individual Investment Account.

6.03 **Share or Unit Accounting.** The Board may provide in its Investment Policy for share or unit accounting to reflect the value of accounts under this Plan, if such method is appropriate for the investments allocable thereto.

6.04 **Suspense Accounts.** The Board may provide in its Investment Policy for special valuation procedures for Suspense Accounts that are properly established under this Plan.

6.05 **Investment of Contributions.** The investment of a Participant's Individual Investment Account shall not be unreasonably delayed, and in no case shall the investment of such contributions be delayed more than thirty (30) days from the date of payroll deduction or other forms of Contributions are deposited into the Trust, to the date that such contributions are invested. Any interest earned on the contributions pending investment shall be used to pay administrative costs and fees that would otherwise be required to be borne by Participants who are then participating in this Plan or that are funded by contributions from the Employers.

ARTICLE VII
INVESTMENT OF AMOUNTS ALLOCATED TO INDIVIDUAL INVESTMENT
ACCOUNTS

7.01 **Establishment of Investment Policy.** The Board shall establish an Investment Policy pursuant to which a Participant may direct the investment of amounts allocated to the Individual Investment Account. All investments shall be funded proportionately based on the balance standing to the credit of the Participant's Individual Investment Account. To the extent permitted under the Investment Policy, a Participant may direct the Board as permitted under the Investment Policy to invest the Accumulated Total Defined Contributions in specific assets, specific funds or other investments as permitted under the Investment Policy. The Investment Policy shall address the establishment of investment options, how often a Participant may make changes among investment options, and any other limitations and provisions that the Board may seem advisable regarding a Participant's direction of the investment of amounts allocated to the Individual Investment Account.

7.02 **Board Retains Full Discretion.** In its discretion, the Board may determine Investment Policy and implement any instruction, guideline, or procedure as it deems necessary or appropriate to ensure the proper administration of such policy and may interpret the Investment Policy accordingly.

7.03 **Implementation of Participant Investment Directions.** All contributions, interest and investment earnings shall be invested based on a Participant's investment allocation choices, provided that the Board may provide for a default investment option. All investment allocation choices shall be credited proportionally between contributions from the Participant and Employer Defined Contributions and any subaccounts. Each Participant shall be credited individually with the amount of contributions, interest and investment earnings. The Board (as Administrator) shall cause the processing of a Participant's investment directions as soon as administratively practicable after duly provided investment directions from the Participant are received. The Board does not guarantee that investment directions will be processed on a daily basis or in any respect regarding the processing time of an investment direction. The processing of any investment transaction may be delayed for any legitimate business reason or force majeure (including but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and correction of errors or omissions of any service provider). The processing date of a transaction shall be binding for all purposes of this Plan and considered the applicable Valuation Date for an investment transaction.

7.04 **Information in Support of Investment Directions.** Any information regarding investments that the Board makes available under this Plan for directed investment may be provided to a Participant in one or more documents (or in any other form, including, but not limited to, electronic media).

7.05 **Allocation of Gains or Losses.** As of each Valuation Date, all Individual Investment Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market value when available or appropriate as follows: (1) to the extent the assets in an

Individual Investment Account are accounted for as pooled assets or investments, the allocation of earnings, gains, losses and expenses of each Individual Investment Account shall be based upon the total amount of funds so invested in a manner proportionate to the Individual Investment Account's share of such pooled investment; and (2) to the extent the assets in an Individual Investment Account are accounted for on a segregated basis, the allocation of earnings, gains, losses and expenses from such assets shall be made on a separate and distinct basis.

7.06 **Responsibility for Investment Loss.** The Commonwealth of Pennsylvania, the Board (including in its capacity as Administrator or Trustee), Employer or other political subdivision and their respective officers and employees shall not be responsible for any investment loss incurred under this Plan or for the failure of any investment to earn any specific or expected return or to earn as much as any other investment opportunity or to cost less than any other investment opportunity, whether or not such other opportunity was offered to a party who has an interest in this Plan.

7.07 **Failure to Direct Investments.** The Board shall designate a Default Investment Alternative. The Board shall designate how an Individual Investment Account will be invested in the absence of a proper affirmative investment direction. The Board may designate a Default Investment Alternative in which the Trustee shall deposit contributions to the Trust on behalf of a Participant who has been identified by the Board as having not specified investment choices under this Plan.

7.08 **Administrator to Follow Investment Directions.** The Administrator may decline to follow an investment direction to the extent that the direction would:

- (a) Result in a prohibited transaction as defined under IRC § 503;
- (b) Jeopardize the tax qualification of this Plan; or
- (c) Be contrary to the Plan Document, investment policy established by the Board, applicable law, or the IRC.

The Board (including in its capacity as Administrator or Trustee) shall not be responsible for any loss or expense resulting from a failure to follow an investment direction in accordance with the requirements of this paragraph.

ARTICLE VIII **VALUATION OF THE TRUST**

8.01 **Valuation of the Assets in the Trust.** As of each Valuation Date, the Trustee shall determine the net worth of the assets held in the Trust as those assets exist on the Valuation Date. In determining such net worth, the Trustee shall value the assets held in the Trust at their fair market value as of the Valuation Date and may deduct all expenses for which any service provider to this Plan to whom the Trust owes money has not been paid. In determining the net worth of the assets held in the Trust, the Trustee may update the value of shares held in an Individual Investment Account by reference to the number of shares held on behalf of the Participant (or other party) on whose behalf the Individual Investment Account is held.

8.02 **Method of Valuation.** In determining the fair market value of securities held in the Trust that are listed on a registered stock exchange, the Trustee shall value those securities at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded before the Valuation Date. Any unlisted security held in the Trust shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers or may appraise those assets itself.

ARTICLE IX **DISTRIBUTION OF BENEFITS**

9.01 **Distribution Permitted upon Termination of Service.**

(a) **In General.** A Terminated Participant may withdraw all or a portion of the vested Accumulated Total Defined Contributions standing to the Participant's credit in the Individual Investment Account in accordance with distribution procedures established by the Administrator. A failure by the Participant to apply for a distribution shall be deemed to be an election to defer commencement of payment. The Trustee shall pay or begin to pay a requested distribution, as applicable, based on the form of the distribution, within sixty (60) days of the filing of the application and receipt of the required data from the Employer of the Terminated Participant and other necessary data. A State Employee must be terminated from all positions that result in either membership in the System or participation in the Plan to be eligible to receive a Distribution. No distribution shall be allowed that would be an in-service distribution prohibited by the IRC. No distributions are permitted if the Participant returns to State Service, whether or not the Participant becomes an Active Member of the System or an Active Participant in the Plan.

(b) **Involuntary Distributions.**

(1) Notwithstanding anything in this Plan to the contrary, if the value of a Terminated Participant's vested Individual Investment Account is greater than one thousand dollars (\$1,000) but less than or equal to five thousand dollars (\$5,000), and the Terminated Participant does not elect to have the vested benefit paid directly to an Eligible Retirement Plan that the Terminated Participant specifies in a direct rollover or to receive the distribution directly, the Administrator periodically may direct that the entire vested Individual Investment Account be paid to such Terminated Participant in a single lump-sum payment as a direct rollover to an individual retirement account described in IRC § 408(a) or an individual retirement annuity described in IRC § 408(b) designated by the Administrator. In determining the \$1,000 limit in subsection (b), the Administrator may consider all Accumulated Total Defined Contributions standing to the credit of the Terminated Participants in the Individual Investment Account. In determining the \$5,000 limit in this subsection, the Administrator may exclude all amounts in the Participant's subaccount under the Individual Investment Account established for Accumulated Rollover Contributions.

(2) If the value of the Terminated Participant's vested Individual Investment Account is equal to or less than one thousand dollars (\$1,000), and the Terminated Participant does not elect (or cannot elect) to have the vested benefit paid directly to an Eligible Retirement Plan that the Terminated Participant specifies in a direct rollover or to receive the distribution directly, the Administrator may direct that the entire vested Individual Investment Account be paid to such Terminated Participant in a direct single lump-sum payment and not as an Eligible Rollover Distribution.

(3) The Administrator may make a distribution described in this subsection (b) no earlier than the end of the third calendar year following the calendar year during which the individual became a Terminated Participant and without regard to any consent of the Terminated Participant. A distribution under this subsection shall be in lieu of any other benefit payable under this Plan. The above-referenced dollar amounts shall be adjusted to the extent changed by applicable law.

9.02 **Distribution Upon Death.**

(a) **Administrator Obligations.** Upon receipt of notification of the death of a Participant, the Administrator shall notify the Nominated Beneficiary of the benefits to which the Nominated Beneficiary is entitled resulting from such death and shall make a lump sum payment within sixty (60) days of receipt of certification of death and other necessary data, subject to the requirements of this section.

(b) **Death Benefit.** The amount of a death benefit is the vested balance standing to the credit of the Individual Investment Account as of the Valuation Date as determined in accordance with the distribution procedures established by the Administrator.

(c) **Administrative Matters.** The Administrator may require such appropriate proof of death and such evidence of the right of any person to receive payment of all or a portion of a death benefit in accordance with the distribution procedures established by the Administrator.

(d) **Nominated Beneficiary Designation.** Each Participant shall designate a Nominated Beneficiary in writing with the Administrator. A Participant may also nominate a contingent beneficiary or beneficiaries to receive the death benefit payable under this Plan. Such nominations may be changed at any time by written designation filed with the Administrator in accordance with procedures established by the Administrator.

(e) **System Beneficiary.** If a Participant or individual who has a vested interest in an Individual Investment Account is also a Member of the System, then the most recent beneficiary nomination filed with and accepted by the System shall be effective for this Plan if: (1) the Administrator establishes procedures to allow a System beneficiary nomination to expressly provide that it is to be effective for this Plan; and (2) a separate subsequent written beneficiary nomination has not been filed and accepted for this Plan.

(f) **Default Beneficiary of a Participant.** If a Nominated Beneficiary is not designated, or if a Nominated Beneficiary of a Participant predeceases the Participant or fails to survive the Participant by 30 days and there are not contingent beneficiaries nominated for that

Nominated Beneficiary's portion of the Participant's benefit, then the benefits shall be payable to the estate of the Participant. In the absence of a beneficiary and an estate, the Administrator may pay the next of kin, under the special circumstances provided in 20 Pa. C.S. § 3101 (relating to payments to family and funeral directors), or to the surviving spouse of the Participant.

(g) **Default Beneficiary of an Individual with a Vested Interest.** If an individual who is not a Participant and who has a vested interest in an Individual Investment Account does not nominate a beneficiary, or if a Nominated Beneficiary of such individual predeceases the individual or fails to survive the individual by 30 days, then any payments payable from the Individual Investment Account as a result of the death of the individual shall be payable to the estate of the individual.

(h) **Effect of Divorce or Pending Divorce on Designation of Spouse as Nominated Beneficiary by Participant Domiciled in the Commonwealth of Pennsylvania.** Notwithstanding anything in this Plan to the contrary, any designation of a spouse or former spouse shall be subject to 20 Pa. C.S. § 6111.2 and the applicable law thereunder.

(i) **Slayer Statute.** The Administrator shall apply slayer statutes, or similar rules that prohibit inheritance by a person who kills someone from whom the person stands to inherit, under applicable state laws and to the extent applied, the offending person shall not have any interest in this Plan as a result of being a beneficiary of the killed individual.

(j) **Effect of Payment of a Death Benefit.** Upon the payment of a death benefit under this Plan, neither this Plan, the Administrator (including in its capacity as Administrator or Trustee) shall have any liability to any individual or entity as a result of such payment and such payment shall be in full satisfaction of their obligations hereunder and under the Trust with respect to the distributed interest in this Plan.

9.03 **Consent to Distributions.** A benefit may not be paid without the consent of the Distributee except as provided in this section. Consent shall not be required with respect to:

- (a) any corrective distribution as described in section 9.04 below;
- (b) a required distribution under IRC § 401(a)(9);
- (c) a distribution of an excess annual addition under IRC § 415;
- (d) forfeitures and payments under the Forfeiture Laws or Service Forfeitures;
- (e) offsets for indebtedness to the Employer under section 5953;
- (f) payments required under domestic relations orders;
- (g) corrections under section 5954(b); or
- (h) an involuntary distribution of a small account under section 9.01(b).

9.04 **Corrective Distributions.** Nothing in this Plan shall preclude the Administrator from making a distribution to the extent such distribution is made to correct a qualification defect in accordance with the correction procedures permitted under this Plan.

9.05 **Distribution under an Approved Domestic Relations Order.**

(a) **Permitted Terms of a Domestic Relations Order.**

(1) **Alternate Payee's Portion.** A Participant's Individual Investment Account shall not be segregated into a subaccount or newly established account titled in the name of the Alternate Payee pursuant to a Domestic Relations Order. An Alternate Payee shall receive an immediate distribution of Alternate Payee's share of a Participant's Individual Investment Account upon acceptance of the Domestic Relations Order as an Approved Domestic Relations Order.

(2) **Amendment of Approved Domestic Relations Orders.**

(i) If an Alternate Payee predeceases the Participant and there are benefits payable to the Alternate Payee, a court with jurisdiction over the distribution of marital property in the Plan may amend the Approved Domestic Relations Order to substitute a person for the deceased Alternate Payee to receive any benefits payable to the deceased Alternate Payee.

(ii) If a court with jurisdiction over the distribution of marital property in the Plan amends the Approved Domestic Relations Order for any reason, then the amended order must be submitted for recertification as an Approved Domestic Relations Order in accordance with the terms of section 13.05.

(3) **Nomination of an Irrevocable Nominated Beneficiary.** A Domestic Relations Order may provide for an Irrevocable Nominated Beneficiary. A Domestic Relations Order requiring the nomination of an Irrevocable Nominated Beneficiary is one that requires a Participant to nominate an Alternate Payee as a beneficiary and that prohibits the removal or change of that beneficiary without approval of a court of competent jurisdiction, except by operation of law. Such a Domestic Relations Order may be certified as an Approved Domestic Relations Order by the secretary of the Administrator, or a designated representative, after the secretary or designated representative of the secretary determines the Domestic Relations Order complies with the requirements of the Retirement Code, in which case the Irrevocable Nominated Beneficiary so ordered by the court cannot be changed by the Participant without approval by the court.

(b) **Administrator Authorization of Distribution.** The Administrator shall make such distributions as may be required to execute the terms of a Domestic Relations Order that the Administrator, in accordance with the terms of section 13.05, has determined constitutes an Approved Domestic Relations Order and subject to implementation.

9.06 **Amount Eligible for Distribution.** The amount of any distribution under this Plan, including, but not limited to, a distribution that constitutes a death benefit, shall be based on the vested Accumulated Total Defined Contributions standing to the credit in the

Distributee's Individual Investment Account (or the Individual Investment Account from which a distribution is payable) as of the Valuation Date that is selected in accordance with the distribution procedures established by the Administrator. Subject to forfeiture as provided in this Plan, a vested interest shall be determined solely based on the number of Eligibility Points credited to the individual who accrued the benefit under the provisions of this Plan. For this purpose, the balance must be increased for any contributions allocated to and reduced for any distribution made from the Individual Investment Account since that Valuation Date. A Distributee shall not share in any allocation of gains or losses attributable to the period between that Valuation Date and the date of the distribution, unless provided otherwise under distribution procedures established by the Administrator.

9.07 **Sources of Distribution**. Unless otherwise provided in distribution procedures established by the Administrator, in determining the source of a distribution, the Administrator shall make a distribution on a pro rata basis from all subaccounts from which a distribution is permitted. Such procedures may permit a Distributee, other than an Alternate Payee, to direct the Administrator as to from which subaccount the distribution is to be made. Regardless of a source of any distribution, the tax effect of such a distribution shall be governed by IRC § 72 and guidance issued by the Internal Revenue Service thereunder.

9.08 **Compliance with IRC § 401(a)(9) – Required Minimum Distributions**.

(a) **General Rules**.

(1) **Application**. This section 9.08 shall not be construed as providing additional forms of benefit that are not otherwise provided under section 10.01. No reference in this Plan to a life annuity or annuity for a period of time or other provision of this Plan in relation to the IRC § 401(a)(9) is to be construed to allowing a payment in other than a lump sum unless an annuity is purchased under section pursuant to section 10.01.

(2) **Requirements of Treasury Regulations Incorporated**. All distributions required under this Plan (including any annuity purchased pursuant to Section 10.01) shall be determined and made in accordance with the Treasury Regulations under IRC § 401(a)(9) and the minimum distribution incidental benefit requirement of IRC § 401(a)(9)(G). In applying any provision of this section, the Administrator shall apply a reasonable good faith interpretation of IRC § 401(a)(9).

(3) **Limits on Distribution Periods**. As of the first Distribution Calendar Year, distributions to a Participant may only be made in the form of payment that is otherwise permitted under this Plan. If a distribution is not made in a single-sum, then such in order to assure compliance with IRC § 401(a)(9), distribution may only be made over one of the following periods:

- (i) the life of the Participant;
- (ii) the joint lives of the Participant and a Designated

Beneficiary;

(iii) a period certain not extending beyond the Life Expectancy of the Participant; or

(iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary.

(b) **Time and Manner of Distribution.**

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

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

(i) **Surviving Spouse is the Designated Beneficiary.** If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the surviving spouse may elect to take distributions under the 5-year rule, as described below, or under the life expectancy rule. If the life expectancy rule applies, 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.

(ii) **Surviving Spouse is not the sole Designated Beneficiary.** If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then each Designated Beneficiary who is not the Participant's surviving spouse may elect to take distributions under the 5-year rule, as described below, or under the life expectancy rule. If the life expectancy rule applies, 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. If the Designated Beneficiary does not elect to commence distributions by December 31 of the calendar year immediately following the calendar year in which the Participant dies, a complete distribution must be made by December 31 of the calendar year containing the fifth anniversary of the Participant's death (the "5-year rule").

(iii) **No Designated Beneficiary.** If there is no Designated Beneficiary as of September 30 of the year immediately 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.

(iv) **Death of Surviving Spouse.** 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 are required to begin, this subsection (b)(2), other than subsection (b)(2)(i), shall apply as if the surviving spouse were the Participant.

For purposes of this subsection (b)(2) and subsection (d), unless subsection (b)(2)(iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (b)(2)(iv) applies, distributions are considered to begin on the date distributions are

required to begin to the surviving spouse under subsection (b)(2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single-sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions must comply with subsections (c) and (d) of this section and only in the form of distribution as permitted under this Plan. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of IRC § 401(a)(9) and the Treasury Regulations thereunder.

(c) **Required Minimum Distributions During Participant's Lifetime.**

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

(i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation § 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(ii) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, 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 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.

(2) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this subsection (c) beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

(d) **Required Minimum Distributions After Participant's Death.**

(1) **Death on or After Date Required Distributions Begin.**

(i) **Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date required 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.

(ii) **No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of the 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.

(2) **Death Before Date Required Distributions Begin.**

(i) **Participant Survived by Designated Beneficiary.** Unless designated otherwise as provided herein, if the Participant dies before the date required 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, determined as provided in subsection (d)(1).

(ii) **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.

(iii) **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 under subsection (b)(2)(i), then this subsection will apply as if the surviving spouse were the Participant.

(e) **Special Rules / Election to Allow Beneficiary to Elect 5-Year Rule.** A Designated Beneficiary shall be permitted to elect on an individual basis whether the 5-year rule or the life expectancy rule in subsection (b)(2) and subsection (d)(2) above applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under subsection (b)(2), or by September 30 of the calendar year that contains the fifth anniversary of the Participant's (or if applicable, surviving spouse's) death. If the Designated Beneficiary does not make an election under this paragraph, distributions will be made in accordance with the 5-year rule.

(f) **Notification of Approaching Required Beginning Date.** The Administrator shall notify in writing each Participant, who has experienced a Termination of Service and who has not commenced distribution by 90 days before the Participant's Required Beginning Date, that the Participant has an obligation to commence distributions by the Required Beginning Date in a form and manner required by IRC § 401(a)(9) and other applicable provisions of the IRC.

ARTICLE X **FORM OF DISTRIBUTION**

10.01 **Normal Form of Distribution for a Terminated Participant.** Pursuant to the election of a Terminated Participant, the Administrator shall direct the distribution of amounts allocated to such Individual Investment Account to the Terminated Participant in cash in one of the following forms of payment subject to the required minimum distribution rules under section 9.08.

(a) **Lump-sum Distribution.** The Participant's entire vested balance in the Individual Investment Account.

(b) **Partial Lump-sum Distribution.** A portion of the Participant's vested balance in the Individual Investment Account with the remaining balance to remain in the Individual Investment Account to be distributed as subsequently elected by the Participant pursuant to this section.

(c) **Individual Purchased Annuity.** All or a portion the Participant's vested balance in the Individual Investment Account to be used to purchase an annuity facilitated by the Administrator with an independent annuity provider to ensure an annuity of a monthly pension for the life of the Participant with a minimum interest rate of 2.5% to the extent commercially available. If a Participant elects to purchase an annuity under this subsection, then the Participant shall elect an Eligible Rollover Distribution with that portion of the vested Individual Investment Account to be used to purchase such annuity.

(d) **Normal Form of Distribution for a Nominated Beneficiary or an Alternate Payee.** The Administrator shall pay an amount payable under this Plan to a Nominated Beneficiary, or Alternate Payee, as applicable, in the form of a one lump-sum payment. If a Participant has begun to receive a distribution of benefits under this Plan and

subsequently dies before receiving the full value of the vested Individual Investment Account, the remaining benefit shall be paid in the form of one lump-sum payment.

10.02 **Direct Rollovers.**

(a) **Eligible Rollover Distributions.** Notwithstanding any other provision of this Plan to the contrary that would limit a Distributee's election under this subsection (a), a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion or all of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover; provided, however, that a Distributee may not elect a direct rollover with respect to a portion of an Eligible Rollover Distribution if such portion totals less than \$500, or such other amount as may be determined by the Administrator. The Distributee must elect a complete direct rollover if the Eligible Rollover Distribution is less than \$500. The portion of any Eligible Rollover Distribution consisting of Voluntary Contributions or Catch-up Contributions may only be rolled over to an individual retirement account or annuity described in IRC § 408(a) or (b) or to a qualified defined contribution plan described in IRC §§ 401(a), 403(a) or 403(b) that provides for separate accounting with respect to such accounts, including separate accounting for the portion of such Eligible Rollover Distribution that is includible in income (including earnings on the portion that is not so includible) and the portion that is not includible in income.

(b) **Non-Spouse Beneficiary Rollover Right.** A non-spouse beneficiary who is a Designated Beneficiary under IRC § 401(a)(9)(E) and the Treasury Regulations thereunder, by a direct trustee-to-trustee transfer may roll over all or any portion of an Eligible Rollover Distribution to an individual retirement account which the beneficiary establishes for purposes of receiving the distribution. If the Participant's Nominated Beneficiary is a trust, the Administrator may make a direct rollover to an individual retirement account on behalf of the trust, provided that the trust satisfies the requirements to be a Designated Beneficiary.

10.03 **Notice Regarding Time and Form of Distributions.** The Administrator shall provide a Distributee who is entitled to an Eligible Rollover Distribution with a written explanation of the right to a direct rollover, the tax consequences of not making a direct rollover, and if applicable, any available special income tax elections. The written explanation shall be provided no less than thirty (30) days and not more than one-hundred eighty (180) days before the benefit commencement date. The direct rollover written explanation must be provided to all Distributees, unless the total amount the Distributee will receive a distribution during the calendar year that is expected to be less than \$200.00.

10.04 **Distribution for Minor or Incompetent Individual.** The Plan may transact business with a guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act), attorney-in-fact, or other legal representative appointed on behalf of a Distributee; provided sufficient documentation is submitted to the Plan evidencing authority to transact business with the Plan. The Plan, Administrator, and the Trustee, who in good faith rely upon the authority of a representative as if such authority was genuine, will not incur any liability for making payments made in accordance with the instruction of such representative. Neither the Plan, Administrator, nor the Trustee has any duty to inquire as to the competence of any individual entitled to receive payments under this Plan.

10.05 Location of Participant or Beneficiary Unknown. If any Participant or Nominated Beneficiary cannot be located and a benefit under this Plan becomes distributable or if a distribution has been issued but the Participant or Nominated Beneficiary fails to timely complete the distribution (in either case, a “lost Distributee”), the provisions of this section 10.05 shall apply. The provisions of this section 10.05 shall no longer apply if the Administrator, before taking action to dispose of the lost Distributee’s benefit is able to complete the distribution.

(a) **Attempt to Locate.** A reasonable and diligent search for the lost Distributee shall be conducted using the following search methods: (1) U.S. Postal Service via certified mail at the lost Distributee’s last known address and through appropriate means for any address or contact information (including email addresses and telephone numbers); (2) search of Plan and System records, and publicly available records or directories for contact information; and (3) use of any of these search methods: (a) a commercial locator service; (b) a credit reporting agency; or (c) a proprietary internet search tool for locating individuals. The Individual Investment Account of the lost Distributee may be charged for the reasonable expenses incurred under this subsection regardless of whether the lost Distributee is actually located or a distribution is made to the lost Distributee.

(b) **Failure to Locate/Dispose of Distributable Benefit.** If the lost Distributee remains unlocated after six (6) months (or such longer period as may be determined by the Administrator) from the date the search methods described in subsection (a) were first used, the benefit of the lost Distributee will not be distributed and will continue to be invested pursuant to the last known investment direction provided by the lost Distributee; provided, however, that such benefit is not subject to the involuntary distribution rules set forth in section 9.01(b).

(c) **Subsequent Distributions.** If a lost Distributee whose benefit was not distributed thereafter at any time but before this Plan has been terminated makes a claim for the lost Distributee’s benefit, the benefit shall be distributed upon written request and subject to the terms of this Plan.

(d) **Alternative Disposition.** The Administrator may adopt an alternative policy under this section as it deems reasonable or appropriate to administer the benefits of lost distributes, provided that the policy is administered in a uniform and nondiscriminatory manner with consideration to the specific circumstances around each lost Distributee.

10.06 Distribution of Excess Benefits. If this Plan pays a benefit in excess of the maximum amount of payment required under the provisions of this Plan, the Administrator shall have the right to recover any such excess payment, plus earnings, on behalf of this Plan and the Trust from the Participant or other Distributee, and to offset against future benefit payments to be paid under this Plan and the Trust to the Participant, such Distributee, or to the beneficiaries or estate of the Participant or Distributee.

ARTICLE XI
USERRA RELATED PROVISIONS

11.01 **Military Service by a Participant.** A Participant who has performed USERRA Leave shall be treated and may make contributions as follows:

(a) **Break in Service.** A Participant who is Reemployed from USERRA Leave may not be treated as having incurred a break in State Service by reason of the USERRA Leave.

(b) **Participant Election to Make Post Reemployed from USERRA Leave Contributions relating to USERRA Leave.** Any Participant or former Participant who is Reemployed from USERRA Leave, who has rights under USERRA, and who desires to make Mandatory Pickup Participant Contributions, Catch-up Contributions and/or Voluntary Contributions for such USERRA Leave shall so notify the Board within the time period required under 38 U.S.C. Ch. 43 (relating to employment and reemployment rights of members of the uniformed services) and IRC § 414(u) of the desire to make such contributions. If such Participant or former Participant elects to make contributions, such contributions shall be made as provided in subsection (c) and allocated to the appropriate subaccount under the Participant's Individual Investment Account in accordance with the procedures established by the Board.

(c) **Post Reemployed from USERRA Leave Contributions.**

(1) **Contributions in General.**

(i) **Participant Makes Mandatory Pickup Participant Contributions.** A Participant may not make Mandatory Pickup Participant Contributions, Catch-up Contributions or Voluntary contributions during USERRA Leave, even if the Participant receives salary wages, stipends, differential wage payments or other payments from the Participant's Employer during the USERRA Leave. If a Participant who is Reemployed from USERRA Leave subsequently makes Mandatory Pickup Participant Contributions or Catch-up Contributions in the amounts and in the time periods required by 38 U.S.C. Ch. 43 and IRC § 414(u) as if the Participant had continued in the Participant's State employment and performed State Service and been compensated during the period of USERRA Leave, then the Employer by whom the Participant is employed at the time the Participant makes the Mandatory Pickup Participant Contributions or Catch-up Contributions shall make the corresponding Employer Defined Contributions. Such Participant shall have contributions, benefits (including Eligibility Points), rights and obligations determined under this Plan as if the Participant was an Active Participant who performed State Service during the USERRA Leave in the job position that such Participant would have held had such Participant not been on USERRA Leave and received the deemed Compensation: (1) on which the Mandatory Pickup Participant Contributions or Catch-up contributions could be made; (2) and if made to this Plan, on which the corresponding Employer Defined Contributions for the USERRA Leave will be computed; and (3) on which the right to make Voluntary Contributions may be made as permitted by law.

(ii) **Deemed Compensation.** In determining the amount of any contribution, Compensation shall be the Compensation the Participant would have received

during the period while in qualified military service based on the rate of pay the Participant would have received from the Employer, but for the absence due to qualified military service. If the Compensation the Participant would have received during the leave is not reasonably certain, the Compensation rate during the USERRA Leave shall be based on the Participant's average Compensation from the Employer during the twelve (12) month period immediately preceding the qualified military leave or, if shorter, the Participant's actual period of employment immediately preceding the qualified military service.

(iii) **Due Date for Contributions.** If an Employer is required to make Employer Defined Contributions for a reemployed Participant, the Employer must make such contributions not later than the date required by the Board or as set forth in USERRA procedures established by the Board, but in no event later than when required by applicable law. For Mandatory Pickup Participant Contributions, Catch-up Contributions and Voluntary Contributions, a Participant, who is reemployed following qualified military service, may make up such contributions during the period beginning on the date of reemployment and ending on the earlier of the date that is three times the length of the qualified military service period or five (5) years from the date of reemployment. The above notwithstanding, in no event shall such repayment period be less than 30 days. Any make-up contribution under this section is subject to the IRC § 415 limitation for the year for which the make-up contribution would have been made had the Participant not been on qualified military leave.

(2) **Participant Does Not Make Mandatory Pickup Participant Contributions.** A Participant who is Reemployed from USERRA Leave and does not make the Mandatory Pickup Participant Contributions and Catch-up Contributions or makes only part of the Mandatory Pickup Participant Contributions and Catch-up Contributions within the allowed payment period may not be eligible to make Mandatory Pickup Participant Contributions, Catch-up Contributions and Voluntary Contributions at a later date for the period of USERRA Leave for which the Mandatory Pickup Participant Contributions and Catch-up Contributions were not timely made.

(3) **No Return from USERRA Leave.** A Participant who performs USERRA Leave from which the Participant could have been Reemployed from USERRA Leave had the Participant returned to State Service in the time frames required by 38 U.S.C. Ch. 43 for reemployment rights, but did not do so, cannot make Mandatory Pickup Participant Contributions, Catch-up Contributions or Voluntary Contributions for the period of USERRA Leave should the Participant later return to State Service and be a Participant in this Plan.

(4) **Other Types of Leave Disregarded.** An Active Participant or Inactive Participant who, on or after June 12, 2017, is granted a leave of absence under 51 Pa. C.S. § 4102 or a military leave under 51 Pa. C.S. Ch. 73 that is not USERRA Leave cannot make Mandatory Pickup Participant Contributions, Catch-up Contributions or Voluntary Contributions during or for the leave of absence or military leave, and may not have Employer Defined Contributions made during such leave, without regard to whether or not the Participant received salary, wages, stipends, differential wage payments or other payments from the Participant's Employer during the leave, notwithstanding any provision to the contrary in 51 Pa. C.S. § 4102 or 51 Pa. C.S. Ch. 73.

(5) **Heroes Earnings Assistance and Relief Act – Death while Performing USERRA Leave.** If a Participant dies while performing USERRA Leave, then the Participant will be credited with the applicable amount of Eligibility Points for the period of USERRA Leave rendered prior to death as if the Participant returned to State Service and terminated employment because of death. The Nominated Beneficiary of the deceased Participant will be entitled to all Eligibility Points relating to the period of qualified military service provided under this Plan as if the Participant resumed and then terminated employment because of death.

(6) **Compliance with IRC § 414(u).** Notwithstanding anything in this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with IRC § 414(u) to the extent required for this Plan to constitute a qualified plan under the IRC. As used in this Plan, qualified military service means any service in the uniformed services (as defined in Chapter 43 of Title 38, United States Code) by any individual if such individual is entitled to reemployment rights under that Chapter with respect to such service.

ARTICLE XII **PROCEDURES APPLICABLE TO CLAIMS FOR BENEFITS OR OTHERWISE** **ARISING IN CONNECTION WITH THIS PLAN**

12.01 **Permissible Claims.** Pursuant to the claims and review procedures set forth in section 12.02, a State Employee, a Participant, a beneficiary, Alternate Payee of a Participant, or person or employer with standing under Pennsylvania Code, at 1 Pa. Code, Part II, Chapters 31, 33, and 35 to make a claim or appeal a decision of the Plan to the Board may file and only file a claim related to such State Employee, a Participant, a beneficiary, Alternate Payee of a Participant, person or employer based on one or more of the following, to: (1) recover benefits due under this Plan, (2) enforce rights under the terms of this Plan; (3) clarify rights to future benefits under this Plan; or (4) to enforce such other rights relating to participation in this Plan provided under the Retirement Code or other applicable law of the Commonwealth of Pennsylvania. All matters relating to a Domestic Relations Order shall be determined under section 13.05.

12.02 **Claims Procedures.** The exclusive remedy of any person or entity identified in section 12.01 who aggrieved by a decision of the Administrator or Trustee or their employees or their designative representatives, shall be the right to an adjudication by the Board under 2 Pa. C.S. Ch.5 (relating to practice and procedure) with appeal therefrom to the Commonwealth Court under 2 Pa. C.S. Ch.7 (relating to judicial review) and 42 Pa. C.S. § 763(a)(1) (relating to direct appeals from government agencies). All claims that may be made as provided in section 12.01 and review of any adverse determination shall be made in accordance with the claim and review procedures that apply to making claims and review of adverse determinations under the System, including, but not limited to, those set forth in the Pennsylvania Code, at 1 Pa. Code, Part II, Chapters 31, 33, and 35.

12.03 **Exclusive Source of Rights and Benefits.** Regardless of any other provision of law, pension and benefits rights of a State Employee shall be determined solely by Part XXV of Title 71 Pa. C.S. or any amendment thereto, or this Plan Document, and no collective bargaining

agreement nor any arbitration award between an Employer and the Employer's employees or the employee's collective bargaining representative shall be construed to do any of the following: (1) change any of the provisions of Part XXV of Title 71 Pa. C.S.; (2) require the Board to administer pension or retirement benefits not set forth in Part XXV of Title 71 Pa. C.S. or not established in the Plan Document; (3) require the Board to modify, amend or change any of the terms and provisions of the Plan Document; or (4) otherwise require action by any other government body pertaining to pension or retirement benefits or rights of State Employees.

ARTICLE XIII
PLAN ADMINISTRATION BY THE BOARD

13.01 Powers and Duties of the Board.

(a) **In General.** The Board (acting on its own behalf as Trustee or Administrator) shall in its capacity as Administrator shall administer this Plan for the exclusive benefit of Participants and beneficiaries, subject to the specific terms of this Plan, the Retirement Code, and other applicable law. The Board as Administrator may consider and defer, where appropriate, to determinations, interpretations, and business rules of the System administered by the Board. In addition to the procedures identified in this Plan, the Board as Administrator may establish rules, procedures, correct any defect, supply information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of this Plan.

(b) **Adjudications.** The Administrator shall have sole jurisdiction to interpret and administer the terms of this Plan and adjudicate all disputes arising in connection with the administration, interpretation, and application of this Plan. Subject to Article XII, determinations made by the Administrator shall be conclusive and binding upon all individuals and entities.

(c) **Powers Granted under the Retirement Code.** In addition to such powers provided in Chapter 59 of the Retirement Code and applicable law, the Board acting on its own behalf, as Administrator or Trustee shall have the following powers and duties to establish and administer this Plan:

(1) The Trustees may commingle or pool assets with the assets of other persons or entities.

(2) The Trustees shall pay all administrative fees, costs and expenses of managing, investing and administering this Plan, the Trust and the Individual Investment Accounts from the balance of such Individual Investment Accounts, except as otherwise provided in the Retirement Code or as the Pennsylvania General Assembly otherwise provides through appropriations from the General Fund.

(3) The Board may establish investment guidelines and limits on the types of investments that a Participant may make, consistent with the Board's fiduciary obligations.

(4) The Board shall have the power to amend the terms of this Plan as may be necessary to maintain the tax-qualified status of this Plan.

(5) The Administrator may establish a process for election to participate in this Plan by those State Employees for whom participation is not mandatory.

(6) The Board may perform an annual or more frequent review of any qualified fund manager for the purpose of assuring it continues to meet all standards and criteria established.

(7) The Board may allow for eligible rollovers and direct trustee-to-trustee transfers into the Trust from qualified Plans of other employers, regardless of whether the employers are private employers or public employers.

(8) The Administrator may allow an Inactive Participant to maintain the Participant's Individual Investment Account within the Plan.

(9) The Administrator shall administer or ensure the administration of this Plan in compliance with the qualification and other applicable rules of the IRC.

(10) The Administrator may establish procedures to provide for the lawful payment of benefits.

(11) The Administrator shall determine what constitutes a Termination of Service and whether such termination has occurred.

(12) The Administrator may establish procedures for distributions of small accounts as required or permitted by the IRC.

(13) The Administrator may establish procedures in the Plan Document or to promulgate rules and regulations as it deems necessary for the administration and management of this Plan, including, but not limited to, establishing:

(i) Procedures by which an eligible Participant may change (a) the amounts of Voluntary Contributions being contributed to this Plan; (b) investment choices on a periodic basis; or (3) make other elections regarding participation in this Plan.

(ii) Procedures for deducting Mandatory Pickup Participant Contributions, Catch-up Contributions and Voluntary Contributions from an Active Participant's Compensation.

(iii) Procedures for rollovers and trustee-to-trustee transfers allowed under the IRC and permitted by the Board as part of this Plan.

(iv) Standards and criteria for providing not less than ten (10) options which are offered by three (3) or more providers of investment options to eligible individuals regarding investments of amounts in an Individual Investment Account. The standards and criteria must provide for a variety of investment options and shall be reviewed in accordance with criteria established by the Board.

(v) Standards and criteria for disclosing to the Participants the anticipated and actual income attributable to amounts invested, property rights and all fees, costs and expenses to be made against amounts deferred to cover the costs and expenses of administering and managing this Plan or the Trust.

(vi) Procedures, standards and criteria for the making of distributions from this Plan upon (a) Termination from Employment, one of which shall include an option for an annuity with a minimum interest rate of 2.5% to the extent commercially available, (b) death or (c) in other circumstances consistent with the purpose of this Plan.

(14) The Administrator may waive any reporting or information requirement contained in the Retirement Code relating to the Plan if the Board determines that the information is not needed for the administration of this Plan.

(15) The Board (acting on its own behalf, as Administrator or Trustee) may contract any services and duties in lieu of its staff performing those services and duties except final adjudications and as prohibited by law. Any duties or responsibilities of the Board not required by law to be performed by the Board may be delegated to a third-party provider subject to appeal to the Board.

(16) The Board may provide that any duties of the Employer or information provided by a Participant to the Employer be performed or received directly by the Board.

(17) The Administrator shall ensure that Participants are provided with educational materials about investment options and choices.

(18) The provisions and restrictions of the Act of July 2, 2010 (P.L. 266, No. 44), known as the Protecting Pennsylvania's Investments Act, shall not apply to the Participants' Individual Investment Accounts or the moneys and investments therein, but the Board is authorized to offer to Participants investment vehicles that would be permitted under the Protecting Pennsylvania's Investments Act.

(d) **Additional Administrative Duties of the Administrator.** The Administrator shall administer this Plan in accordance with section 5902 (relating to administrative duties of the Board) of the Retirement Code. Such administration shall include supplying all information and reports to the Internal Revenue Service, a Participant, the beneficiaries and Alternate Payees of a Participant, and others as required by applicable law.

(e) **Duties of the Administrator Regarding Applications and Elections of Participants.** The Administrator shall administer this Plan in accordance with section 5905 (relating to duties of Administrator regarding applications and elections of participants) of the Retirement Code.

(f) **Adjustment of Errors.** Should any change or mistake in records result in any Participant, beneficiary, or Alternate Payee receiving from this Plan more or less than such individual would have been entitled to receive had the records been correct, then regardless of the intentional or unintentional nature of the error and upon the discovery of such error, the

Board shall correct the error and if the error affects contributions to or payments from this Plan, the Board shall take such action as shall be provided for in this Plan.

13.02 **Appointment of Advisers.** The Board (in its own capacity, as Trustee or Administrator) may exercise any power regarding the appointment of advisers as it possesses under the Retirement Code, including, but not limited to, counsel, specialists, advisers, agents, third party administrative services providers and recordkeepers and other persons deemed necessary or desirable in connection with the administration of this Plan.

13.03 **Action by the Board.** This Plan acknowledges that the Board is constituted, and shall or may conduct business under the authority that it otherwise possesses, as the governing body of the Plan. Except as prohibited by applicable law, whenever the Board (in its own capacity, as Trustee or Administrator) under this Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by an individual or entity duly authorized by the Board.

13.04 **Reliance upon Information.** The Board (in its own capacity, as Trustee or Administrator), its staff, delegates and agents in administering this Plan are entitled to, but are not required to, rely upon information provided by an Employer, Participant, a beneficiary or Alternate Payee of a Participant, a Plan service provider and their respective agents and representatives.

13.05 **Approval of Domestic Relations Orders.**

(a) **Terms of a Domestic Relations Order.** A Domestic Relations Order pertaining to a Participant shall be certified as an Approved Domestic Relations Order by the secretary of the Administrator, or a designated representative, only if the Domestic Relations Order meets all of the following:

(1) Does not require this Plan to provide any type or form of benefit or any option applicable to a Participant in this Plan other than a single lump-sum payment.

(2) Does not require the segregation of the Alternate Payee's share of the Participant's Individual Investment Account into a subaccount or newly established Individual Investment Account titled in the name of the Alternate Payee.

(3) Does not require this Plan to recover or distribute any funds that were distributed to the Participant or at the Participant's direction before the approval of the Domestic Relations Order by the secretary of the Administrator, or a designated representative.

(4) Requires this Plan to pay to the Alternate Payee no more than the lesser of: (a) the vested amount of the Participant's Individual Investment Account specified in the Domestic Relations Order or (b) the vested amount of the Participant's Individual Investment Account as of the date of the transfer of the Alternate Payee's share to the Alternate Payee.

(5) States that this Plan shall not be required to recoup or make good for losses in value to the Participant's Individual Investment Account incurred between the date

of the valuation of the account used for equitable distribution purposes and the date of the distribution to the Alternate Payee.

(6) Specifies the amount or percentage of the Participant's Individual Investment Account to be paid to the Alternate Payee and the date upon which such valuation is based.

(7) Specifies the name and last known mailing address, if any, of the Participant and the name and last known mailing address of each Alternate Payee covered by the Domestic Relations Order and states that it is the responsibility of each Alternate Payee to keep a current mailing address on file with this Plan.

(8) Does not grant an Alternate Payee the rights, privileges or options available to a Participant.

(9) Requires the Participant to execute an authorization allowing each Alternate Payee to monitor the Participant's compliance with the terms of the Domestic Relations Order through access to information concerning the Participant maintained by this Plan. Any authorization granted under this provision shall be construed as an authorization for the Alternate Payee to receive information concerning the Participant that relates to the administration, calculation and payment of the Alternate Payee's share of the Participant's Individual Investment Account and not as an authorization to exercise the rights afforded to the Participant or obtain information that is not related to the administration, calculation and payment of the Alternate Payee's share of the Participant's Individual Investment Account.

(10) Requires the distribution of the Alternate Payee's share of the Participant's Individual Investment Account, as soon as practicable upon a final determination that the underlying Domestic Relations Order constitutes an Approved Domestic Relations Order, which may be made by a direct payment or to the extent permitted under the IRC, an Eligible Rollover Distribution.

(11) In the case of a Participant who is currently receiving distributions from this Plan as of the date that the Domestic Relations Order is approved by the secretary of the Board, or a designated representative, may not order the Board to pay the Alternate Payee more than the vested balance available in the Participant's Individual Investment Account as of the date the Domestic Relations Order is approved or require that distributions continue to the Alternate Payee after the death of the Participant and final settlement of the Participant's Individual Investment Account.

(b) **Determination by Secretary.** Within a reasonable time after receipt of a Domestic Relations Order, the secretary of the Board, or a designated representative, shall determine whether the Domestic Relations Order is an Approved Domestic Relations Order and notify the Participant and each Alternate Payee of this determination. Notwithstanding any other provision of law, the exclusive remedy of any Participant or Alternate Payee aggrieved by a decision of the secretary of the Board or, a designated representative, shall be the right to an adjudication by the Board under 2 Pa. C.S. Ch.5 (relating to practice and procedure) with appeal therefrom to the Commonwealth Court under 2 Pa. C.S. Ch.7 (relating to judicial review) and 42

Pa. C.S. § 763(a)(1) (relating to direct appeals from government agencies). The Board shall have no obligation to implement an Approved Domestic Relations Order until all parties have either exhausted or waived all appeal rights.

(c) **Other Orders.** The requirements for approval identified in subsection (a) shall not apply to any Domestic Relations Order that is an order for support as that term is defined in 23 Pa. C.S. § 4302 (relating to definitions) or an order for the enforcement of arrearages as provided in 23 Pa. C.S. § 3703 (relating to enforcement of arrearages). These orders shall be approved to the extent that they do not attach moneys in excess of the limits on attachments as established by the laws of the Commonwealth of Pennsylvania and the United States, require distribution of benefits in a manner that would violate the laws of the United States, any other state or the Commonwealth of Pennsylvania or require distribution of funds for support or enforcement of arrearages against any Participant who is not receiving distributions from this Plan at the time the order is entered. These orders may be approved notwithstanding any other provision of 71 Pa. C.S., Part XXV or this Plan that would otherwise require a distribution of Accumulated Employer Defined Contributions in the form of an annuity or to require the purchases of an annuity.

(d) **Obligation Discharged.** Only the requirements of 71 Pa. C.S., Part XXV and any regulations promulgated thereunder 71 Pa. C.S., Part XXV shall be used to govern the approval or disapproval of a Domestic Relations Order. Therefore, if the secretary of the Board, or a designated representative, acts in accordance with the provisions of 71 Pa. C.S., Part XXV and any promulgated regulations in approving or disapproving a Domestic Relations Order, then the obligations of the Administrator and this Plan with respect to such approval or disapproval shall be discharged.

(e) **Domestic Relations Order Procedures.** Except to the extent prohibited by applicable law, the Administrator may adopt procedures that shall govern the terms, review and approval of a Domestic Relations Order.

13.06 **Participant and Employer Contributions to Trust.** The Administrator shall, each year in addition to any fees and itemized budget required under section 5509 of the Retirement Code, certify, as a percentage of each Participant's Compensation, the Employer Defined Contributions, which shall be paid to the Trust and credited to each Participant's Individual Investment Account. These certifications shall be regarded as final and not subject to modification by the Secretary of the Budget. The Administrator shall cause all Mandatory Pickup Participant Contributions made on behalf of a Participant, all Catch-up Contributions and all Voluntary Contributions made by a Participant to be credited to the Participant's Individual Investment Account.

13.07 **Participant status statements.** The Administrator shall furnish annually to each Participant on or before April 1, and more frequently as the Administrator may agree or as required by law, a statement showing the Accumulated Total Defined Contributions credited to the Participant's Individual Investment Account, the nature and type of investments and the investment allocation of future contributions as of December 31 of the previous year, and shall request the Participant to make any necessary correction or revision regarding his Nominated Beneficiary.

ARTICLE XIV
DUTIES OF AN EMPLOYER

14.01 **General Duty.** An Employer shall: (1) perform those duties imposed under the Retirement Code and regulations implementing the Retirement Code; (2) timely provide all information requested by the Board; (3) maintain and preserve records required by applicable law and as requested the Board; (4) cooperate fully with the Board in the administration of this Plan and maintain compliance with applicable law; and (5) pay or reimburse the Administrator for any costs incurred with respect to such Employer as permitted under section 5902(g) of the Retirement Code.

14.02 **Status of Participants.** An Employer shall provide the Board all information that the Board requests for the administration of this Plan.

14.03 **Mandatory Pickup Participant Contributions, Employer Defined Contributions, Catch-up Contributions and Voluntary Contributions.** An Employer shall make the Mandatory Pickup Participant Contributions on behalf of a Participant and shall deduct and remit to the Trust any Catch-up Contributions and Voluntary Contributions authorized by a Participant. The Employer shall make the Employer Defined Contributions on behalf of a Participant. The Employer shall notify the Board at times and in a manner prescribed by the Board of the Compensation of any Participant to whom the limitation under IRC § 401(a)(17) either applies or is expected to apply and shall cause the Participant's Mandatory Pickup Participant Contributions and Catch-up Contributions to be deducted from Payroll Period Compensation to cease at the limitation under IRC § 401(a)(17) on the payroll date if and when such limit is reached. The Employer shall certify to the State Treasurer and the Board the amounts picked up and deducted and the Employer Defined Contributions being made and shall send the total amount picked up, deducted and contributed together with a duplicate of such voucher to the secretary of the Administrator every pay period or on such schedule as established by the Board.

14.04 **Demographic Information.** In accordance with the State Employee demographic information requirements established by the Administrator, an Employer, with regard to the State Employee of the Employer, shall provide the Administrator the State Employee's home address, birthdate certified by the Employer, previous school or State Service and any other information requested by the Administrator, and a nomination of beneficiary to be made by such State Employees who participate in this Plan and filed with the Administrator and shall make such contributions as required under Article III.

14.05 **Advising Participants of Duties.** To the extent required by the Administrator, an Employer, with regard to its State Employees, shall provide information regarding this Plan.

14.06 **Employee Performing USERRA Leave or Military-Related Leave of Absence.** An Employer shall report all of the following to the Board:

- (a) Any Participant who:
 - (1) Ceases to be an Active Participant to perform USERRA service; or

(2) Is granted a leave of absence under 51 Pa. C.S. § 4102 (relating to leave of absence for certain governmental employees) or a military leave of absence under 51 PA. C.S. § 7302 (relating to granting military leaves of absence).

(b) The date on which the State Employee is Reemployed from USERRA Leave or returns after the leave of absence or military leave of absence, if applicable.

(c) Any other information that the Board may require.

14.07 Differential Wage Payments and Military Leave of Absence Payments.

Notwithstanding the exclusion of differential wage payments as defined in IRC § 414(u)(12) from Compensation under this Plan, the Employer of any Participant on USERRA Leave shall report differential wage payments made to the Participant to the Administrator, and the Employer of any Participant on leave of absence under 51 Pa. C.S. § 4102 shall report any payment made to the Participant in the form and manner established by the Administrator.

**ARTICLE XV
RIGHTS AND DUTIES OF EMPLOYEES AND PARTICIPANTS**

15.01 **General Duty.** An Employee, a Participant, and a former Participant shall: (1) perform those duties imposed under the Retirement Code and regulations implementing the Retirement Code; (2) timely provide all information requested by the Administrator; and (3) cooperate fully with the Administrator in the administration of this Plan.

15.02 **Information on New Employees.** Each new Employee shall furnish the Employer with a complete record of creditable nonstate service, proof of date of birth, home address, status in the System and this Plan and creditable service in the Public School Employees' Retirement System, the System, the State Employees' Defined Contribution Plan, and such other information as the Board may require. Willful failure to provide the information required by this section or under the Retirement Code to the extent available or the provision of erroneous information upon entrance into the System or this Plan shall result in the forfeiture of the right of the Participant to subsequently assert any right to benefits based on erroneous information or on any of the required information that the Participant failed to provide. The foregoing duties shall include the obligation to update such information to the extent of any changes therein occur.

15.03 **Return from USERRA Leave.** A Participant who has reemployment rights under USERRA shall notify the Administrator of the Participant's election, if any, to claim rights related to Reemployment from USERRA Leave within such time as required by USERRA.

**ARTICLE XVI
AMENDMENT AND TERMINATION**

16.01 **Amendment by the Board.** The Board shall have the right at any time to amend this Plan subject to grant of authority provided in the Retirement Code, namely, to determine the terms and provisions of this Plan not inconsistent with Part XXV, Retirement for State Employees and Officers, under Title 71 Pa. C.S., the IRC, including, but not limited to IRC § 401(a), and other applicable law. Unless the context indicates otherwise, any amendment to this

Plan is not applicable to determine the benefit accrued (and the extent to which such benefits are vested) by a Terminated Participant or former State Employee whose employment terminated before the effective date of such amendment, except where application of the amendment to the Terminated Participant or former State Employee is required by statute, regulation or other guidance of general applicability. Where the provisions of this Plan are ambiguous as to the application of an amendment to a Terminated Participant or former State Employee, the Board has the authority to make a final determination on the proper interpretation of this Plan subject to any appeal rights provided under Article XII.

16.02 **Termination of the Plan.** The Board hereby acknowledges that this Plan may be terminated pursuant to the lawful exercise of legislative and executive authority by the General Assembly and Governor of the Commonwealth of Pennsylvania. In the event of the termination of this Plan and to the extent required to constitute a governmental Plan within the meaning of IRC § 414(d) that is a qualified plan under IRC § 401(a), this Plan shall comply with the vesting requirements resulting from the application of IRC § 401(a)(4) and IRC § 401(a)(7) as in effect on September 1, 1974. For reference purposes, IRC § 401(a)(7) then provided:

A trust shall not constitute a qualified trust under this section unless the Plan of which such trust is a part provides that, upon its termination or upon complete discontinuance of contributions under the Plan, the rights of all employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the amounts credited to the employees' accounts are nonforfeitable.

ARTICLE XVII **MISCELLANEOUS**

17.01 **Exclusive Benefit.**

(a) **General Rule.** Except as provided under section 17.01(b) and section 17.01(c) and otherwise specifically permitted or required by applicable law no part of the assets of this Plan (including any corpus or income of the Trust or funds contributed thereto) may be used for, or diverted to, purposes other than the exclusive benefit of the Participants and the beneficiaries and Alternate Payees of the Participants, whether by operation of this Plan or the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means.

(b) **Mistake of Fact.** If an Employer makes a contribution under a mistake of fact, the Employer may demand repayment of such contribution at any time within one (1) year following the time of payment and the Trustee shall return such amount to the Employer upon its finding of a mistake of fact. Earnings of this Plan and Trust attributable to the contributions may not be returned to the Employer, but any losses attributable thereto must reduce the amount so returned.

(c) **Expenses.** All fees, costs and expenses of establishing and administering the Plan and the Trust and investing the assets of the Trust shall be borne by the Participants and paid from assessments against the balances of the Individual Investment Accounts as established

by the Administrator, except that the fees, costs and expenses of establishing and administering the Plan and the Trust shall be paid by the Commonwealth through annual appropriations.

Such expenses shall include, but not be limited to, any expenses incident to the functioning of a third party administrative services providers, or any person or persons retained or appointed by the Board (in its capacity as Administrator or Trustee) incident to the exercise of its duties under this Plan, including, but not limited to, fees of accountants, counsel, investment managers, and agents appointed for the purpose of assisting the Board (in its capacity as Administrator or Trustee) in carrying out the instructions of a Participant as to the directed investment of their Individual Investment Accounts and other specialists and their agents and other costs of administering this Plan. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Board (in its capacity as Administrator or Trustee) may charge to the Individual Investment Account of an individual Participant a reasonable charge to offset the cost of making a distribution.

If liquid assets of this Plan are insufficient to cover any expense that may be paid from this Plan and Trust, then assets of this Plan and Trust shall be liquidated to the extent necessary for such expenses. If any part of the assets of the Trust becomes subject to tax, all taxes incurred will be paid from the assets of the Trust. Until paid, the expenses shall constitute a liability of the Trust.

17.02 **Participant Rights.** This Plan and the Trust shall not be deemed to constitute a contract between any Employer and any Participant or any individual or to be a consideration or an inducement for the employment of any Participant or individual, and except as provided herein or the laws of the Commonwealth of Pennsylvania, give any Participant, individual or entity any legal or equitable right against an Employer, the Board, or the Trustee, including their respective officers, directors, employees, agents, representatives and volunteers. Nothing contained in this Plan or the Trust shall be deemed to give any Participant or individual the right to be retained in the service of any Employer or to interfere with the right of any Employer to discharge any Participant or individual at any time regardless of the effect which such discharge shall have upon the individual as a Participant in this Plan.

17.03 **Alienation of Benefits.**

(a) **General Rule.** Except as provided under this section, no interest in an Individual Investment Account, rights to receive or direct distributions or a benefit under this Plan of any Participant or the beneficiary or Alternate Payee of any Participant shall be subject in any manner to being commuted, sold, assigned, alienated, anticipated, mortgaged, pledged, hypothecated, encumbered, charged or otherwise transferred or conveyed or be liable for, or subject to, the debts, contracts, liabilities, engagements, torts, attachment or legal process of any Participant or the beneficiary or Alternate Payee of any Participant, nor shall it be subject to attachment or legal process for or against any of the foregoing. Any attempt to act in violation of this subsection (a) shall be void.

(b) **Exception for Forfeiture.** An interest in an Individual Investment Account, rights to receive or direct distributions or a benefit under this Plan shall be subject to forfeiture as provided in the Forfeiture Laws; provided, however, that the Accumulated

Mandatory Pickup Participant Contributions, Accumulated Catch-up Contributions, Accumulated Rollover Contributions, and Accumulated Voluntary Contributions standing to the credit of a Participant shall be available for the payment of fines and restitution as provided by law. Amounts in the Trust that have been ordered to be distributed to an Alternate Payee as the result of an equitable distribution of marital property as part of an Approved Domestic Relations Order entered before the date of the order or action in a court or other tribunal resulting in a forfeiture of a Participant's interest in this Plan and Trust shall not be subject to the Forfeiture Laws. Any Accumulated Employer Defined Contributions forfeited under the Forfeiture Laws or other applicable law shall be retained by the Trustees and used for the payment of expenses of this Plan.

(c) **Exception for Approved Domestic Relations Order.** An interest in an Individual Investment Account, rights to receive or direct distributions or a benefit under this Plan shall be subject to attachment in favor of an Alternate Payee under an Approved Domestic Relations Order.

(d) **Exception for Obligations to the Employer.** The Participant's interest in the Individual Investment Account shall be subject to offset with respect to any debt or other monetary obligation to the Employer authorized under section 5953 of the Retirement Code.

17.04 **Use of Electronic Media.** To the extent authorized by the Administrator, a Participant or the beneficiary or Alternate Payee of a Participant may use any electronic medium to make or provide any application, claim, beneficiary designation, election, notice, consent or waiver under this Plan.

17.05 **Notice to Members/Participants.** Notice by publication, including, but not limited to, newsletters, newspapers, forms, first class mail, letters, manuals and electronic notice, including, but not limited to, e-mail or publicly accessible Internet websites, distributed or made available to a Participant in a manner reasonably calculated to give actual notice of the provisions of the Retirement Code and this Plan that require notice to Participants shall be deemed sufficient notice for all purposes.

17.06 **Plan Corrections and Earnings Adjustments.**

(a) **General.** The Administrator may undertake such correction of Plan errors as the Administrator deems necessary, including, but not limited to, correction to preserve the tax qualification of this Plan under IRC § 401(a). Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan Document and operational failures under a method described in this Plan or under the IRS Employee Plans Compliance Resolution System or other applicable guidance promulgated by the Internal Revenue Service. The Administrator may require an Employer or the Employer may make if permitted by the Administrator, corrective contributions or make other corrections pursuant to this section regardless of whether this Plan otherwise permits such contribution source. In addition, this Plan is authorized to recover benefits from a Participant or the beneficiary or Alternate Payee of a Participant that have been distributed improperly.

(b) **Earnings Credit for Adjudications.** In the event that a Participant or Beneficiary is determined to be entitled to additional Mandatory Pickup Participant Contributions, Catch-up Contributions and/or Employer Defined Contributions as a result of: (1) the final disposition of an arbitration or grievance proceeding, (2) the order of any court and administrative tribunal, or (3) the a settlement by the parties of any complaint, action, lawsuit, or proceeding that could have resulted in such a final disposition or order; such Participant or Beneficiary's Account shall be credited with appropriate earnings attributable to such additional Mandatory Pickup Participant Contributions, Catch-up Contributions and Employer Defined Contributions. The Employer shall be responsible for the funding of such earnings.

(c) **Earnings Credit for Delinquent Investment.** In the event that Mandatory Pickup Participant Contributions, Catch-up Contributions made through salary deductions and/or Employer Defined Contributions are not remitted to the Trust in a timely manner as would allow for investment as required under Retirement Code § 5814(b), Participant and Beneficiary Accounts shall be credited with appropriate earnings attributable to such additional Mandatory Pickup Participant Contributions, Catch-up Contributions, and Employer Defined Contributions. The Employer shall be responsible for funding of such earnings.

(d) **Associated Fees.** The responsible Employer shall be assessed and responsible for any fees and/or expenses associated with the calculation and processing of earnings credits.

(e) **Other Corrections.** Except as specified in this section 17.06, there shall be no earnings credit with respect to any other corrective or delinquent contributions under the Plan.

17.07 **Waiver of Notice.** Any person entitled to a notice under this Plan may waive the right to receive such notice, to the extent such a waiver is not prohibited by applicable law.

17.08 **Evidence.** The Administrator may permit anyone required to give data, statements or other information relevant under the terms of this Plan or the administration thereof, to do so to the extent not prohibited under Constitutions of the United States or Pennsylvania, the Pennsylvania Administrative Agency Act, and the rules of administrative practice and procedure before the Administrator as provide under Article XII, by certificate, affidavit, document or other form from which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Board, acting as Administrator or Trustee and including its staff, is fully protected in acting and relying upon any evidence described under the immediately preceding sentence.

17.09 **Gender, Number and Tense.** Wherever any words are used in this Plan in the masculine, feminine or neutral gender, they shall be construed as though they were also used in another gender in all cases in which they would so apply; whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply; and whenever any words are used herein in the past or present tense, they shall be construed as though they were also used in the other form in all cases where they would so apply.

17.10 **Binding Effect.** This Plan, and all actions and decisions made hereunder, shall be binding upon all Participants and the beneficiaries and Alternate Payees of all Participants, and their heirs, administrators, successors and assigns.

17.11 **Severability of Provisions.** If any provision of this Plan shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions under this Plan shall be construed as if the illegal, invalid or unenforceable provisions has never been included in this Plan. If any provision of the Retirement Code is held to be illegal, invalid or unenforceable for any reason, any corresponding provision of this this Plan shall be amended or repealed as appropriate but the remaining provisions under this Plan shall remain in effect. The above notwithstanding, the application of this Plan to any person to whom it has been held invalid for any period of State Service shall be in a manner consistent with the provisions of section 413(2) of Act 5.

17.12 **Computation of Days for Documents with Filing Deadlines.** When computing the due date for a document with a filing deadline, the first day (the date of communication to the Participant) shall be excluded and the last day of the period shall be included. A “day” means a calendar day. If the due date for a required action falls on a Saturday or Sunday or on any day made a legal holiday on which the System’s business is closed, then the due date shall be extended to the next business day. For any document required to be filed with the Board or submitted in the administration of this Plan, the date of receipt and not the date of mailing shall control.

17.13 **Governing Law.** The provisions of this Plan shall be construed, administered, and enforced in accordance with the provisions of the applicable law of the Commonwealth of Pennsylvania and, to the extent applicable, Federal law. In the event of a conflict between the terms of the Plan Document and the Retirement Code, the Retirement Code shall prevail. The above notwithstanding, all conflicts of law shall be resolved in favor of maintaining the qualified status of this Plan under the IRC.

17.14 **References to Certain Federal Statutes.** A reference to the IRC or USERRA, including administrative regulations promulgated under the IRC or USERRA, shall include laws and regulations in effect on June 12, 2017, and amended, supplemented or supplanted on or after June 12, 2017.

17.15 **Construction, Board’s Discretion and Headings.**

(a) **Preservation of Qualified Plan Status.** This Plan and the Trust shall be interpreted consistent with and to preserve the tax qualification of this Plan under IRC § 401(a) and tax exemption of the Trust under IRC § 501(a) and also consistent with other applicable law. To the extent permissible under applicable law, any provision which a court (or other entity with binding authority to interpret this Plan) determines to be inconsistent with such construction and interpretation, is deemed severed and is of no force or effect and the remaining Plan terms shall remain in full force and effect. No provision of this Plan shall be construed to mean that the limitations on benefits or other requirements under the provisions of IRC § 401(a) or other applicable provisions of the IRC, as applicable to a governmental Plan, do not apply to the Participants in this Plan.

(b) **Usage of the Term Spouse.** When used in this Plan, the word “spouse” shall have the meaning given by applicable state law, provided however, for purposes of the IRC, when applicable, the word “spouse” means the individual to whom an individual is married for purposes of Federal tax law.

(c) **Usage of Terms Defined in Retirement Code.** Any term used in this Plan that is not defined in Article 1, but otherwise defined in the Retirement Code shall have the meaning as set forth in the Retirement Code.

(d) **The Administrator’s Discretion.** The Administrator has the authority to interpret and construe this Plan and governing law and to determine all questions arising in the administration, interpretation and application of this Plan. Any determination the Administrator makes under this Plan is final and binding upon any affected individual or entity subject to rights provided under Article XII.

(e) **Headings.** The headings and subheadings of this Plan have been inserted for convenience of reference and shall not be considered to control but may be used to aid in the construction hereof.

ARTICLE XVIII THE TRUST

18.01 Trust Declaration.

(a) **Establishment.** The Trust for this Plan is established and named the “State Employees’ Defined Contribution Trust” (“Trust”) pursuant to section 5801(b) of the Retirement Code. The purpose of the Trust is to be the entity through which the Trustees hold and invest the assets this Plan until distributed in accordance with the provisions of this Plan.

(b) **Intention to Qualify under IRC § 401(a).** This Trust is intended to constitute a qualified trust under IRC § 401(a) and be entitled to tax exemption under section 501(a) of the IRC. The provisions of the Trust, including this Article XVIII and the applicable provisions of this Plan, shall be construed and administered in accordance with the applicable provisions of the Retirement Code and to the extent required to constitute a qualified trust, IRC § 401(a).

(c) **Assets Held in Trust.** All of the assets of the Plan shall be held in trust for the exclusive benefit of the Plan’s Participants and their beneficiaries and defraying reasonable expenses of administering the Plan. The Trust shall accept and receive all sums of money paid to it from time to time pursuant to the terms of this Plan and shall hold, invest, reinvest, manage, and administer those monies and all increments, earnings, and income thereon as trust funds exclusively for such purposes. All of the assets of the Plan shall be held in a separate trust fund, as required by the Retirement Code.

18.02 Trustee Fiduciary Status. The Board as Trustee and the Board members as individual Trustees each stand in a fiduciary relationship to the Participants and their Beneficiaries regarding the investments and disbursements of any of the moneys of the Trust and shall not profit either directly or indirectly with respect thereto.

18.03 **Trust Fund.** The Trust shall consist of the Trust Fund consisting of contributions and assets otherwise transferred to the Trust in accordance with the provisions of the Retirement Code, other Pennsylvania law, and this Plan, together with all investment earnings thereon, less deductions for fees, costs, expenses, investment losses and distributions.

18.04 **Contributions.** All amounts contributed or transferred to this Plan shall become part of the Trust. The Trustee shall establish procedures for accepting contributions to the Trust and any limitations on cash, securities, or other property acceptable to the Trustee. Securities or property not so acceptable shall be converted into cash, and said cash transferred to the Trust and credited accordingly.

18.05 **Distributions.** Distributions from the Trust shall be made to such persons, at such times, and in such amounts as set forth in the provisions of this Plan; provided, however, that in no event shall the Trustee be under any obligation to make any payment other than from the funds in this Trust. The Trustee shall be fully protected in relying and acting upon notice, instruction, certification, or other document in writing that 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. Upon any such distribution, the amount of the payment shall no longer constitute a part of the Trust.

18.06 **Trust Powers.** In addition to the powers set forth in Article XIII, the Trustee shall have the power and duty to take all actions necessary or proper in carrying out the provisions of the Trust. Without limiting the generality of the foregoing, the Trustee shall have the following powers and duties:

(a) The Trustee may purchase or otherwise acquire property for the Trust, whether real or personal; hold it; and sell, convey, transfer, lease, or otherwise dispose of, and also grant options with respect to it. The Trustee may cause any securities or other property to be registered in the name of the "State Employees' Defined Contribution Plan," or in the name of one or more of the Trustee's nominees, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust;

(b) The Trustee, in carrying out the provisions of the Trust, may authorize one or more persons or any agent to negotiate, execute, or deliver any agreement or instrument or make any payment on behalf of the Trustee and may allocate among the individual Trustees or delegate to other persons all or such portion of the Trustee duties under the Trust, as the Trustee, in their sole discretion, shall decide;

(c) If any Distributee receives money to which such person was not entitled, the Trustee is authorized in its discretion to recover such money (plus interest at a rate of 4% compounded annually) from the Distributee or the Distributee's estate if applicable through one or more of the following: from the Distributee through any available legal process or remedy, from the Distributee through offset against other amounts not yet paid to the recipient, or from the Individual Investment Account from which the excess was taken to offset against amounts not yet paid.

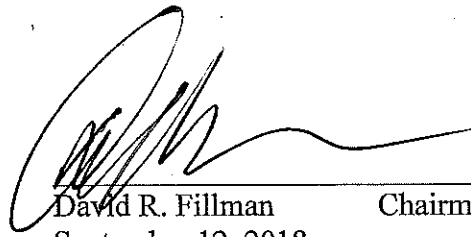
(d) If any Distributee receives a Distribution of less than that to which such person was entitled, the Trustee is authorized to make a corrective distribution to the Distributee or the Distributee's estate. Such distribution shall include reasonable earnings at the aggregate rate earned by the Plan but in no amount less than 0% per year and or greater than 4% per year.

(e) The Trustee shall be authorized and empowered to do all acts, whether or not expressly authorized herein that the Trustee may deem necessary or proper to protect and carry out the purpose of the Trust or to qualify the Plan under the applicable provisions of the IRC.

[SIGNATURE PAGE FOLLOWS]

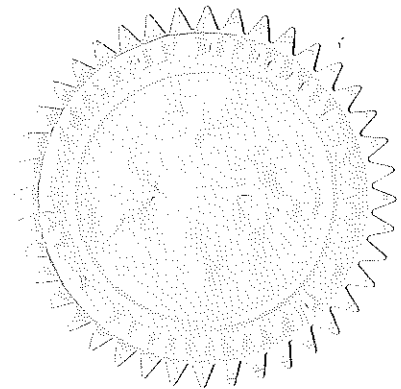
IN WITNESS WHEREOF, the Commonwealth of Pennsylvania State Employees' Retirement Board has caused this State Employee's Defined Contribution Plan and Trust to be executed, in accordance with its powers under the Retirement Code, on the date written below, to be effective as of January 1, 2019.

COMMONWEALTH OF PENNSYLVANIA
STATE EMPLOYEES' RETIREMENT BOARD
an agency of the
COMMONWEALTH OF PENNSYLVANIA



David R. Fillman Chairman
September 12, 2018

Seal:



SCHEDULE A
MANDATORY PICKUP PARTICIPANT CONTRIBUTION RATES FOR OPTIONAL
PARTICIPATION
(Section 2.01)

| Original Membership Class to Elected Membership Class | Contribution Rate* |
|---|--|
| A to A-5 | 0% |
| AA to A-5 | 1.25% |
| A-3 to A-5 | 1.25% |
| A-4 to A-5 | 4.3% |
| D-4 to A-5 | 2.5% |
| E-1 to A-5 | 5% if regular member contributions for such service would have been 10% 2.5% if regular member contributions for such service would have been 7.5% |
| E-2 to A-5 | 2.5% |
| A to A-6 | 1% |
| AA to A-6 | 2.25% |
| A-3 to A-6 | 2.25% |
| A-4 to A-6 | 5.3% |
| D-4 to A-6 | 3.5% |
| E-1 to A-6 | 6% if regular member contributions for such service would have been 10% 3.5% if regular member contributions for such service would have been 7.5% |
| E-2 to A-6 | 3.5% |
| A to DC-only | 5% |
| AA to DC-only | 6.25% |
| A-3 to DC-only | 6.25% |
| A-4 to DC-only | 9.3% |
| D-4 to DC-only | 7.5% |
| E-1 to DC-only | 10% if regular member contributions for such service would have been 10% 7.5% if regular member contributions for such service would have been 7.5% |
| E-2 to DC-only | 7.5% |

| | |
|--|--|
| <p>Any Membership Class to DC-only</p> | <p>If the Participant would have been making shared-risk member contributions if the election had not been made, then the Mandatory Pickup Participant Contributions shall be a percentage of Compensation greater than the amounts listed in this subsection equal to the shared-risk member contribution rate that would have been applicable. This percentage rate shall be subject to any subsequent changes in the shared-risk member contributions.</p> <p>If the Participant would have had regular member contributions adjusted by the shared-gain adjustment if the election had not been made, then the mandatory Pickup Participant Contributions shall be reduced by the same percentage of Compensation regular member contributions would have been reduced by the shared-gain adjustment. This percentage rate shall be subject to any subsequent changes in the shared-gain adjustment to regular member contributions.</p> |
|--|--|

*In addition to the standard contribution rate, if the Participant would have been making social security integration contributions if the election had not been made, then the mandatory pickup participant contributions on compensation for which social security integration contributions would have been made shall be 5% of Compensation in addition to the amounts listed in this subsection.

SCHEDULE B
EMPLOYERS SUBJECT TO PLAN

Administrative Office of Pennsylvania Courts
Bloomsburg University Community Activities
Board of Probation and Parole
Bucks County Community College
Bucks County Health Department
California University Student Association, Inc.
Capital Preservation Committee
Center for Rural Pennsylvania
Central Susquehanna Intermediate Unit
Chester County Health Department
Clarion Students' Association
Community College of Allegheny County
Community College of Philadelphia
Delaware County Community College
Delaware River Joint Toll Bridge Commission
Delaware River Port Authority
Delaware Valley Regional Planning Commission
Department of Aging
Department of Agriculture
Department of Banking and Securities
Department of Community & Economic Development
Department of Conservation and Natural Resources
Department of Corrections
Department of Drug and Alcohol Programs
Department of Education
Department of Environmental Protection
Department of General Services
Department of Health
Department of Human Services
Department of Labor and Industry
Department of Military and Veterans Affairs
Department of Revenue
Department of State
Department of the Auditor General
Department of Transportation
East Stroudsburg University Student Activity Association, Inc.
Edinboro University Services, Inc.
Environmental Hearing Board
Erie County Department of Health
Executive Offices
Fish and Boat Commission
Game Commission
Harrisburg Area Community College
Historical and Museum Commission
House Democratic Appropriations Committee

House of Representatives
House Republican Appropriations Committee
Independent Fiscal Office
Independent Regulatory Review Commission
Indiana University Student Co-op Association
Insurance Department
Joint Legislative Conservation Committee
Joint State Government Commission
Kutztown University Student Services, Inc.
Lancaster-Lebanon Intermediate Unit
Legislative Budget and Finance Committee
Legislative Data Processing Center
Legislative Reference Bureau
Lehigh Carbon Community College
Liquor Control Board
Local Government Commission
Luzerne County Community College
Mansfield College Community Services, Inc.
Milk Marketing Board
Millersville University Student Services, Inc.
Montgomery County Community College
Northampton Community College
Office of Attorney General
Office of Liquidations and Rehabilitations
Office of the Governor
Office of the Lieutenant Governor
Pennsylvania College of Technology
Pennsylvania Convention Center
Pennsylvania Emergency Management Agency
Pennsylvania Gaming Control Board
Pennsylvania Health Care Cost Containment Council
Pennsylvania Higher Education Assistance Agency
Pennsylvania Highlands Community College
Pennsylvania Housing Finance Agency
Pennsylvania Infrastructure Investment Authority
Pennsylvania Municipal Retirement System
Pennsylvania Port Authority
Pennsylvania State Employees' Retirement System
Pennsylvania State Police
Pennsylvania State Senate
Pennsylvania State University
Pennsylvania Turnpike Commission
Port Authority Transit Corporation
Public School Employees' Retirement System
Public Utility Commission
Reading Area Community College
Shippensburg University Student Services, Inc.
Slippery Rock Student Government Association, Inc.

State Civil Service Commission
State Ethics Commission
State Public School Building Authority
State System of Higher Education
Susquehanna River Basin Commission
Thaddeus Stevens College of Technology
Treasury Department
West Chester University Student Services, Inc.
Westmoreland County Community College

**SIXTH AMENDED AND RESTATED DEFERRED COMPENSATION PLAN FOR
OFFICERS AND EMPLOYEES OF THE
COMMONWEALTH OF PENNSYLVANIA**

*COMMONWEALTH OF PENNSYLVANIA SIXTH AMENDED AND RESTATED
DEFERRED COMPENSATION PLAN*

SIXTH AMENDED AND RESTATED DEFERRED COMPENSATION PLAN

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*COMMONWEALTH OF PENNSYLVANIA SIXTH AMENDED AND RESTATED
DEFERRED COMPENSATION PLAN*

1. **ESTABLISHMENT OF THE PLAN**

- 1.01 **Establishment of the Plan:** An eligible deferred compensation Plan is hereby established for Employees, pursuant to and in accordance with Act 81 of November 6, 1987 (amending P.L. 145, No. 99), as amended, [the "Enabling Statute"] and any other applicable State law, and in accordance with IRC § 457(b) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereto.
- 1.02 **Purpose of the Plan:** The purpose of the Plan is to provide eligible Employees with a convenient way to save on a regular and long-term basis and thereby help to supplement their retirement. Under the Plan, a designated amount of each Participant's Normal Compensation shall be withheld each pay period by the Employer and invested at the direction of the Participant. Under the Plan, Deferred Compensation is held by the Administrator in trust for the exclusive benefit of the Participants, their Alternate Payees and their Beneficiaries.
- 1.03 **No Modification of Employment Agreement:** Nothing in this Plan shall be deemed to constitute an employment contract or agreement between any Employee and the Employer, or to give any Employee the right to be retained in the employ of the Employer, nor shall anything in this Plan be construed to modify the terms of any employment contract or agreement between any Employee and the Employer or in any way obligate the Employer to continue the services of any Employee.
- 1.04 **No Right Other than Provided by Plan:** The establishment of the Plan shall not be construed as giving to any Participant, Alternate Payee, Beneficiary or any other person any legal or equitable right against the Employer or its representatives, except as expressly provided by the Plan.
- 1.05 **Plan is Binding:** This Plan, and all acts and decisions taken under it, are binding and conclusive, for all purposes, upon all interested persons and upon the heirs, executors, administrators, and successors of any and all such persons.
- 1.06 **Effective Date:** This Plan amends and restates any previous plan, and shall be effective as of June 9, 2021.

*COMMONWEALTH OF PENNSYLVANIA SIXTH AMENDED AND RESTATED
DEFERRED COMPENSATION PLAN*

2. **DEFINITIONS**

Any capitalized term not expressly defined below shall have the meaning ascribed to it in the provision where such term appears or as defined by the Code. Whenever a time frame is referenced such time frame may be longer or shorter as required or permitted by the Code or any other applicable law, but the Administrator shall give at least ten (10) days' notice (by public posting on its website or such other method reasonably calculated to convey such change) prior to the effective date of any change to such time frame. Whenever used in this Plan, the following terms shall have the respective meanings as set forth below:

- 2.01 **“Account”**. The bookkeeping account maintained for each Participant (or Alternate Payee or Beneficiary) which at all times shows: a) the amount of the Participant's Contributions; b) any amount designated as the Participant's Designated Roth Contributions; c) any amounts accepted as a Rollover; d) any Distributions to the Participant, Alternate Payee or Beneficiary; e) any in-plan rollover to designated Roth account; f) any investment income or loss; and g) any fees or expenses charged against the account.

The Administrator, in its sole discretion, may create or combine one or more separate sub-accounts (each a “sub-Account”) in maintaining a Participant's Account. Account may also refer to one or more of such sub-Accounts.

The value of a Participant's Account is based on the value of all applicable sub-Accounts under the Investment Accounts(s) in which the money in the Participant's Account is invested at any time.

A Participant, Alternate Payee or Beneficiary, as applicable, shall receive periodic Account reports in the form prescribed by the Administrator until a Distribution begins.

- 2.02 **“Administrative Service Agency”**. Any corporation or other organization selected by the Administrator to perform certain administration functions for the operation of the Plan.

- 2.03 **“Administrator”**. The Pennsylvania State Employees' Retirement Board, an independent administrative board of the Commonwealth of Pennsylvania, which has been directed to administer the Plan pursuant to and in accordance with the Enabling Statute.

Except as otherwise indicated, any reference in the Plan to the Administrator is deemed to also refer to the Administrative Service Agency to the extent of any delegation to it.

- 2.04 **“Alternate Payee”**. Any spouse or former spouse of a Participant who is recognized by a PADRO as having a right to receive all or a portion of the Deferred Compensation payable to the Participant. Any reference to Alternate Payee throughout the Plan incorporates by reference the possibility of the existence of multiple Alternate Payees.

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- 2.05 **“Beneficiary”**. The person or legal entity last validly designated in the Participation Agreement by the Participant to receive any undistributed Deferred Compensation payable upon the Participant's death. Any reference to Beneficiary throughout the Plan incorporates by reference the possibility of the existence of multiple Beneficiaries. If the Participant designates more than one Beneficiary for either a "primary" or "contingent" status, all Beneficiaries of that status shall have equal shares unless the Participant specifies otherwise. As of the Effective Date, the Participant cannot designate as a Beneficiary a class of persons and any such designation made on or after the Effective Date is ineffective for all purposes. If the Beneficiary designated by the Participant should predecease the Participant or die within 30 days of the Participant's death, or if a valid nomination of a Beneficiary is not in effect at the Participant's death, any money payable to a beneficiary shall be payable to the estate of the Participant.
- 2.06 **“Benefit Commencement Date”**. The date selected by the Participant, Alternate Payee, or the Beneficiary, or the "default" date that results from the payee's failure to make such an election, all as provided under Provision 7.
- 2.07 **“Code” or “IRC”**. The Internal Revenue Code of 1986, as amended, including any regulations or rulings under the Code. Any reference to Regulations is a reference to Treasury department regulations under the Code, unless otherwise specified. Where there is a conflict between the Code and Regulations, the Code shall prevail.
- Any reference to a section of the Code or Regulations shall be construed to include a reference to the corresponding provision of any successor thereto.
- 2.08 **“Compensation”**. All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar Year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar Year but for any compensation reduction election permitted under the Code, including but not limited to IRC §§ 125, 132(f), 401(k), 403(b), 408(a) or 457(b) (including an election to defer compensation under Provision 5). As permitted by Treasury regulations or other similar guidance, Compensation also includes accrued bona fide sick, vacation or other leave pay payable to a Participant.

For Plan Years after December 31, 2008, to the extent permitted by the applicable Code provisions and Treasury regulations, Compensation shall include pay received by a Participant from the Employer while performing Services in the Uniformed Services but only to the extent the pay does not exceed the amounts the Participant would have received if the Participant had continued to perform services for the employer rather than entering Services in the Uniformed Services

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2.09 **“Contributions”**. Amount of Normal Compensation deferred by the Participant in accordance with the Plan, including Designated Roth Contributions.

The amount of such Contributions shall be set in accordance with the limits imposed by the Code, the Enabling Statute, the provisions of the Plan, and the Participation Agreement. Contributions shall normally be deferred in accordance with the Participation Agreement; however, if necessary, the Administrator may conform the Participation Agreement to comply with the limits established in the Code, Enabling Statute or the provisions of the Plan. Contributions shall be made according to the payroll methods of and at such times as may be determined by the Employer.

2.10 **“Deferred Compensation”**. The amount of Contributions that the Participant elects to contribute in his or her Participation Agreement, including Designated Roth Contributions, adjusted for any gains or losses, and adjusted for, or subject to, the applicable provisions of the Plan.

2.11 **“Designated Roth Contribution”**. An elective deferral that is:

- a) Designated irrevocably by the Participant at the time of the deferred election as a Designated Roth Contribution that is being made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and
- b) Treated by the 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 deferred election.

2.12 **“Distribution”**. Any kind of distribution or the particular kind of distribution provided by the Plan, including, but not limited to:

- Retirement Distribution under Provision 7A
- Death Benefit Distribution under Provision 7B
- Unforeseeable Emergency Distribution under Provision 7C
- Voluntary In-Service Distribution under Provision 7E.

Any Distribution shall be paid as a cash payment(s) or as a transfer of ownership of the Investment Account(s) that is the applicable portion of the Account.

2.13 **“Employee”**. The individual, whether appointed, elected, salaried, or otherwise, who performs services for the Employer on a regular basis and where it is deemed that an

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Employer-Employee relationship exists. The State Employees' Retirement Board shall make the final determination of who is a Commonwealth Officer or an Employee.

- 2.14 **“Employer”**. The Commonwealth of Pennsylvania, including any agencies or departments, however designated, of the Commonwealth, as determined by the Administrator.
- 2.15 **“Includible Compensation”**. An Employee’s actual wages in box 1 of Form W-2 (or any successor form from the IRS for reporting personal income with a section for gross income) for a Year for services to the Employer, but subject to a maximum of \$200,000 (or any higher maximum as may apply under IRC § 401(a)(17)) and increased (up to the dollar maximum) by any compensation reduction election under the Code, including but not limited to IRC §§ 125, 132(f), 401(k), 403(b), 408(a) or 457(b) (including an election to defer Compensation under Provision 5). Includible Compensation shall be determined without regard to any community property laws.

Consistent with IRC § 457(e)(5), and solely for the purpose of determining the amount of Includible Compensation for the purpose of applying the deferral limit provided by Provision 5, Includible Compensation shall include the amount of cash wages paid as termination pay upon Severance from Employment on Account of unused leave during service for the Employer if the right to such payment is provided by a statute or regulation, collective bargaining agreement, or other bona fide wage policy of the Employer that is legally enforceable by the Participant to the extent that the payment is currently includible in the Participant's gross income for federal income tax purposes.

- 2.16 **“Investment Account”**. Each of the investment options made available for the purposes of the Plan as approved by the State Employees' Retirement Board.
- 2.17 **“Normal Compensation”**. The total amount of wages, salary, and overtime that would otherwise be payable by the Employer to the Employee in the absence of any agreement to defer compensation under this Plan, or under any other deferred compensation plan, but excluding any amounts described by the second paragraph of Provision 2.15.
- 2.18 **“Normal Retirement Age”**. The age elected by the Participant which may not be earlier than the earliest age at which the Participant has the right to retire without the consent of the Employer and to immediately receive unreduced retirement benefits under the Employer's basic retirement plan and which may not be later than the later of the date that the Participant attains age 70½, or the date of the Participant's actual Severance from Employment.

Unless otherwise stated or required by law, a Participant shall be deemed to elect as a Normal Retirement Age the third Year following the Year a Participant first makes a contribution in accordance with Provision 5.03.

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A Participant's election of a Normal Retirement Age under this provision shall be irrevocable once deferrals have been made utilizing the catch-up additional limitation under Provision 5. The Participant's Normal Retirement Age does not control his/her Benefit Commencement Date.

- 2.19 **“PADRO”**. A Plan Approved Domestic Relations Order issued pursuant to a state domestic relations law, which has been determined by the Administrator to meet the requirements of the Plan and has been issued by a court of competent jurisdiction pursuant to a state domestic relations law. Such order relates to the marital property rights of the spouse or former spouse of a Participant, including the right to receive all or a portion of the Deferred Compensation payable to the Participant in furtherance of the equitable distribution of marital assets.
- 2.20 **“Participant”**. Each Employee or former Employee who has Deferred Compensation under the Plan and who has not yet received all of the payments of Deferred Compensation to which he/she may be entitled under the Plan.
- 2.21 **“Participation Agreement”**. The agreement in the form(s) prescribed by the Administrator, as amended from time to time, entered into by and between the Employee and the Employer through the Administrator, under which the eligible Employee elects to participate in the Plan, and the Employee and the Employer agree to defer an amount of the Employee’s Compensation according to the provisions of the Plan. The Participation Agreement may be amended from time to time in accordance with the provisions of the Plan.
- 2.22 **“Payout Option”**. Except as limited below, any of the annuity options, income options, settlement options or other options for payment that are available under the applicable Investment Account(s) held under the Plan, or that may otherwise be made available by the Administrator on a uniform basis to all payees in similar circumstances. The Administrator shall not permit the use of any payout option that is based on gender-distinct actuarial tables or that otherwise unlawfully discriminates against any person. The Administrator shall not permit the Participant, Alternate Payee or Beneficiary to elect any Payout Option that, at the time the Distribution begins, does not satisfy the provisions of the Plan, including the applicable requirements of IRC § 457(d)(2) and IRC § 401(a)(9).
- 2.23 **“Permitted Plan”**. A plan permitted by the Code to accept rollovers from a qualified retirement plan, IRA, 403(b), 401(k), or a deferred compensation plan described in IRC § 457(b).
- 2.24 **“Plan”**. This plan, established and maintained by the State Employees' Retirement Board, pursuant to and in accordance with the Enabling Statute. The Plan may also be referred to as the Commonwealth of Pennsylvania Deferred Compensation Program.

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- 2.25 **“Rollover Contributions”**. Any amount paid or distributed out of a Permitted Plan to the individual for whose benefit the Account or annuity is maintained if the entire amount received is paid into a Permitted Plan for the benefit of such individual not later than the sixtieth (60th) day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income.
- 2.26 **“Roth Account”**. An Account, together with any subaccounts as contemplated herein, containing Designated Roth Contributions, Rollover pursuant to Provision 7.12, or proceeds from such contributions or rollovers.
- 2.27 **“Segregated Account”**. An Account or portion thereof set apart for a Beneficiary upon the death of the Participant or for an Alternate Payee pursuant to a PADRO.
- 2.28 **“Service in the Uniformed Services”**. Consistent with 38 U.S.C. § 4303(13), the performance of duty on a voluntary or involuntary basis in a Uniformed Service under competent authority include active duty, active duty for training, initial active duty training, inactive duty training, full-time National Guard duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty. No period of Service in the Uniformed Services shall be acknowledged for purposes of the Plan unless a) the Participant seeking recognition of the period of Service in the Uniformed Services is eligible for reemployment in compliance with 38 U.S.C. § 4304; b) the Participant has applied for reemployment in compliance with 38 U.S.C. § 4312; and c) the Participant has furnished to the Plan Administrator satisfactory documentation concerning Service in the Uniformed Services as provided for by 38 U.S.C. § 4312(e)(3)(B).
- 2.29 **“Severance from Employment”**. The termination of the Participant’s employment with the Employer, including but not limited to death or retirement, as determined by the Administrator and within the meaning of IRC § 402(e)(4)(D)(i)(3). Severance from Employment does not occur if an Employee transfers between employers or returns to the same employer within two (2) weeks after the last day of earned compensation. An Employee whose employment is interrupted by qualified military service under IRC § 414(u) shall be deemed severed from employment until such time as he or she is reemployed following the term of duty. All other Employees shall be deemed to have severed their employment with the Employer for purposes of this Plan when both parties consider the employment relationship to have terminated and neither party anticipates any future employment of the Employee by the Employer. In the case of a Participant who is an independent contractor, Severance from Employment shall be deemed to have occurred when the Participant’s contract for services has completely expired and terminated, there is no foreseeable possibility that the Employer shall renew the contract or enter into a new

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contract for services to be performed by the Participant, and it is not anticipated that the Participant shall become an Employee of the Employer.

In the case of a Participant performing services for Employer under contract, where it has been deemed that an employment relationship exists, Severance from Employment shall be deemed to have occurred when the Participant's contract (or all contracts) under which services are performed has completely expired or terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will otherwise become an Employee of the Employer. An expiration or termination of a contractual relationship that would not be construed as a good faith and complete termination of such contractual relationship within the meaning of Regulations § 1.457-2(h)(3) shall not be a Severance from Employment.

- 2.30 **“Standard Rate of Compensation”**. Consistent with IRC § 414(u)(7), either: a) the rate of pay the Participant would have received from Employer but for an absence due to Service in the Uniformed Services during the period; or b) if the Employer determines that the rate of pay the Participant would have received during the period of the absence cannot be determined with reasonable certainty, the rate representing the average rate of pay for the months actually worked by the Participant.
- 2.31 **“Unforeseeable Emergency”**. An unforeseeable emergency means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant, a spouse or dependent of the Participant (as defined by IRC § 152(a)), the Participant’s Beneficiary, or a spouse or dependent of Participant’s Beneficiary, loss of the Participant's property due to casualty, or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant. As defined by the Internal Revenue Service, and by way of example, the need to send the Participant's child to college or the desire to purchase a home is not considered an Unforeseeable Emergency. The determination as to whether an Unforeseeable Emergency exists is based on the facts of each individual case in accordance with the Code. For purposes of this definition, any such Beneficiary designated in a valid change of beneficiary form must be so designated by the Participant as the Participant’s Beneficiary no less than thirty (30) days prior to when the Unforeseeable Emergency first arises for this definition to apply to the Participant’s Beneficiary, or a spouse or dependent of Participant’s Beneficiary.
- 2.32 **“Uniformed Service”**. Consistent with 38 U.S.C. § 4303(16), any of the armed forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

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- 2.33 **“Year”**. The calendar year. For the purposes of administering the Plan, the Employer and the Administrator and the Administrative Service Agency shall be entitled to rely on the assumption that a Participant's taxable year is the calendar year, unless the Participant gives written notice specifying his/her taxable year.

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3. **PLAN ADMINISTRATION**

- 3.01 **Responsibility for Administration.** The Administrator, acting as the legal administrator of the Plan, and acting on behalf of the Employer, is empowered to do all things necessary or advisable to ensure the proper, efficient, and lawful administration of the Plan. Notwithstanding the generality of the foregoing, the Administrator is specifically empowered to enter into agreements to provide certain investment, marketing, service, and administrative functions that may be necessary or desirable for the operation of the Plan. These administration functions include, but are not limited to, the enrollment of Employees as Participants, the maintenance of Accounts and other records, payment of Plan approved fees, interpretation of the provisions of the Plan, the preparation of periodic reports to Participants, Alternate Payees, and Beneficiaries and the distribution of Deferred Compensation to Participants, Alternate Payees and Beneficiaries. The Administrator may designate the Administrative Service Agency, or any other person(s) or organization(s) to assist in the administration of the Plan. Any delegation shall be set forth in writing and may be revoked at any time.
- 3.02 **Responsibility of Administrative Service Agency.** Any delegation agreement with the Employer or the Administrator and any services shall at all times be subject to the general supervision of the Administrator and/or the Employer. Notwithstanding any delegation of responsibility by the Administrator to the Administrative Service Agency, the Administrator shall have the power to decide and govern all matters that may affect the status of the Plan under the Code. The Administrator has authority to control and manage the operation of the Plan.
- 3.03 **Appeals.** The Administrator shall have general authority to decide all matters under the Plan. Any decisions of the Administrative Service Agency to the extent of any delegation may be appealed to the Administrator. Any appeal of a decision by the Administrator shall go through the appeal process established by the Administrator.
- 3.03.1 **Determinations to be Fairly Made.** Any determination required or permitted to be made for the purposes of the Plan by the Administrator or the Employer shall be uniformly and consistently made according to reasonable procedures established by the Administrator.
- 3.03.2 **Matters to be Determined.** Determinations may include, but are not limited to, any determination as to whether an Employee is eligible to participate in the Plan, the amount of a Participant's Compensation, the amount of Contributions to be made, whether an amount of Contributions exceeds the limitations prescribed by the Plan, whether a Participant has incurred a hardship, whether a Participant has a Severance from Employment, whether a Beneficiary designation is valid or effective, and whether the claimant is the proper Beneficiary.

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3.04 **All Necessary Powers.** The Administrator shall have such powers as may be necessary or advisable so as to discharge its duties under the Plan, including but not limited to:

- a) construing and interpreting the Plan, deciding all questions of eligibility, and determining the amount and time and payment of any Contributions or Distributions under the Plan;
- b) prescribing rules and procedures consistent with the provisions of the Plan to be followed in making Contributions, applying for Distributions, asserting any rights or privileges under the Plan, or to effectuate any provision of the Plan; provided however, that any rules and procedures shall be uniformly and consistently applied to persons in similar circumstances;
- c) receiving from the Administrative Service Agency or from a Participant, Alternate Payee or Beneficiary, any information which may be necessary or desirable for the administration of the Plan;
- d) performing any acts which may be necessary or advisable to perform its duties under the Plan so as to comply with any provision of the Code;
- e) assisting any Participant, Alternate Payee or Beneficiary regarding his/her rights and responsibilities under the Plan;
- f) holding any amounts, property, rights, or investments under the Plan in trust for the exclusive benefit of Participants, their Alternate Payees and their Beneficiaries in accordance with Provision 6.01.
- g) withholding or causing to be withheld from any amounts distributed pursuant to a PADRO all federal, state, city or other taxes as shall be required pursuant to any law or governmental ruling or regulation, including but not limited to Treasury Regulations.

3.05 **Administration Costs.** Consistent with the provisions of the Enabling Statute, the Employer shall not incur any expense in the operation and administration of the Plan other than its obligations to make Employee payroll deductions for deferral of compensation as provided by the Plan. The Plan shall make all necessary and reasonable charges against and from the Accounts for any other expenses for the administration of the Plan. Beginning July 1, 2021, such charges may include, but shall not be limited to, the following, as adjusted by the Administrator from time-to-time:

3.05.1. **Administrator's Fees.** The Plan shall deduct a monthly flat fee and a monthly asset-based fee from the Account of each Participant whose Account balance exceeds \$5,000 as of the date established by the Administrator. The flat fee shall be \$1. The asset-based fee shall be 1/12 of 2 basis points of the Account balance as of the date established by the Administrator, provided however, that no Participant's total asset-based fee shall exceed \$50 annually. If 2 basis points of a Participant's Account exceeds the maximum fee, the Plan shall deduct a monthly fee equal to a prorated portion of the maximum fee in lieu of another asset-based fee.

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- 3.05.2. **Administrative Service Agency's Fee.** The Plan shall deduct a monthly Administrative Service Agency fee of \$4.65 from the Account of each Participant.
- 3.06. **Fee Policy.** The Administrator shall establish and comply with a policy that requires the periodic review of fees for administration costs and the necessary adjustment of such fees.

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4. **PARTICIPATION IN THE PLAN**

- 4.01 **Enrollment.** An Employee may become a Participant by entering into a Participation Agreement. At the time of entering into or amending a Participation Agreement, a Participant must agree to defer at least the minimum amount as may be provided by the Enabling Statute and prescribed by the Administrator.
- 4.02 **Amendment of Participation Agreement.** A Participant may amend an executed Participation Agreement to change the amount or type of Contribution, the designation of investment(s), and/or the designated Beneficiary. A change in the amount or type of Contribution shall be effective on the pay date designated by the Participant, provided that the Administrative Service Agency or Employer, prior to the beginning of the month on which the Participant designates the change(s) to be effective, receives an amended Participation Agreement. If the request is to change the allocation of how future Contributions are invested, such change will take effect on the first pay date after receipt of the request by the Administrative Service Agency. Consistent with the Enabling Statute, the Administrator may establish reasonable rules limiting the timing and frequency of Contributions or investment changes. A Participant may at any time amend the Participation Agreement to change the designated Beneficiary and such amendment shall become effective when received by the Administrator or Administrative Service Agency.
- 4.03 **Suspension of Contributions.** A Participant may at any time suspend Contributions by executing and delivering an amended Participation Agreement, and thereby be restored to Normal Compensation.
- 4.03.1 **Suspension of Contributions Due to Bankruptcy.** If a Participant files for bankruptcy, suspension of Contributions must occur. A Participant must notify the Administrator within thirty days of filing for bankruptcy. A Participant may only recommence Contributions upon the entry of a dismissal or discharge order.
- 4.03.2 **Suspension of Contributions Due to Unforeseeable Emergency Distribution.** If a Participant files for an Unforeseeable Emergency Distribution, suspension of Contributions must occur. A Participant may only recommence Contributions after six months beyond the date of the Unforeseeable Emergency Distribution.
- 4.04 **Recommencement of Contributions.** A Participant who has suspended Contributions may again resume Contributions by entering into an amended Participation Agreement in accordance with Provision 4.02 with respect to Compensation not yet earned. Any Participant who has received a Voluntary In-Service Distribution and subsequently recommences Contributions into a new Account will not be permitted to elect a Voluntary In-Service Distribution with regard to such new Account.

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- 4.05 **Designated Roth Contributions.** Each Participant may make Designated Roth Contributions; provided, however, that a Participant shall not make a Designated Roth Contribution to the Plan for any Year to the extent such Designated Roth Contributions would exceed the limitations as defined in Provision 5.

The Plan will accept elective deferrals designated as Designated Roth Contributions made on behalf of Participants. A Participant's Designated Roth Contributions will be allocated to a Roth Account maintained for such deferrals. The Plan will maintain a record of the amount of Designated Roth Contributions in each Participant's Roth Account. Unless specifically stated otherwise, designated Roth Contributions will be treated as Elective Deferrals for all purposes under the Plan.

Contributions and withdrawals of Designated Roth Contributions will be credited and debited to the Roth Account maintained for each Participant. Gains, losses and other credits or charges will be separately allocated on a reasonable and consistent basis to each Participant's Roth Account and the Participant's other accounts under the Plan.

No contributions other than Designated Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Account except as provided in Provision 7.12 or unless otherwise authorized at law.

- 4.06 **Leave of Absence.** Contributions may continue under the Plan with respect to a Participant who is on an approved leave of absence from the Employer, with compensation.

If a Participant is absent from work on an approved leave of absence, without compensation, the Participation Agreement shall remain in effect and Contributions will continue in accordance with the Participation Agreement when the Participant returns to work.

- 4.07 **Deferral Date.** Contributions will occur for any calendar month only if a Participation Agreement providing for the deferral has been entered into before the beginning of the month, and further provided that the month is not earlier than the first calendar month which begins at least thirty-one (31) days after the execution of the Participation Agreement.

- 4.08 **Amendment of Participation Agreement by Employer.** The Employer shall have the right to amend the Participation Agreement to the extent that the Administrator or the Administrative Service Agency reasonably believes necessary to conform to the Plan and law.

- 4.09 **Information to be Provided by the Participant.** Each Employee enrolling in the Plan shall provide to the Administrator or to the Administrative Service Agency at the time of initial enrollment, and later if there are any changes, any information required by the Administrator or by the Administrative Service Agency, including, without limitation,

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whether he/she is a participant in any other deferred compensation plan organized in accordance with IRC § 457(b) or under any other plan or arrangement that permits elective deferrals within the meaning of IRC § 457(c). If an Employee fails to provide any information deemed necessary or advisable by the Administrator or by the Administrative Service Agency, such Employee may be denied the right to participate in the Plan at the determination of the Administrator or of the Administrative Service Agency.

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5. **LIMITATIONS ON DEFERRALS**

- 5.01 **Normal Limitation.** Except as otherwise provided by Provision 5, the maximum amount deferred for any Participant for any taxable Year of the Participant, including any amount that is treated as deferred under the Plan according to IRC § 457(c) and including any Designated Roth Contributions, shall not exceed the lesser of: a) the maximum dollar amount specified by IRC § 457(b)(2)(A); or b) one hundred (100) percent of the Participant's Includible Compensation. Consistent with IRC § 457(e)(14), the deferral restrictions contained in the provision shall not apply to any qualified excess benefit arrangement as defined by IRC § 415(m)(3).
- 5.02 **Age 50 Catch-up.** A Participant who will attain age fifty (50) or more by the end of the calendar Year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals for the Year. The maximum dollar amount of the age 50 catch-up Annual Deferrals for a Year is determined by, and is subject to, the requirements of IRC § 414(v).
- 5.03 **Special 457 Catch-up.** In each of the last three (3) calendar Years ending before the Year in which the Participant attains Normal Retirement Age, and if the amount determined under this Provision exceeds the amount computed under Provision 5.01 or 5.02, then the Annual Deferral limit under this Provision shall be the lesser of:
- a) an amount equal to two (2) times the Provision 5.01 applicable dollar limit for such Year; or
 - b) the sum of:
 - 1) An amount equal to the aggregate Provision 5.01 limit for the current Year plus each prior calendar Year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus the aggregate amount of Compensation that the Participant deferred under the Plan during such Years, and
 - 2) An amount equal to the aggregate limit referred to in IRC § 457(b)(2) for each prior calendar Year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to Provisions 5.02 and 5.03), minus the aggregate contributions to Pre-2002 Coordination Plans for such Years.

However, in no event can the deferred amount be more than the Participant's Compensation for such Years.

For purposes of this Provision 5.03, a Participant's Includible Compensation for the current taxable Year shall be deemed to include any Contributions for the taxable Year in excess of the amount permitted under the normal limitation. The Participant's Includible

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Compensation for any prior taxable Year shall be deemed to exclude any amount that could have been deferred under the normal limitation for such prior taxable Year.

- 5.04 **Coordination of Age 50 Catch-up with Special 457 Catch-up.** The age 50 catch-up described in Provision 5.02 does not apply for any taxable Year for which a higher limitation applies under the special 457 catch-up described in Provision 5.03. A Participant who is eligible for the age 50 catch-up described in Provision 5.02 for a Plan Year and for whom the Plan Year is also one of the Participant's last three (3) taxable Years ending before the Participant attains Normal Retirement Age is eligible for the larger of:
- a) The basic annual limitation described in Provision 5.01 and the age 50 catch-up described in Provision 5.02, or
 - b) The basic annual limitation described in Provision 5.01 and the special 457 catch-up described in Provision 5.03.
- 5.05 **Contributions on Account of Prior Service in the Uniformed Services.** Consistent with 38 U.S.C. § 4318 and IRC § 414(u), when a Participant is reemployed with Employer after Service in the Uniformed Services, the Participant may make contributions to the Participant's Account (if the Participant has not already done so while engaged in Service in the Uniform Services) in the total amount that would have been permitted under Provision 5.01 if the Participant had been steadily employed in the position previously held with Employer at a Standard Rate of Compensation throughout the period of Service in the Uniformed Services. Contributions made in accordance with this Provision will not reduce the amount the Participant would otherwise be permitted to contribute under Provision 5.01 for any taxable Year subsequent to reemployment, except that no more than the amount permitted under the Normal Limitation in Provision 5.01 shall be permitted for any one calendar Year. A Participant shall only be permitted to make contributions under this Provision during the period beginning on the date of reemployment and extending for the lesser of: a) three times the period of the Participant's immediately preceding period of Service in the Uniformed Services; or b) five Years. This Provision is expressly designed to give effect to the rights provided by IRC § 414(u) and nothing in this Provision or any other provision shall be construed to provide rights in addition to those provided by IRC § 414(u). This Provision shall apply to reemployment on or after December 12, 1994.
- 5.06 **Eligible Rollover Contributions to Plan.** The Administrator will accept and credit as Contributions to a Participant's Account the amount rolled over from another Permitted Plan, provided that the other plan permits the Rollover.
- 5.06.1 The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with IRC § 402 and to confirm that such plan is an eligible retirement plan within the meaning of IRC § 402(c)(8)(B).

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5.06.2 For purposes of this Provision, an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of ten (10) Years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the Employee, (3) any deemed distribution under the provisions of IRC § 72(p), (4) the portion of any distribution that is not includable in gross income, (5) any distribution of excess deferrals or (6) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under IRC § 401(a)(9). In addition, an eligible retirement plan means an individual retirement Account described in IRC § 408(a), an individual retirement annuity described in IRC § 408(b), a qualified trust described in IRC § 401(a), an annuity plan described in IRC §§ 403(a) or 403(b), or an eligible governmental plan described in IRC § 457(b), that accepts the eligible rollover distribution.

5.06.3 The Plan shall establish and maintain for the Participant a separate sub-Account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under IRC § 457(b). In addition, the Plan shall establish and maintain for the Participant a separate sub-Account for any eligible rollover distribution paid to the Plan from any eligible governmental plan under IRC § 457(b).

Any Rollover Contribution shall not be treated as Contributions subject to the limitations of Provision 5.01. However, the amount of Contributions during the Participant's taxable Year in which the Rollover Contribution occurred shall be treated as Contributions subject to the limitations of Provision 5.01. The amount of any Contributions under the plan from which the Rollover is made shall be taken into Account in computing the catch-up limitation under Provision 5.02 to the extent required by Provision 5.02.

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6. INVESTMENTS AND ACCOUNTS

- 6.01 **Account Assets Held in Trust.** Notwithstanding any contrary provision of the Plan, in accordance with IRC § 457(g), all amounts of Contributions pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants, Alternate Payees and Beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of Pennsylvania. All amounts of compensation deferred under the Plan shall be transferred to a trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the Accounts of Participants.
- 6.02 **Administrator to Be Trustee.** The Administrator shall be the Trustee under any trust established pursuant to Provision 6.01.
- 6.03 **Direction of Investments.** During the Participant's life, the Participant shall direct the investment of his or her Account, subject to the Plan rules. After the Participant's death or after a PADRO is effective, the Beneficiary or Alternate Payee shall direct the investment of the Account, or of his or her Segregated Account. Notwithstanding any other provision of the Plan, during any period when a Segregated Account is created and the corresponding interest in the trust fund is segregated on behalf of an Alternate Payee pursuant to a PADRO as provided in Provision 7.20, the Alternate Payee may be entitled to direct the investment of such interest in accordance with this Provision as if he or she were the Participant to the extent provided in such order. In the event that an Alternate Payee fails to specify an investment direction, such Alternate Payee's interest in the trust fund shall be invested in the same manner as the relevant Participant's Plan benefit as of the date of creation of the Segregated Account. The rights of each Participant, and where applicable each Beneficiary or Alternate Payee, with regard to the exercise of investment direction are subject to the requirements of: a) the Code; b) other applicable law; c) the Plan; and d) the administrative procedures developed by the Administrator.
- 6.04 **Liability.** The payments to be provided under the Plan are based upon the amounts deferred and the investment results achieved by the applicable investment(s). In no case shall the Employer's liability to pay Deferred Compensation to a Participant, an Alternate Payee or a Beneficiary under the Plan exceed the value of payments due under the investments acquired through the investment of the Participant's Contributions and credited to the Participant's Account (whether or not payable to a Beneficiary) or to the Alternate Payee's Segregated Account, whichever the case may be, after deducting any charges as provided by Provision 3.05 and after deducting any charges assessed according to the provisions of the applicable investment contract(s). Consistent with the provisions of the Enabling Statute, neither the Employer nor the Administrator shall be liable for losses arising out of the investment performance of any investments acquired under the Plan. Any action by the

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Employer or the Administrator in approving any investment contract shall not be construed as an endorsement of any investment contract, nor shall it be considered to attest to the financial soundness or the suitability of any investment for any purpose. Notwithstanding any other provision of the Plan, the Employer shall not be liable to any Participant or Alternate Payee or Beneficiary for any mistakes or errors in the making or retaining of any investments, nor for any loss resulting from or arising out of investing or failing to invest any Contributions.

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7. **DISTRIBUTION OF DEFERRED COMPENSATION**

A. **RETIREMENT DISTRIBUTION**

7.01 **Retirement Distribution.** Upon his/her Severance from Employment, the Participant is entitled to receive his/her Account under any Payout Option that satisfies the provisions of the Plan.

7.02 **Election of Benefit Commencement Date.** A Participant or Alternate Payee who has elected to receive payment in accordance with any Payout Option and who wishes to revoke that Payout Option, either before or after his or her Account enters distribution status, shall not be prohibited from doing so, provided such revocation complies with the requirements of the Code and the terms of the implicated Investment Accounts.

At the time prescribed for the election of his/her Payout Option, the Participant or Alternate Payee may elect whether or not to recalculate life expectancy(s) to the extent permitted by Regulations under IRC § 401(a)(9)(D).

7.03 **Required Beginning Date.** Consistent with the requirements of IRC § 401(a)(9)(C), a Retirement Distribution shall begin not later than April 1 of the Year following the Year during which the Participant attains age 70½, or following the Year during which the Participant has a Severance from Employment, whichever occurs later (or the other date required or any other date permitted or required by Regulations under IRC § 401(a)(9)).

7.04 **Payout Option Conforming to Code.** Any Retirement Distribution shall be made according to a Payout Option that conforms to the requirements of IRC § 401(a)(9).

B. **DEATH BENEFIT DISTRIBUTION**

7.05 **Death Benefit Distribution.** Upon the Participant's death, before a Distribution has begun under Provision 7.01 (or upon the "primary" Beneficiary's death, before a Distribution to him/her has begun), each Beneficiary is entitled to receive his/her/its separate Account of the Participant's Account under any Payout Option that satisfies the provisions of the Plan except as limited by Provision 7.08.

7.06 **Election of Benefit Commencement Date.** A Beneficiary who has elected to receive payment in accordance with any Payout Option and who wishes to revoke that Payout Option, either before or after the affected Participant's Account enters distribution status, shall not be prohibited from doing so, provided such revocation complies with the requirements of the Code and the terms of the implicated Investment Accounts.

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7.07 **Required Beginning Date and Distribution Amounts.** Any Death Benefit Distribution shall satisfy the applicable requirement provided in Provisions 7.07.1 and 7.07.2.

7.07.1 If the Beneficiary is the surviving spouse, the Distribution shall begin not later than the last day of the Year after the Year in which the Participant would have attained age 70½ (or any later date that may be permitted by Regulations under IRC § 401(a)(9)), and the entire Account shall be distributed - in accordance with Regulations under IRC § 401(a)(9) - over the life or over a period not extending beyond the life expectancy of the spouse.

7.07.2 If the Beneficiary is not the surviving spouse, either:

- a) the entire Account shall be distributed - in accordance with Regulations under IRC § 401(a)(9) - over a period not to exceed 5 years beyond the date of Participant's death and not extending beyond the life expectancy of the Beneficiary; or
- b) if the Beneficiary begins receiving distributions not later than one year after the date of Participant's death, the Beneficiary may receive distributions over the entire life expectancy of such Beneficiary.

7.08 **Death or Absence of Beneficiary.** If the Beneficiary designated by the Participant should predecease him or die within thirty days of his death, or if a valid nomination of a Beneficiary is not in effect at his death, any money payable to a beneficiary shall be payable to the estate of the Participant.

C. UNFORESEEABLE EMERGENCY DISTRIBUTION

7.09 **Unforeseeable Emergency Distribution Conditions.** If the Participant, Participant's spouse, Participant's dependent, Participant's Beneficiary, or a spouse or dependent of Participant's Beneficiary, is faced before Participant's Severance from Employment with an Unforeseeable Emergency, the Participant is entitled to receive a Distribution (as a cash lump sum) of the amount determined by the Administrator to be the amount that is reasonably needed to satisfy the Unforeseeable Emergency, subject to the restrictions of Provision 7.10. For purposes of this definition, any such Beneficiary designated in a valid change of beneficiary form must be so designated by the Participant as the Participant's Beneficiary no less than 30 days prior to when the Unforeseeable Emergency first arises for this definition to apply to the Participant's Beneficiary, or a spouse or dependent of participant's Beneficiary.

7.10 **Denial of Unforeseeable Emergency Distribution.** An Unforeseeable Emergency Distribution shall not be paid to the extent that the financial hardship is or may be relieved through reimbursement or compensation by insurance or otherwise, by borrowing from

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commercial sources on reasonable commercial terms to the extent that this borrowing would not itself cause a severe financial hardship, by cessation of deferrals under the Plan, or by liquidation of the Participant's other assets (including the assets of the Participant's Spouse and minor children that are reasonably available to the Participant) to the extent that this liquidation would not itself cause severe financial hardship.

D. ROLLOVER AND TRANSFER

- 7.11 **Rollover of Deferred Compensation to Another Permitted Plan.** Consistent with IRC § 457(e)(16), a Participant or Beneficiary may elect, in the form prescribed by the Administrator, to roll over his/her entire Account to another Permitted Plan, provided that the Administrator is satisfied that the other plan will accept the transferred amount. If a Participant elects to roll over his or her entire Account in accordance with this Provision, the Participant shall have no further rights in the Plan.
- 7.12 **In-Plan Rollover to Roth Account.** Subject to the delivery of a written receipt and release as described below, at any time, a Participant, a Beneficiary who is a Participant's Surviving Spouse or a spousal Alternate Payee may elect to have any amount not otherwise distributable under the plan transferred to a Designated Roth Account. No such transfer shall be subject to voluntary withholding. Any amounts transferred will be included in gross income as if the transfer had been made to such Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee (together "Recipients") provided, however, that the Administrative Service Agency has first received a written receipt and release, as provided for in Section 8.08, from said Recipients that such transferred amounts will be included in gross income. After a Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee has made an in-Plan rollover into a Roth Account, such Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee may elect to take distributions from such Account in accordance with any of the distribution options set forth in Provision 7. Such provisions shall be administered in accordance with procedures established by the Administrative Service Agency and shall be interpreted and administered in accordance with and subject to Section 402A(c)(4)(E) of the Code and any rules, regulations or other guidance issued by the Internal Revenue Service in relation thereto.
- 7.13 **Transfer of Deferred Compensation to purchase service credit in State Employees' Retirement System.** A Participant may elect to transfer a portion of his or her Account, but not including any amount contained in any Roth Account, sufficient to make a lump sum purchase of service credits in the State Employees' Retirement System. Prior to the transfer, the Participant must present evidence to the Plan Administrator that such credits have been certified as available for purchase.

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E. VOLUNTARY IN-SERVICE DISTRIBUTION

- 7.14 **Voluntary In-Service Distribution.** A Participant who is an active Employee shall receive a distribution of the total amount payable to the Participant under the Plan if the following requirements are met:
- a) the total amount payable to the Participant under the Plan does not exceed \$5,000 (or the dollar limit under IRC § 411(a)(11), if greater);
 - b) the Participant has not previously received a distribution under this Provision;
 - c) no amount has been deferred under the Plan with respect to the Participant during the two-Year period ending on the date of the in-service distribution; and
 - d) the Participant elects to receive such distribution.

F. ADMINISTRATION OF DISTRIBUTION PROVISIONS

- 7.15 **Life Expectancy.** Any determination of life expectancy for the purposes of the Plan shall be made by using the unisex tables specified in Regulations under IRC § 401(a)(9) and IRC § 72.
- 7.16 **Distribution to Minor or Incompetent Beneficiary.** If a Distribution is to be made to a minor Beneficiary or to a Beneficiary that the Administrator finds to be unable to care for his/her affairs, the Administrator, in its sole discretion, may direct (if no claim has been made by a duly appointed representative) that any payment(s) be made to the legal guardian of the Beneficiary, or if none, to a parent of the Beneficiary or a responsible adult with whom the Beneficiary maintains his/her residence, or to the custodian for the Beneficiary under the Pennsylvania Uniform Transfers to Minors Act, 20 Pa.C.S. § 5301 *et seq.*, or to any person determined by the Administrator to be a proper recipient for the Beneficiary. If the amount to be paid is over \$10,000, then a court order must be presented certifying legal guardianship. The legal guardian must also sign a form certifying that the funds to be distributed will be used solely for the minor Beneficiary's benefit as stated in the Pennsylvania Uniform Transfers to Minors Act. This payment(s) shall fully release and discharge the liability of the Employer, the Plan and the Administrator as against the adverse claim of any other person.
- 7.17 **Dispute as to Proper Payee.** If a dispute arises as to the proper payee of any payment(s) upon the death of the Participant, the Administrator may, pursuant to 20 Pa.C.S. § 8704, make such payment(s) to the Beneficiary entitled thereto under the Plan or under a designation by the Participant pursuant to the Plan and by making such payment, the Administrator shall be released from all claims by third parties.

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7.18 **Ambiguity as to Interest of any Beneficiary.** To the extent there is ambiguity and the Administrator is in doubt as to the proper construction of the Plan with respect to the interest of any Beneficiary, the Administrator shall construe the Plan to state provisions consistent with 20 Pa.C.S. § 101 *et seq.*, to the extent that such construction is not inconsistent with any requirement of IRC § 457(b).

G. ALTERNATE PAYEES

7.19 The establishment and maintenance of, or allocations and credits to, the Segregated Account of any Alternate Payee shall not vest in such Alternate Payee any right, title or interest in and to any trust fund assets or Plan benefits except at the time or times and upon the terms and conditions and to the extent expressly set forth in the PADRO, the Plan and the Participation Agreement.

7.20 Payments with respect to the Segregated Account may be made by the Administrator from the trust fund to an Alternate Payee pursuant to the terms of a PADRO; *provided, however*, that no PADRO shall create any rights greater than the Participant's rights under the Plan and IRC § 457. Upon the designation of the Domestic Relations Order as a PADRO by the Administrator or Administrative Service Agency, a portion of the Participant's Account, which portion shall be determined in accordance with the PADRO, shall be separated into a Segregated Account maintained on behalf of the Alternate Payee designated under such PADRO until payment is made to the Alternate Payee in accordance with this Provision and the terms of the Plan. The Employer, Administrator or Administrative Service Agency shall incur no liability solely by reason of any action taken in accordance with this Provision pursuant to the terms of a PADRO.

7.20.1 To the extent required by a PADRO, the Administrator or Administrative Service Agency shall maintain a Segregated Account for the Alternate Payee.

7.20.2 If a PADRO applies with respect to a Participant prior to the distribution of the Alternate Payee's interest, the Administrator or Administrative Service Agency shall establish a Segregated Account for the interest of the Alternate Payee, within a reasonable time after the next Valuation Date available after the Domestic Relations Order is determined by the Plan Administrator or Administrative Service Agency to be a PADRO.

7.20.3 A Participant's Account shall be reduced to the extent that any portion of the Participant's Account has been paid or set aside for payment to an Alternate Payee. The Participant shall be deemed to have released the Employer, the Administrator or Administrative Service Agency from any claim with respect to such amounts in any case where the Participant fails to obtain an order of the court that relieves the

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Employer, Administrator or Administrative Service Agency from any obligation to comply with a domestic relations order.

- 7.20.4 An order shall not be a PADRO unless the Administrator or Administrative Service Agency determines that the court order on its face and without reference to any other document states all of the following:
- a) The court order expressly states that it relates to the provision of support, alimony, equitable distribution, or any other marital property rights to a spouse or former spouse of a Participant and is made pursuant to State domestic relations law.
 - b) The court order clearly and unambiguously specifies that it refers to this Plan.
 - c) The court order clearly and unambiguously specifies the name of the Participant's Employer.
 - d) The court order clearly specifies: the name, mailing address, and Taxpayer Identifying Number of the Participant; and the name, mailing address, and Taxpayer Identifying Number of the Alternate Payee.
 - e) The court order clearly specifies the amount or percentage, or the manner in which the amount or percentage is to be determined, of the Participant's Account to be paid to the Segregated Account of the Alternate Payee.
 - f) The court order expressly states that the Alternate Payee's Segregated Account shall bear all fees and expenses as though the Alternate Payee were a Participant.
 - g) The court order expressly states the allocation of the charge for the Administrator's or Administrative Service Agency's expense in processing a domestic relations order between the Alternate Payee's Segregated Account and the Participant's Segregated Account.
 - h) The court order clearly specifies that any Distribution to the Alternate Payee becomes payable only upon the Alternate Payee's written claim made to the Plan Administrator or Administrative Service Agency.
 - i) The court order clearly specifies that any Distribution to the Alternate Payee may be made in any manner that the Participant could receive a Distribution, except for Provision 7C (Unforeseeable Emergency Distribution), or Provision 7E (Voluntary In-Service Distribution).
 - j) The court order states that it does not require this Plan to provide any type or form of benefit or any option not otherwise provided under this Plan.
 - k) The court order expressly states that the order does not require this Plan to provide increased Deferred Compensation.
 - l) The court order expressly states that any provision of it that would have the effect of requiring any Distribution to an Alternate Payee of Deferred Compensation that is required to be paid to another natural or artificial person under any court order is void.

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- m) The court order expressly states that nothing in the order shall have any effect concerning any party's tax treatment, and that nothing in the order shall direct any person's tax reporting or withholding.
- n) The court order expressly states that nothing in the order shall permit the Alternate Payee to make any contributions to the Plan.

7.20.5 An order shall not be a PADRO if it includes any provision that does not relate to this Plan. Without limiting the comprehensive effect of the preceding sentence, an order shall not be a PADRO if the order includes any provision relating to any pension plan, retirement plan, deferred compensation plan, health plan, welfare benefit plan, or employee benefit plan other than this Plan.

7.20.6 An order shall not be a PADRO unless the order provides for only one Alternate Payee.

7.20.7 An order shall not be a PADRO if the order includes any provision that would require the Plan Administrator or Administrative Service Agency to calculate the amount to be segregated to the Alternate Payee's Segregated Account in a manner not readily calculable by the Plan Administrator or Administrative Service Agency according to its currently available records.

7.20.8 An order shall not be a PADRO if the order includes any provision that would permit the Alternate Payee to designate any beneficiary for any purpose. However, an order does not fail to qualify as a PADRO because it provides that any rights not paid before the Alternate Payee's death shall be payable to the duly appointed and then-currently serving Personal Representative of the Alternate Payee's estate or other person duly authorized by appropriate state law concerning decedents and their estates.

7.20.9 The Plan Administrator or Administrative Service Agency may assume without liability that the Alternate Payee named by the court order is a proper payee and need not inquire into whether the person named is a spouse or former spouse of the Participant.

7.21 **PADRO Procedures.** The Administrator or Administrative Service Agency may (but is not required to) establish written procedures for determining whether an order directed to the Plan is a PADRO.

7.22 **Determination as to Order's Status.** The Plan Administrator or Administrative Service Agency shall make a determination within a reasonable time as to whether the order is a PADRO. The Plan Administrator or Administrative Service Agency may delay the commencement of its consideration of any order until the later of the date that is 30 days

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after the date of the order or the date that the Plan Administrator or Administrative Service Agency is satisfied that all rehearing and appeal rights with respect to the order have expired.

- 7.23 **Investment Direction During Domestic Relations Matter.** Notwithstanding any notice to the Plan Administrator or Administrative Service Agency (or to any other person dealing with or performing services regarding the Plan) that a domestic relations order is or may be presented to be determined as a PADRO, the Participant shall continue to exercise his or her duty of investment direction as required by the Plan unless a court order expressly provides otherwise and the Plan Administrator determines that the court order is a PADRO. If a PADRO provides for an Alternate Payee to have a right of investment direction under the Plan, the Plan Administrator or Administrative Service Agency shall give effect to that court order to the extent permitted by the Plan.
- 7.24 **Giving Effect to a PADRO.** If the Plan Administrator or Administrative Service Agency determines that an order is a PADRO, the Plan Administrator or Administrative Service Agency shall cause the payment of amounts to the Alternate Payee or to a Segregated Account as provided by (and to prevent any payment or act which might be inconsistent with) the PADRO.
- 7.25 **Domestic Relations Proceeding.** Each of the Employer and Plan Administrator and Administrative Service Agency and any person serving under contract or otherwise with respect to the Plan shall not be obligated to incur any cost to defend against or set aside any judgment, decree or order relating to the division, attachment, garnishment, or execution of or levy upon an Account, sub-Account, Segregated Account or any Distribution, including (but not limited to) any domestic relations proceeding. Notwithstanding the foregoing, if any such person is joined in any proceeding, the party may take such action as it considers necessary or appropriate to protect any and all of its legal rights, and the Participant (or Alternate Payee or Beneficiary) shall reimburse all actual fees of lawyers and legal assistants and expenses reasonably incurred by such party through the respective Accounts or otherwise.

H. MISCELLANEOUS DISTRIBUTION RULES

- 7.26 **Exclusion of Distributions for Public Safety Officers.** Retired or disabled public safety officers (i.e., law enforcement officers, firefighters, or rescue squad or ambulance crew) may exclude up to \$3,000 of distributions for the direct payment of premiums for coverage for the public safety officer, his or her spouse, and his or her dependents under an accident or health insurance plan or qualified long-term care insurance contract.

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8. **GENERAL PROVISIONS**

- 8.01 **Non-assignability.** The Participant or Beneficiary shall not have any right to commute, sell, assign, pledge, transfer, or otherwise convey, use or encumber any right to receive any payments under the Plan, which payments and rights are expressly declared to be non-assignable and non-transferable. Deferred Compensation shall not be subject to attachment, garnishment, or execution, or be transferable by operation of law in the event of a divorce or marital separation or of a bankruptcy or insolvency, except to the extent otherwise required by law or by Provision 7G of this Plan.
- 8.02 **Relationship to Other Plans.** This Plan is in addition to any other retirement, pension, or benefit plan presently in existence or later established (if any), and participation under the Plan shall not affect benefits receivable under any other plan, unless the plan is a deferred compensation plan subject to IRC § 457.
- 8.03 **Plan Binding on Successors.** The Plan, as duly amended from time to time, shall be binding on each Employer and each Participant, and his/her Beneficiary, surviving spouse, heirs, executors and administrators.
- 8.04 **Amendment or Termination.** The Commonwealth of Pennsylvania or the State Employees' Retirement Board (the Administrator but not the Administrative Service Agency) may, at any time, amend or terminate this Plan. Any amendment or termination shall not reduce the amount of Deferred Compensation credited to any Account as of the date of the amendment or termination, and shall not impair the rights of any person to any Deferred Compensation, except to the extent required by law. The Administrator shall give each Participant notice of any amendment or termination before its effective date, except for an amendment conforming any Provision to the Code or regulations then in effect.
- 8.05 **Governing Law.** This Plan is established with the intent that the Plan shall satisfy the requirements of an "eligible deferred compensation plan" pursuant to IRC § 457(b). The provisions of the Plan shall be interpreted whenever possible in conformity with the requirements of that section and other relevant sections of the Code.

It is also intended that this Plan shall satisfy the requirements of the Enabling Statute and any rules or regulations under the Enabling Statute, and any other applicable State law. This Plan shall be construed and enforced under the internal laws of the Commonwealth of Pennsylvania without regard to the principles of conflicts of laws.

- 8.06 **Captions.** The captions preceding the parts and provisions of the Plan have been inserted solely as a matter of convenience and in no way define or limit the scope or intent of any provisions of the Plan, and are to be ignored in any construction of the provisions of the Plan.

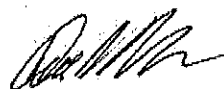
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- 8.07 **Information to be Provided by the Participant or Beneficiary.** Each Employee who enrolls in the Plan shall provide to the Administrator, at the time of initial enrollment, and later if there are any changes, any information reasonably required by the Administrator. If an Employee fails to provide any information deemed necessary by the Administrator, the Employee may be denied (in the sole discretion of the Administrator) the right to participate in the Plan. Each person having any interest in the Plan shall file with the Administrator any information concerning himself/herself and his/her Beneficiary as may be reasonably required by the Administrator. A Participant or Beneficiary or other person shall not have any rights to or otherwise be entitled to the payment of any Deferred Compensation under the Plan unless such information has been filed.
- 8.08 **Receipt and Release.** Any payment(s) or any agreement to make payment(s) shall, to the extent of the payment(s) or agreement, be in full satisfaction of all claims. The Administrator may (in its sole discretion), as a condition precedent to making or causing to be made any payment(s), or agreement to make payment(s), or rollover (under Provision 7.11), require any person or entity to execute a receipt and release.
- 8.09 **Severability.** If any provision of the Plan is held invalid for any reason, the remaining provisions of the Plan shall be construed and enforced as if the invalid provision had not been included in the Plan, unless such a construction of the Plan would be clearly contrary to the intent of the Plan.

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IN WITNESS WHEREOF, the Commonwealth of Pennsylvania State Employees' Retirement Board has caused this Sixth Amended and Restated Plan to be executed, in accordance with its powers under the Enabling Statute, on the date written below, to be effective as of June 9, 2021.

COMMONWEALTH OF PENNSYLVANIA
STATE EMPLOYEES' RETIREMENT BOARD
an agency of the
COMMONWEALTH OF PENNSYLVANIA



David R. Fillman, Chairman

June 9, 2021

Seal:

