

1/1//2018

## **Fifth Amendment to the State of Georgia Employees' Qualified Trust Deferred Compensation Plan**

The State of Georgia Employees' Qualified Trust Deferred Compensation Plan (the "Plan") was previously established by the State of Georgia and is currently administered by the Board of Trustees of the Employees' Retirement System of Georgia ("the Board" or "Board of Trustees").

### **WITNESSETH:**

**WHEREAS**, the Plan was originally established effective December 18, 1985, and has been subsequently amended several times, with the most recent amendment and restatement as of January 1, 2013;

**WHEREAS**, the Board desires to amend the Plan to implement HB 312 relating to Designated Roth Contributions; and.

**WHEREAS**, Section 11.1 of the Plan provides that the Board of Trustees may amend the Plan at any time.

**NOW, THEREFORE, BE IT RESOLVED**, the Plan is hereby amended effective January 1, 2018 as follows:

1. Section 2.1 (l), the definition of "**Compensation**", is hereby amended by changing the reference to "Earnable Compensation" in the first sentence from O.C.G.A. 47-2-1(5) to O.C.G.A. 47-2-15.
2. Section 2.1, "**Definitions**", is hereby amended to insert new definitions as Section 2.1(r-1) and 2.1 (r-2) immediately after 2.1(r) "Deferred Compensation Contribution Sub-Account" to read as follows:
  - "(r-1) 'Designated Roth Contribution' means any Deferred Compensation Contribution made to the Plan in accordance with the provisions of Section 5.10, but which is not excludable from gross income and is intended to satisfy the requirements of Code Section 402A."
  - "(r-2) 'Designated Roth Contribution Sub-Account' means that sub-account established under the Plan for each Participant to reflect any Designated Roth Contributions made on behalf of that Participant, along with any distributions, charges and investment gains or losses allocable to such Designated Roth Contributions."
3. Sections 2.1(a), 2.1(xx), 3.5, 6.1, 6.2, 6.6, 7.2, 7.7, and 9.2(c) are hereby amended by adding the phrase "and Designated Roth Contribution Sub-Account," to immediately follow the term "Deferred Compensation Contribution Sub-Account" , wherever it appears therein.
4. Section 5.2 of the Plan, "**Administrative Modification of Deferred Compensation Contributions**", is hereby amended by deleting the "and" after subsection (a)(2)(B) and adding "and" after subsection (a)(2)(C) and adding the following new subsection (a)(2)(D) immediately thereafter to read as follows:
  - "(D) Excess Deferrals will be distributed first from the Participant's Designated Roth Contribution Sub-Account and then from the Participant's Deferred Compensation Contribution Sub-Account,"

5. Section 5.8 of the Plan, "**Qualified Rollover Contributions**" is hereby deleted in its entirety and replaced with the following:

**"5.8 Qualified Rollover Contributions.** Subject to approval by the Plan Administrator, an Employee who is or was entitled to receive a distribution that is eligible for rollover to a qualified plan under Code Section 408(d)(3) or is an "Eligible Rollover Distribution" from an "Eligible Retirement Plan" (both as defined in Section 7.8 of the Plan), may elect to contribute all or any portion of such distribution to the Plan directly from such Eligible Retirement Plan (a direct rollover) or within 60 days of receipt of such distribution to the Employee. For purposes of this Section, the Plan shall not accept the following as Qualified Rollover Contributions:

- (a) any rollover of after-tax employee contributions that is not made by a direct rollover (including Designated Roth Contributions);
- (b) any rollover from an individual retirement account or annuity described in Code Section 408(a) or 408(b) (including a Roth IRA under Code Section 408A) to the extent such amount would not otherwise be includible in the Employee's income; or
- (c) any rollover amounts that are not Designated Roth Contributions that are to be contributed to the Plan as Designated Roth Contributions.

To the extent the Plan accepts Rollover Contributions of after-tax employee contributions (including Designated Roth Contributions), the Plan will separately account for such contributions, including separate accounting for the portion of the Rollover Contribution that is includible in gross income and the portion that is not includible in gross income.

If the Plan accepts a direct rollover of Designated Roth Contributions, the Trustee and the Plan Administrator shall be entitled to rely on a statement from the distributing plan's administrator identifying (i) the Employee's basis in the rolled over amounts and (ii) the date on which the Employee's 5-taxable-year period of participation (as required under Code Section 402A(d)(2) for a qualified distribution of Designated Roth Contributions) started under the distributing plan. If the 5-taxable-year period of participation under the distributing plan would end sooner than the Employee's taxable year period of participation under the Plan, the 5-taxable-year period of participation applicable under the distributing plan shall continue to apply with respect to the Rollover Contribution. If the 5-taxable-year period of participation under the distributing plan would end later than the Employee's taxable year period of participation under the Plan, the 5-taxable-year period of participation in this Plan shall apply with respect to the Rollover Contribution.

Prior to accepting any amounts as Qualified Rollover Contributions under the provisions of this Section, the Plan Administrator shall be authorized to require the Employee to provide such written documentation and evidence as the Plan Administrator may deem satisfactory and necessary to determine that such transfer would fall under one of the above qualifying categories. The Plan Administrator shall not approve any amount intended as a Qualified Rollover Contribution which might in any way jeopardize the qualified tax exempt status of the Plan or potentially create adverse tax consequences for the Employer, the Plan or any Plan Participants.

Any transfer approved by the Plan Administrator under the foregoing provisions shall be treated as a Qualified Rollover Contribution to the Plan and shall be credited to the Rollover Contribution Sub-Account for the Participant.

Amounts held in trust by the Plan as Qualified Rollover Contributions shall at all times be considered fully Vested and shall not be subject to forfeiture for any reason. Once such Qualified Rollover Contributions have been made, they may not be withdrawn by or distributed to the Participant except to the extent that the provisions of Plan Article 7 apply."

6. A new Section 5.10, "**Designated Roth Contributions**" shall be added to the end of Article 5, and shall read as follows:

"5.10 **Designated Roth Contributions.** Effective as of January 1, 2018, a Participant may designate all or any portion of his or her Deferred Compensation Contributions to the Plan as Designated Roth Contributions within the meaning of Code Section 402A and any applicable guidance or regulations issued thereunder, in the manner prescribed by the Plan Administrator. The Plan Administrator will maintain all such contributions made pursuant to Code Section 402A separately and make distributions in accordance with the Plan unless otherwise required to do otherwise by Code Section 402A and any applicable guidance or regulations issued thereunder.

- (a) Tax Treatment. Designated Roth Contributions shall be treated the same as Deferred Compensation Contributions for purposes of this Plan except that (i) such amounts shall be includible in the Participant's income for federal income tax purposes at the time the Participant would have received the amount in cash if the Participant had not elected a deferral of Compensation and (ii) any automatic deferrals shall not be treated as Designated Roth Contributions.
- (b) Separate Accounting. Designated Roth Contributions, as adjusted for earnings and losses, shall be held in a sub-account known as the Designated Roth Contribution Sub-Account. Such sub-account shall be subject to provisions and limits of Article 4 and 5 in the same manner as those sections apply to the other Deferred Compensation Contributions, other than rollovers as described in Section 5.8 of the Plan.
- (c) Roth Designations. The Participation Agreement described in Section 4.3 of the Plan shall provide for a designation by the Participant to treat all or a portion of Deferred Compensation Contribution as Designated Roth Contributions. Any such designation must be made before the Deferred Compensation Contributions are withheld from the Participant's Compensation. The Participant may modify or revoke his or her Roth designation with respect to future contributions, at the same intervals, with the same frequency and by the same deadlines imposed to changes in the amount of the Participant's Deferred Compensation Contributions as provided in Article 4 of the Plan."

7. Section 7.2(a) of the Plan, "**Earliest Commencement of Distribution**", shall be amended by adding "Designated Roth Contributions" to follow "Deferred Compensation Contributions" in subsection (1) to clarify that the six (6) month suspension of contributions applies to Designated Roth Contributions.

8. Section 7.13 of the Plan, "**Transfers to Purchase Permissive Service Credit**" shall be amended by deleting that section in its entirety and replacing it with the following:

"7.13 **Transfers to Purchase Permissive Service Credit.** Notwithstanding any other provision of the Plan to the contrary, a Participant can instruct the Plan Administrator to transfer amounts from his or her Deferred Compensation Contribution Sub-Account, Designated Roth Contribution Sub-Account, Rollover Sub-Account or the vested portion of his or her Matching Contribution Sub-Account, or Additional Contribution Sub-Account by way of a trustee-to-trustee transfer to any defined benefit governmental plan (as defined in Code Section 414(d)) where the Participant informs the Plan Administrator that such transfer is for the purchase of permissive service credits under such defined benefit governmental plan. For purposes of this Plan Section 7.13, "permissive service credits" shall mean service credits recognized by the defined benefit governmental plan in question for purposes of calculating a participant's benefit under such plan, which such participant has not yet received, and which such participant may receive only by making a voluntary additional contribution, in an amount determined by the defined benefit governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit. Amounts transferred from any portion of the

Participant's vested Account pursuant to this Plan Subsection 7.13 shall not be considered a distribution for any purpose under the Plan."

9. Section 9.1 of the Plan, "**Applicability of Plan Benefit Vesting**", shall be amended by adding the following language to immediately follow the second sentence in the second paragraph thereof:

"In addition, Designated Roth Contributions made to a Designated Roth Contribution Sub-Account pursuant to Plan Section 5.10 shall be considered immediately Vested at the time contributed to the Trust Fund and therefore the current value (as of the latest Accounting Date) of such Designated Roth Contribution Sub-Account shall at all times be non-forfeitable and fully subject to distribution rules under Code Section 402A."

10. Section 9.1 of the Plan, "**Applicability of Plan Benefit Vesting**", shall be amended by deleting the last sentence thereof and replacing it with the following:

"Thus, the current value of any Matching Contribution Sub-Account and any Additional Contribution Sub-Account may be partially or fully forfeited at the time of a transfer as described in Section 9.2(d) below, or at the time of a distribution event pursuant to Plan Section 7.1."

**BOARD OF TRUSTEES OF  
THE EMPLOYEES' RETIREMENT SYSTEM OF GEORGIA**

By Its: Board Chair  
Jovice Smith

Date: December 14, 2017