

Sixth Amendment to the State of Georgia Employees' Deferred Compensation Plan

The State of Georgia Employees' 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 July 25, 1979, and has been subsequently amended several times, with the most recent amendment and restatement as of January 1, 2009;

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

WHEREAS, Section 8.1 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 1.2 "**Purpose of the Plan**" is hereby amended by removing the phrase "on a pre-tax basis each month" in the first sentence.
2. Section 2.1, "**Definitions**", is hereby amended to insert new definitions as Section 2.1(m-1) and 2.1 (m-2) immediately after 2.1(m) "de minimis Inactive Account to read as follows:
"(m-1) 'Designated Roth Contribution' means any Deferred Compensation contributed to the Plan in accordance with the provisions of Section 3.12, which is not excludable from gross income and is intended to satisfy the requirements of Code Section 402A."
"(m-2) 'Designated Roth Contribution Account' means that sub-account established under the Deferred Compensation Account 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. Section 3.5(b) of the Plan, relating to "**Maximum Deferrals**" is hereby amended to add the following new sentence to the end thereof:
"Excess deferrals will be distributed first from the Designated Roth Contribution Account and then from the Participant's Deferred Compensation Contribution Account."
4. A new Section 3.11, "**Rollover Contributions**" shall be added to the end of Article 3, and shall read as follows:
"**3.11 Rollover Contributions.** Subject to approval by the Plan Administrator, an Employee who is or was entitled to receive a distribution from a Section 457(b) Plan sponsored by a governmental entity, and which is an "Eligible Rollover Distribution" from an "Eligible Retirement Plan" (both as defined in Section 6.11 of the Plan), may contribute all or any portion of such distribution to the Plan directly from such governmental 457(b) 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 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 of amounts that are not Designated Roth Contributions that are to be transferred to the Plan as Designated Roth Contributions; and
- (d) any rollover from an Eligible Retirement Plan that is not from a section 457(b) Plan sponsored by a governmental entity.

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 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 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 Rollover Contribution to the Plan and shall be credited to a Rollover Contribution Account for the Participant.

Amounts held in trust by the Plan as Rollover Contributions shall at all times be considered fully Vested and shall not be subject to forfeiture for any reason. Once such 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."

5. A new Section 3.12, "**Designated Roth Contributions**" shall be added to the end of Article 3, and shall read as follows:

"3.12 Effective as of January 1, 2018, a Participant may designate all or any portion of his or her Deferred Compensation Contributions 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.
- (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 Account. Such 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.)
- (c) Roth Designations. The Participation Agreement described in Section 3.3 of the Plan shall provide for a designation by the Participant to treat all or a portion of Deferred Compensation Contributions as Designated Roth Contributions. Any such designation must be made before the Deferred Compensation is 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 as provided in Article 3 of the Plan."

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

By Its: Board Chair
Janise Barrett

Date: December 14, 2017