

**State of Georgia Employees' Qualified Trust
Deferred Compensation Plan**

As First Approved by the
Employee Benefit Plan Council
December 18, 1985
And Amended and Restated in its Entirety
Effective January 1, 2013

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State of Georgia Employees' Qualified Trust Deferred Compensation Plan

ARTICLE 1. INTRODUCTION AND PURPOSE OF PLAN

1.1 Establishment of Plan. This Plan shall be known as the State of Georgia Employees' Qualified Trust Deferred Compensation Plan ("Plan") and is created in accordance with Ga. Laws 1985, p.441, as amended, O.C.G.A. 45-18-50 through 45-18-58, and Section 401(k) of the United States Internal Revenue Code. The Plan was originally adopted December 18, 1985 and was amended and restated effective January 1, 2009, to reflect changes in federal law and the provisions of O.C.G.A 47-2-350 through 47-2-360, the Georgia State Employees Pension and Savings Plan. The Plan is being amended and restated again effective January 1, 2013, to incorporate amendments made over the past five years. The Plan intends to satisfy Code Sections 401(k) and 401(a) by meeting the requirements of Code Section 414(d).

1.2 Purpose of Plan. The purpose of this Plan is to attract and retain quality career Employees for the State of Georgia and to encourage long-term savings as a source of supplemental retirement benefits by allowing Participants to designate a portion of their Compensation to be deferred and contributed each month by the various Participating Employers, and to be invested at the discretion of and in a manner approved by the Board until such time as the Employee's benefits are distributed under the Plan.

ARTICLE 2. DEFINITIONS

2.1 Term Definitions. Whenever used in the Plan, the following terms shall have the meanings as set forth below unless otherwise expressly provided or unless such a reading would render the provision nonsensical:

- (a) **"Account"** means the aggregated total of all assets held on behalf of a Participant in trust under the Deferred Compensation Contribution Sub-Account (including any amounts contributed as a Catch-up Contribution), the Matching Contribution Sub-Account (if any), the Additional Contribution Sub-Account (if any), and the Rollover Sub-Account (if any) under the Plan, together with any distributions, transfers, charges or investment gains or losses allocable to each such sub-account.
- (b) **"Accounting Date"** means the date on which an Investment Fund is valued and earnings and/or losses are allocated to Participants' Accounts. There shall be an Accounting Date at least once a month on the last business day of the month and, if practical, more frequent Accounting Dates to reflect, as closely as possible, the earnings and/or losses with respect to a Participant's Account from the time any Plan contributions are invested in various investment Funds until such contributions are eventually distributed in accordance with the Plan.

- (c) **“Additional Contribution”** means a discretionary contribution to the Plan pursuant to Plan Section 5.5 by any Participating Employer on behalf of a Participant for up to seven and one-half percent (7 1/2%) of such Participant’s Compensation for the month, to the extent that:
- (1) funds have been appropriated, granted or allocated from the State Legislature for such purpose or
 - (2) such Participating Employer has entered into an agreement with the Plan to appropriate such funds to provide Additional Contributions for its own participating Employees if such Participating Employer does not receive its operating funds through appropriation, grant or allocation from the State Legislature.

Any Participating Employer that enters into such an agreement to appropriate funds for Additional Contributions will be treated as having received an appropriation, grant or allocation from the State Legislature for all purposes of the Plan unless such Participating Employer otherwise notifies the Plan of their intent to cease such Additional Contribution.

- (d) **“Additional Contribution Sub-Account”** means the record established by the Plan Administrator for each Participant to reflect any Additional Contributions on behalf of the Participant along with any distributions, charges, forfeitures and investment gains or losses allocable to such contributions.
- (e) **“Annual Addition”** means those amounts defined under Plan Subsection 5.6(c).
- (f) **“Beneficiary”** means the person, persons or legal entity, as designated by the Participant or provided for pursuant to Plan Section 4.10, who shall be entitled to receive the undistributed remainder of such Participant’s Account in the event of the Death of any Participant.
- (g) **“Beneficiary Form”** means that form established by the Plan Administrator, in its sole discretion, for use in designating or changing a previous designation of Beneficiary under the Plan. Such form may be in writing or in an electronic medium. A Beneficiary Form shall not be valid unless it meets all applicable requirements of Plan Section 4.10.
- (h) **“Board”** means the Board of Trustees of the Employees’ Retirement System of Georgia, which is the statutory body responsible for administration of the Plan.
- (i) **“Catch-up Contribution”** means a reduction in Compensation and a corresponding and equal contribution to the Plan pursuant to Plan Section 5.9 and Code Section 414(v) by any Participating Employer on behalf of an Employee who has or will have attained the age of fifty (50) years and has otherwise deferred the maximum amount permissible under Plan Subsection 4.8(a) during the Plan Year in which the Catch-up Contribution is made. All Catch-up Contributions will be held in the Deferred Compensation Contribution Sub-Account within a Participant’s Account, but shall be disregarded for purposes of the limitations placed under Plan Sections 4.8 and 5.6.
- (j) **“Change Participation Agreement”** means that form established by the Plan Administrator, in its sole discretion, for use in changing a Participant’s Deferred

Compensation Contribution or for other purposes as determined by the Plan Administrator. Such form may be in writing or in an electronic medium.

- (k) **“Code”** means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute.
- (l) **“Compensation”** means ‘Earnable Compensation’ as that term is defined under the Employees’ Retirement System of Georgia in O.C.G.A. 47-2-1(5). Compensation does not include any remuneration payable to an Employee for personal services rendered to any Participating Employer for overtime payments, bonuses, or supplements of short duration. For purposes of this Plan and consistent with the requirements of Code Section 401(a)(17), only up to the first one hundred and fifty thousand dollars (\$150,000) or such greater amount as may be applicable under Code Section 401(a)(17)(B), of Compensation payable to the Employee in any given Plan Year shall be taken into account. Notwithstanding the above, the annual Compensation of each Participant taken into account in determining allocation for any Plan Year beginning after December 31, 2001, shall not exceed two hundred thousand dollars (\$200,000), as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Compensation shall include before-tax or salary deferral contributions made to this Plan or any other plan of the Employer under a Code Section 132(f)(4) qualified transportation plan, or under Code Sections 125, 402(g)(3), 457 or 414(h) on behalf of a Participant for such Plan Year. Effective for Plan Years beginning on or after January 1, 2007, Compensation shall generally not include payments made after Termination from Service, unless such payments meet the requirements of Treas. Reg. 1.415(c)-2(e)(3). For purposes of Plan Subsection 5.6(b), and that Subsection only, Compensation shall mean that contained under Code Section 415(c).

Compensation shall include Differential Wage Payments beginning January 1, 2011. “Differential Wage Payments” mean any payments that are made by the Employer to an individual with respect to any period during which the individual is performing Qualified Military Service while on active duty for a period of more than 30 days, and represents all or a portion of the wages the individual would have received from the Participating Employer if the individual were performing services for the Participating Employer.

- (m) **“Contributions”** means the sum of all contributions made by a Participant as a Qualified Rollover Contribution, or on the behalf of a Participant by a Participating Employer as Deferred Compensation Contribution, a Matching Contribution, an Additional Contribution, or a Catch-up Contribution.
- (n) **“Contribution Eligibility Year”** means that service time equal to one thousand (1,000) hours in a single Plan Year (recorded in hours as reported to the Plan Administrator by the relevant Participating Employer) required in order to insure Participant eligibility for Additional Contributions pursuant to the provisions of Plan Section 5.5.
- (o) **“Death”** means the death of a person as recognized under the laws of the State of Georgia, regardless of the actual state of residence of such person.
- (p) **“Deferred Compensation”** means that portion of the Participant’s Compensation which the Participant and any Participating Employer mutually agree to defer under Plan Section 5.1 and which such Participating Employer agrees to pay to the Plan as a Deferred

Compensation Contribution for the Participant. For purposes of this Plan, Deferred Compensation shall not include amounts agreed upon by the Participant and any Participating Employer to be deferred as a Catch-up Contribution made pursuant to Plan Section 5.9.

- (q) **“Deferred Compensation Contribution”** means a contribution to the Plan by any Participating Employer on behalf of an Employee based on, and in an amount equivalent to the Participant’s Deferred Compensation.
- (r) **“Deferred Compensation Contribution Sub-Account”** means that sub-account established under the Plan for each Participant to reflect any Deferred Compensation Contributions and Catch-up Contributions on behalf of that Participant, along with any distributions, charges and investment gains or losses allocable to such contributions.
- (s) **“Employee”** means a Member of the State Legislature or a person who works Full Time for any Participating Employer and receives his or her Compensation in a direct payment from such Participating Employer. Independent contractors, Senior Judges and Directors Emeritus shall not be considered Employees for purposes of the Plan. Persons who have in the past met the requirements of this sub-section, and are subsequently classified, reclassified or otherwise considered to be independent contractors, Senior Judges or Directors Emeritus shall no longer be Employees eligible to participate in the Plan and shall be deemed to have incurred a Termination of Service upon the date of such classification or reclassification. Any independent contractor who subsequently becomes reclassified as an Employee may only participate in this Plan, subject to the terms of the Plan, prospectively from the date that such reclassification actually occurs, rather than from the date on which such change is effective. Notwithstanding any other provision of this Plan, if any person fails to meet the requirements of this paragraph with regard to a Plan Year, such person shall not be considered an Employee within the meaning of this Subsection until such time as the required conditions are once again met. Effective January 1, 2009, Employee shall also include all individuals defined as ‘Employees’ under the Employees’ Retirement System of Georgia contained in O.C.G.A. 47-2.
- (t) **“Employer Contribution”** means the aggregated total of any Participating Employer’s Deferred Compensation Contribution (if any) on behalf of an Employee pursuant to Plan Section 5.1, any Participating Employer’s Matching Contribution (if any) on behalf of the same Employee pursuant to Plan Section 5.3, and any Participating Employer’s Additional Contribution (if any) on behalf of the same Employee pursuant to Plan Section 5.5 and Catch-up Contributions (if any) pursuant to Plan Section 5.9.
- (u) **“Executive Director”** means the Executive Director of the Employees’ Retirement System of Georgia, who is the Board’s designee to exercise functions delegated by the Board.
- (v) **“Financial Hardship”** means a situation of immediate and heavy financial needs of a Participant determined by the Plan Administrator to qualify that Participant for an immediate distribution of some or all of the Participant’s Deferred Compensation Contribution Sub-Account or of any applicable portion of his or her Rollover Contribution Sub-Account, such determination being made pursuant to Plan Section 7.6.

- (w) **“Fiscal Year”** means the State’s accounting year of twelve (12) months commencing on July 1 of each calendar year and ending on June 30 of the following calendar year.
- (x) **“Full Time”** means employment which averages at least thirty (30) hours per week, is intended to be continued for an indefinite period of time, and generally excludes student, seasonal, intermittent, part-time, or “sheltered” transitional training employment, except to the extent an incumbent in such employment works at least one thousand (1,000) hours within a given Plan Year, in which case such Employee shall be deemed to be “Full Time” for that particular Plan Year. Any Employee who is on an authorized leave of absence pursuant to the provisions of Plan Section 4.7 shall be considered as working Full Time during such leave.
- (y) **“GSEPS”** means the Georgia State Employees’ Pension and Savings Plan under O.C.G.A. 47-2-350 through 47-2-360.
- (z) **“GSEPS Participant”** means any Employee who first or again becomes a member of the Employees Retirement System of Georgia on or after January 1, 2009, or any member of the Employees Retirement System of Georgia on December 31, 2008, who irrevocably elects to participate in GSEPS.”
- (aa) **“In-Service Distribution”** means a distribution prior to the Participant’s Death or Termination of Service, from a Participant’s Deferred Compensation Contribution Sub-Account or Rollover Contribution Sub-Account (as appropriate) approved by the Plan Administrator as a result of either Financial Hardship or attainment of age 59 ½, as provided under Plan Subsection 7.2(a).
- (bb) **“Investment Fund”** means a specific investment vehicle or pool of vehicles with similar characteristics established by the Board for investment at the Board’s discretion of allocated portions of Employer Contribution amounts, including (at the Board’s discretion) a Participant Loan Fund.
- (cc) **“Matching Contribution”** means a supplemental contribution to the Plan pursuant to Plan Section 5.3 by any Participating Employer on behalf of a Participant based on a percentage of the amount of any Deferred Compensation Contribution made on behalf of a Participant, to the extent that:
 - (1) funds have been appropriated, granted or allocated from the State Legislature for such purpose; or
 - (2) such Participating Employer has entered into an agreement with the Plan to appropriate such funds to provide Matching Contributions for its own participating Employees if such Participating Employer does not receive its operating funds through appropriation, grant or allocation from the State Legislature.

Those Participating Employers that enter into such an agreement to appropriate funds for Matching Contributions will be treated as having received an appropriation, grant or allocation from the State Legislature for all purposes of the Plan unless such Participating Employers otherwise notify the Plan of their intent to cease such Matching Contributions.

- (dd) **“Matching Contribution Sub-Account”** means the record established by the Board for each Participant to reflect any Matching Contributions on behalf of that Participant along with any distributions, charges, forfeitures and investment gains or losses allocable to such contributions.
- (ee) **“Minor”** means a person below the legal age of majority as determined under the laws of the State of Georgia at the time of determination of majority, without regard to whether such person lived at any time within the State of Georgia and without regard to the laws of the current state of residence of such person.
- (ff) **“Normal Retirement Age”** means the later of age sixty (60) or thirty (30) years of continuous service with a Participating Employer.
- (gg) **“Participant”** means any Employee who has enrolled in this Plan pursuant to Plan Section 4.3 or who has a Qualified Rollover Account established in his or her name pursuant to Plan Section 4.2, and has not had a complete distribution of his or her Account. In addition, any Beneficiary for whom an Account has been established in his or her name shall be a Participant and shall share the rights of a Participant, except with regard to distribution features pursuant to Article 7, for which purpose the distinction between Participant and Beneficiary shall remain.
- (hh) **“Participant Loan”** means any loan permitted as an investment option pursuant to the terms of Plan Article 8.
- (ii) **“Participant Loan Fund”** means the Investment Fund provided for Participant Loans to record any asset balance which has been loaned to the Participant.
- (jj) **“Participating Employer”** means any of the employing entities defined as an ‘Employer’ under the Employees’ Retirement System of Georgia contained in O.C.G.A. 47-2, that make Employer Contributions to the Plan on behalf of their eligible Employees and otherwise meet the requirements of State law, and :
- (1) Any department, agency, board, commission, authority or other institution of the State of Georgia authorized to pay remuneration to Employees for direct personal services;
 - (2) County departments of family and children services within the State;
 - (3) Electing county departments of health within the State;
 - (4) Electing county school boards or independent boards of education within the State;
 - (5) Electing regional community service boards within the State; and
 - (6) The Georgia Lottery Corporation.
- (kk) **“Participation Agreement”** means that form more fully described in Plan Section 4.3, whether in writing or in an electronic medium, whereby an Employee can elect to defer a portion of the Employee’s Compensation in accordance with the provisions of this Plan.

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- (ll) **“Pay Period”** means a regular accounting period established by a Participating Employer for measuring and paying Compensation earned by Employees. A Pay Period can be monthly, semi-monthly, bi-weekly or weekly, and need not be equal for all Participating Employers.
- (mm) **“Plan”** means the State of Georgia Employees' Qualified Trust Deferred Compensation Plan as set forth herein and as it may be amended from time to time.
- (nn) **“Plan Administrator”** means the Executive Director. The Executive Director may delegate all or any part of his or her powers, duties and authorities in such capacity without ceasing to be the Plan Administrator.
- (oo) **“Plan Forfeitures Accumulation Account”** means a temporary summary Plan Account established pursuant to the provisions of Plan Section 9.2 to accumulate all credited Matching Contributions and Additional Contributions forfeited from any and all applicable Sub-Accounts of Terminated Participants.
- (pp) **“Plan Trustees”** means the committee comprised of the Executive Director and the members of the Board, who, in the exercise of their respective responsibilities under the Plan, jointly provide primary fiduciary control regarding management of the Plan and oversight of the assets held in the Plan's Trust Fund for the exclusive benefit of the Participants and their Beneficiaries.
- (qq) **“Plan Year”** means the Plan's accounting year of twelve (12) months coincident with the calendar year. The first Plan Year shall end on December 31 of the calendar year in which Participant Deferred Compensation Contributions and Employer Contributions are first made under the Plan.
- (rr) **“Qualified Military Service”** means Military Service during which the Employee is entitled to reemployment rights under Chapter 43 Title 38 of the United State Code. “Military Service” means the period of an Employee's active duty for training and service in the Army, Navy, Air Force or Marines of the United States of America, 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 national emergency.
- (ss) **“Qualified Reservist Distribution”** means any distribution to a Participant from his Deferred Compensation Contribution Sub-Account:
- (1) by reason of the Participant being a member of a “reserve component” (as defined in 37 USC §101),
 - (2) to a Participant who is ordered or called to active duty in the armed services for a period in excess of 179 days or for an indefinite period, and
 - (3) The distribution is made during the period beginning on the date of the order or call to active duty and ending at the close of the active duty period.

- (tt) **“Qualified Rollover Contribution”** means a transfer into this Plan, either direct or through the Employee by means of (1) an Individual Retirement Account (2) a distribution or transfer from another pension, profit-sharing or stock bonus plan qualified under Code Section 401(a), or (3) a distribution or transfer from a Code Section 403(a), 403(b), or 457(b) Plan pursuant to the provisions of Plan Section 5.8.
- (uu) **“Rollover Contribution Sub-Account”** means that sub-account of the Account established pursuant to the provisions of Plan Section 6.1 exclusively for the purpose of receiving, maintaining and ultimately distributing a Qualified Rollover Contribution to the Plan.
- (vv) **“Spousal Waiver Form”** means that form established by the Plan Administrator, in its sole discretion, for use by a spouse to consent to the designation of another person as the Beneficiary or Beneficiaries under a Participant's Account. A Spousal Waiver Form shall not be valid unless signed by the spouse and notarized by a Notary Public.
- (ww) **“State”** means the State of Georgia along with its various arms, instrumentalities, departments, divisions, boards, commissions, authorities, agencies and political subdivisions.
- (xx) **“Sub-Account”** shall mean any one of the Deferred Compensation Contribution Sub-Account, Matching Contribution Sub-Account, Additional Contribution Sub-Account or Rollover Contribution Sub-Account which together, comprise a Participant's Account.
- (yy) **“Termination of Service”** means the date an Employee ceases to be employed (*i.e.*, incurs a termination from employment) by any and all Participating Employers due to: Death; retirement; discharge; disability; resignation (provided continuous service is interrupted); layoff; expiration or nonrenewal of appointment or term of office; nonreelection or such other form of permanent severance as may be provided by appropriate law, contract, or rules and regulations and as reflected in the Employee's personnel record or any similar official government personnel record. For purposes of this definition, Termination of Service shall not include an interruption in State service for a period of thirty-one (31) calendar days or less, Transfer among Participating Employers, or an approved leave of absence without pay of 365 calendar days or less.
- (zz) **“Transfer”** means a break in service of thirty-one (31) calendar days or less between leaving the employ of one Participating Employer and commencing employment with another Participating Employer.
- (aaa) **“Trust Fund”** means those assets of the Plan held in formal trust for the exclusive benefit of the Participants under the Plan and their Beneficiaries, as such assets shall exist from time to time.
- (bbb) **“Vested”** means that benefits under this Plan cannot be alienated nor forfeited, all in accordance with the provisions of Plan Article 9. A benefit is Vested when all conditions and obligations necessary to obtain the rights to that benefit at some designated future point shall have been fulfilled and shall no longer be subject to future contingencies;

similarly, a benefit is not subject to forfeiture when the rights to that future benefit are essentially absolute and may not be subsequently reduced or divested.

- (ccc) **“Vested Beneficiary”** means the person, persons or other legal entity, designated by a Participant or designated by operation of the Plan, as a Beneficiary of some specified portion of his or her Account, for whom the Account value has in fact become legally payable in accordance with the terms of this Plan as a result of the Death of the Participant.
- (ddd) **“Vesting Service Years”** means the total number of years (rounded down to the nearest whole number of years) of continuous service with one or more Participating Employer, measured as of the date of that Participant’s Loan, In-Service Distribution, Death, or Termination of Service pursuant to which a Participant becomes Vested in his or her Additional Contributions or Matching Contributions, all as set forth in Plan Section 9.2. A Participant shall be credited with one (1) Vesting Service Year for each actual year of service completed with one or more Participating Employers (which service with such Participating Employers shall be combined, except as provided in 9.2 of the Plan), so long as all (and only) such actual service time being taken into account in the credit computation has been continuous and unbroken except for the following occurrences: (1) service breaks of thirty-one (31) calendar days or less due to Transfer, (2) authorized leaves of absence of 365 calendar days or less, or (3) as otherwise required by law. Effective December 12, 1994, each period of qualified military service (within the meaning of Chapter 43 of Title 38 of the United States Code) served by an Employee who is reemployed pursuant to the provisions of that Chapter by the Employer shall be considered service with the Participating Employer for purposes of this definition. Effective January 1, 2009, Vesting Service Years for any Participant who was a member of the Employee’s Retirement System of Georgia on December 31, 2008, and who irrevocably elects to participate in GSEPS, shall be measured from the first date such Participant begins participation in this Plan.

2.2 Gender and Number. Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine and the definition of any terms herein in the singular may also include the plural.

2.3 Days and Dates. Whenever a time limit is expressed in terms of a number of days, they shall be consecutive calendar days, including weekends and holidays unless otherwise noted, provided however, that if the last day of a period of days would occur on a weekend or a holiday recognized by the State of Georgia for observance by State employees, the last day of the period shall be the next business day following. Where a period of time is described in this Plan in terms of “business” or “working” days, such period shall not include weekends or holidays.

2.4 Headings and Subheadings. The headings and subheadings in this Plan are inserted for the convenience of reference only and are to be ignored in any construction of the provisions hereof.

ARTICLE 3. ADMINISTRATION

3.1 Responsibilities of the Board. The Board shall act as the principal agent of the State of Georgia in matters concerning the establishment, implementation and operation of this Plan and

shall have full power to promulgate, adopt, amend or revoke such rules and regulations consistent herewith, as may be necessary to implement and operate the Plan and to make discretionary policy decisions affecting the rights or benefits of Participants under this Plan. The preceding sentence notwithstanding, the Board, the Executive Director, the Plan Trustees, or the State may be represented by the Office of the State Attorney General in any proceeding before a court of law.

The Board shall further have the sole administrative authority pursuant to Plan Article 11 to amend the terms and provisions of the Plan, or to terminate the Plan, or to substitute a new Plan, and shall exercise sole discretion with regard to distribution of the Deferred Compensation Account of the Plan Administrator, where such prospective distribution is due either to alleged Financial Hardship pursuant to Plan Section 7.6 or to a requested Participant Loan against such Deferred Compensation Account pursuant to Plan Article 8.

3.2 Responsibilities of the Executive Director. The Executive Director shall be the Plan Administrator and shall serve as the executive officer for the administration of the Plan provisions contained herein and such other rules and regulations with respect to implementation and operation of the Plan as may from time to time be promulgated by the Board. As Plan Administrator, the Executive Director shall at all times act as custodian of the Employer Contribution assets held in the Plan's Trust Fund on behalf of Participants and their Beneficiaries, and shall have prepared and delivered to Participants or the pertinent Federal, State or local governmental agencies all information, descriptions, and reports as may be required by applicable law or provisions of the Plan.

The Executive Director shall where necessary interpret the provisions of the Plan and any ancillary promulgations of the Board, determining (except as may be otherwise explicitly provided in the Plan) the rights and status of Participants or Beneficiaries under the Plan. The Executive Director furthermore shall (except as may be otherwise explicitly provided in the Plan) make findings of fact with respect to any matter arising in connection with the administration of the Plan, including determinations of qualified Financial Hardship and (if made available by the Board) Participant Loan approval. Except as may be subsequently superseded by Plan amendment or other promulgations of the Board, legislative enactment, or decision by a court of law with competent jurisdiction, such interpretations and findings of fact shall be final and conclusive as to all interested persons for all purposes of the Plan.

The Executive Director may employ such personnel as may be necessary to carry out his or her duties and responsibilities hereunder and to provide the Board with the necessary staff support for the proper exercise of its duties and responsibilities regarding implementation and operation of the Plan. The Executive Director may also invite proposals from qualified corporations or other qualified entities to bid on providing investment, administrative, or other services to the Plan, and may, following such a procedure, execute a contract or contracts with one or more firms so selected. So long as such action would not be *prima facie* arbitrary and capricious, the Executive Director may furthermore cancel or negotiate modification of any contract or contracts so executed. Finally, the Executive Director may delegate to his or her staff personnel or to any contracted organizations herein described such tasks and duties with respect to administration of the Plan as he or she may deem appropriate.

3.3 Delegated Responsibilities for Determination of Qualifying Financial Hardship and Participant Loan Approval. The Plan Administrator shall be authorized to delegate to either designated staff or any entity contracted to provide administrative or other services to the

Plan both the initial determination as to whether any Participant has suffered a qualifying Financial Hardship and is entitled to an In-Service distribution thereby under Plan Section 7.6, the initial review, approval or denial of any Participant Loan requested by a Participant against his or her Account pursuant to Plan Article 8 (to the extent such Participant Loan provisions have been implemented by the Board). In carrying out determinations of eligibility for Financial Hardship distributions, the Plan Administrator and his or her designees shall apply the standards for qualifying Financial Hardship set forth either explicitly under Plan Section 7.6 or incorporated by reference thereunder. No person appointed by the Plan Administrator shall make any determination with respect to any interest that he or she may have under the Plan except for determinations required by the Plan and available to all Participants.

3.4 Responsibilities of the Plan Trustees. The Executive Director in the capacity of Plan Administrator and the appointed members of the Board shall ex-officio constitute the Plan Trustees. In addition to their other responsibilities with respect to the Plan set forth herein, the Plan Trustees shall as a body exercise primary oversight and fiduciary responsibilities with respect to the Plan and its associated Trust Fund, so as to assure that no part of the corpus or income of the Trust Fund maintained pursuant to the Plan or any funds properly contributed to the Plan shall, through operation of the Plan or other means, be used for or diverted to purposes other than the exclusive benefit of Plan Participants and their Beneficiaries. Such "exclusive benefit" responsibility shall not be considered violated solely as the result of the proper exercise of administrative actions authorized under Plan Section 3.5 (with respect to collection of Plan administrative expenses), Plan Section 6.4 (with respect to collection of Investment Fund charges), Plan Sections 5.2, 5.4 or 5.7 (with respect to the return of unallowable Employer contributions), and Plan Section 9.4 (with respect to the return or utilization of forfeited Matching and Additional Contributions).

In the exercise of its fiduciary responsibilities, the Plan Trustees shall, where practicable, generally follow the standards of fiduciary conduct prescribed in the Employee Retirement Income Security Act of 1974 ("ERISA") and any other statement of fiduciary policy adopted for such purpose by the Board. The fiduciary responsibilities of the Plan Trustees shall include, but are not limited to, the following:

- (a) **Books and Records.** The Plan Trustees shall cause to be created and maintained adequate and distinct written or computerized records with respect to operation of the Plan, including any common Investment Funds thereto, any and all Participant or Beneficiary accounts and Sub-Accounts thereunder pursuant to Plan Article 6, and any pending litigation to which the Plan or the Plan Trustees are a party. Such records shall be kept and retained for so long as the contents thereof may be or become material in the administration of the Plan or in the full and complete discharge of liabilities to any and all Participants or Beneficiaries thereunder.
- (b) **Audits.** The Board shall cause to be carried out detailed audit of the Plan's official books and records by a qualified accountant at least once annually to be conducted in accordance with the requirements of the State Accounting Office. Such audit shall ascertain whether, for the period covered by the audit, the Plan has been administered in accordance with applicable law, the provisions of the Plan, and sound fiduciary principles. The audit shall be conducted in accordance with generally accepted auditing standards, and shall include such tests of the Plan books and records as are deemed appropriate and necessary by the accountant.

- (c) **Annual Report.** The Board shall cause to be prepared an annual report with respect to each Plan Year completed (except for the initial Plan Year in which Employer Contributions are first made). Such annual report shall include, but shall not be limited to, appropriate market valuations of Plan assets and liabilities at the beginning and end of such Plan Year; a statement for the Plan Year period showing Contributions, investment purchases and redemptions, investment and other Plan income, realized and unrealized investment gains and losses, and Plan distributions, administrative expenses or other expenditures; and the results of any audit or audits completed with respect to any portion of the Plan Year.

3.5 Administration Cost. Under Ga. Laws, 1985, p.441, as amended, O.C.G.A. 45-18-57, the costs of administering the Plan and providing its specified benefits to Participants will be paid by the Participating Employers to the extent of available funds for such purpose. To the extent such funds are insufficient to cover the reasonable and necessary costs of Plan implementation and operation, the Plan Administrator shall determine, in a manner deemed fair and equitable, the unfunded administration expense of the Plan. The Plan Administrator may then withhold or collect, or have withheld or collected, such unfunded costs, in a manner deemed fair and equitable (including, but not limited to, direct debits on a pro rata basis to Participant's Deferred Compensation Contribution Sub-Accounts, Matching Contribution Sub-Accounts, and/or Additional Contribution Sub-Accounts, as well as to, if applicable, any Rollover Contribution Account of the Participant) from any or all of the following:

- (a) The current or prior years' Employer Contributions to the Plan (including Deferred Compensation Contributions);
- (b) The income produced from the Employer Contributions to the Plan (including Deferred Compensation Contributions);
- (c) The income produced from any investment under the Trust Fund of Employer Contributions to the Plan (including Deferred Compensation Contributions);
- (d) From the organization or organizations processing or managing such investment; or
- (e) From the organization or organizations providing any other contractual services under the Plan.

In determining the unfunded administration expense of the Plan, the Plan Administrator shall be authorized to take into account not only expenditures already made or incurred but also any reserves for contingencies or unliquidated Plan liabilities which he or she may deem to be appropriate under sound accounting and fiduciary principles.

3.6 Legal Status of Plan. It is the intention of the State that this Plan and Trust Fund exist, and be administered, as a profit-sharing plan and qualified trust under Code Section 401(a) and as a qualified Cash or Deferred Arrangement ("CODA") under Code Section 401(k), along with any other governing Code sections cross-referenced therefrom and any regulations or rulings thereunder promulgated or proposed by the Secretary of the Treasury. Therefore, the Board, Committee, Plan Administrator and Plan Trustees shall be hereby authorized and required to exercise all of their respective powers and responsibilities under applicable law, regulation and applicable provisions of Plan Article 3, both express and implied, and any additional statements of fiduciary policy as may be adopted by the Board, so as to at all times carry out such intention.

3.7 Policy of Uniform Administration. In exercising their administrative authority and responsibilities under the Plan, the Board, Plan Administrator and Plan Trustees, along with their employees, officials, agents, assignees and successors, shall follow a general policy of non-discrimination and uniform treatment with respect to any actions taken affecting the interest of any Participant or Beneficiary of the Plan or of any Employee. Such policy shall not be taken to mean that all Participants, Beneficiaries or Employees must be treated or affected equally, but rather that, as much as is practicable, all Participants, Beneficiaries or Employees who are similarly situated shall be treated in a like manner.

3.8 Liability Limitations. The State, Participating Employers, Board, Plan Administrator and Plan Trustees, along with their employees, officials, agents, assignees and successors of same, shall be held harmless by the Participant or Beneficiary together with his or her heirs, successors and assignees from any and all liability hereunder for all acts of commission or omission performed in good faith and with reasonable prudence, including acts relating to the investment of Employer Contributions and the Participant's or Beneficiary's investment preference hereunder. Except as otherwise provided by contract or applicable law, no person acting in an administrative or fiduciary capacity with respect to the Plan shall be liable for any action taken or not taken with respect to the Plan except for personal gross negligence or willful misconduct. Furthermore, except as otherwise provided by contract or applicable law, any person acting in said capacity with respect to the Plan may rely, and shall be fully protected in acting in good faith, upon the advice and counsel of the Office of the State Attorney General, upon the records, reports or determinations of the State, any Participating Employers, the Plan, or any contracted organization under the Plan, or upon any information furnished by an Employee, a Participant, or a Beneficiary concerning any fact required to be determined under any of the provisions of the Plan.

ARTICLE 4. PLAN PARTICIPATION

4.1 Eligibility. Any Employee, including an Employee who is a Trustee, and who is actively receiving Compensation on or after the date the Plan becomes effective, is eligible to become a Participant. Any eligible Employee actually becomes a Participant pursuant to Plan Section 4.2.

4.2 Enrollment. Any Employee eligible to participate pursuant to Plan Section 4.1 shall become a Participant at the earlier of either: (1) the first day after receipt by the Plan Administrator of an Additional Contribution or a Matching Contribution made by a Participating Employer on behalf of the Employee; or (2) the first day after receipt by the Plan Administrator of a Participation Agreement described in Plan Section 4.3, directing the Employee's Participating Employer to defer payment of a part of his or her Compensation and to contribute an equal amount to the Plan on his or her behalf. The deferral will commence as soon as administratively possible.

Any Employee may also become a Participant for the purposes of making a Qualified Rollover Contribution pursuant to Plan Section 5.8 by requesting such Qualified Rollover Contribution in writing and by providing such documentation as may be required by the Plan Administrator. Any enrollment for the purposes of a Qualified Rollover Contribution shall not, however, in and of itself entitle the Employee to defer Compensation. Deferrals of Compensation require a valid Participation Agreement pursuant to Plan Section 4.3.

Any Employee who is hired or rehired on and after January 1, 2009, and is eligible for GSEPS or an Employee who was hired before January 1, 2009, who elects to participate in GSEPS, shall be deemed to have elected to have a Deferred Compensation Contribution made on his behalf into the Plan equal to one percent (1%) of his Compensation, unless he makes an affirmative election (a) not to participate in the Plan, (b) to have a different amount deferred, or (3) to withdraw from the Plan completely. This deemed election may be modified or revoked at any time by the Participant in accordance with the provisions of Sections 4.4 and 4.5 of the Plan.

4.3 Participation Agreement. The Plan Administrator shall establish a Participation Agreement form or forms at its exclusive discretion, which shall be required for all Employees wishing to defer a portion of Compensation under the Plan. Such form or forms may be in writing or in an electronic medium. Among other provisions, the Participation Agreement shall also contain a provision whereby the Participant, together with his heirs, successors and assignees, shall hold harmless the State, Participating Employers, Board, Plan Administrator and Plan Trustees, along with the employees, officials, agents, third-party service providers, assignees and successors of same, from any and all liability hereunder for all acts of commission or omission performed in good faith and with reasonable prudence, including acts relating to the investment of Employer Contributions and the Participant's or Beneficiary's investment preference hereunder.

4.4 Participant Modifications to Amount Deferred. The amount of Deferred Compensation per Pay Period, subject to the limits of Plan Sections 4.8, 4.9 and 5.6, may be increased or decreased only by using a Change Participation Agreement properly completed by a Participant and, if applicable, his or her Participating Employer. The Plan Administrator shall reserve the final authority to approve or deny any requested deferral amount modifications (other than a Revocation of Compensation Deferral pursuant to Plan Section 4.5). Examples of why the Plan Administrator may reject a Change Participation Agreement include, the Change Participation Agreement not being properly completed, the Change Participation Agreement causing the Participant's Deferred Compensation Contribution to be more than zero percent but less than one percent (1%) of Compensation, or the Change Participation Agreement creating total contributions in excess of the Plan maximum.

4.5 Participant Revocation of Compensation Deferral. Any Participant may revoke his or her election to have Compensation deferred by properly executing and delivering a Change Participation Agreement to the Plan Administrator. Such revocation will become effective as soon as administratively practicable after receipt of the Change Participation Agreement by the Plan Administrator. Revocation of a Participant's Deferred Compensation Contribution shall not, however, entitle the Participant to a distribution of his or her Account under this Plan. The Participant's Account shall be distributed only pursuant to Plan Article 7. The revocation of a deferral election by a Participant shall not preclude the Participant from later making another election for the deferral of Compensation pursuant to Plan Section 4.2. A GSEPS Participant who is automatically deemed to have elected a one-percent Deferred Compensation Contribution in accordance with Section 4.2 of the Plan, shall have ninety (90) days from his first date of enrollment in the Plan to elect to withdraw from the Plan entirely. Any such withdrawal must be in writing in accordance with a form or forms prescribed by the Plan Administrator, which may be in an electronic medium. If the Participant elects to withdraw from the Plan within this ninety-day period, any amounts previously deferred into the Plan from the Participant's Compensation shall be returned to him as soon as administratively practicable, including any earnings but not losses that may have been credited to the automatic Participant's Deferred Compensation Contributions. All amounts returned to the Participant shall be taxable to him in the year

returned but no early withdrawal penalty shall apply. Any Employer Matching Contributions made on behalf of the Participant with respect to the automatic Deferred Compensation Contributions that are returned to the Employee, shall be forfeited and placed in the Plan's Forfeiture Account.

4.6 Duration of Compensation Deferral. Once a Participant elects to make a Deferred Compensation Contribution, the election shall continue in effect for all Pay Periods in which Compensation is due until the earliest of:

- (a) Termination of Service;
- (b) Death;
- (c) Modification of the Deferred Compensation election by the Participant pursuant to Plan Section 4.4;
- (d) Revocation of the Deferred Compensation election by the Participant pursuant to Plan Section 4.5; or
- (e) Administrative action by the Plan Administrator required or deemed advisable by the Plan Administrator in order to prevent violation of the contribution limits under Plan Sections 4.8 and 5.6.

4.7 Leave of Absence. Any Participant who is granted a leave of absence with pay by a Participating Employer shall continue to have Compensation deferred in the same manner as in effect on the work day immediately before he or she begins such leave. The Participant may also modify or revoke the election pursuant to Plan Sections 4.4 and 4.5 while in such leave status. Any Participant who is granted a leave of absence without pay by a Participating Employer for less than three hundred and sixty-six (366) consecutive calendar days shall continue as a Participant in the Plan, but his or her Participation Agreement shall lapse, and no Deferred Compensation Contributions, Additional Contributions nor Matching Contributions shall be added to such Participant's Account during this period. When the Participant returns to active paid status from such leave, the payment of Employer Contributions shall recommence as per the terms of this Plan and the deferral of Compensation shall again commence to the extent of any Participation Agreement that was in effect immediately prior to the first day of the Participant's authorized leave of absence.

Any of the provisions of the preceding paragraph notwithstanding, if an approved leave of absence (either with or without pay) is terminated by a Participating Employer or Participant without the resumption of paid status, the Participant shall be treated as having a Termination of Service under the Plan, with the date of Termination of Service being the first day of such leave of absence. When a Participant has continued on a leave of absence without pay for three hundred and sixty-six (366) consecutive calendar days, that Participant shall also be treated as having a Termination of Service under the Plan.

4.8 Restrictions on Requested Deferred Compensation Amounts. Deferred Compensation Contributions must meet the following requirements:

- (a) **Maximum Plan Year Amount.** The total amount of Compensation which a Participant may agree to defer during any given Plan Year shall not exceed the lesser of (1) or (2) below:

- (1) Depending on the Plan Year in question:
 - (A) For all Plan Years beginning prior to 1/1/2000, ten percent (10%) of the Participant's Compensation earned during the Plan Year at issue;
 - (B) For all Plan Years beginning on or after 1/1/2000, but prior to 1/1/2002, fifteen percent (15%) of the Participant's Compensation earned during the Plan Year at issue;
 - (C) For all Plan Years beginning on or after 1/1/2002, one hundred percent (100%) of the Participant's Compensation earned (subject to the limits of Subsection (b), below), during the Plan Year at issue; or
- (2) The seven thousand dollar (\$7,000) annual Deferred Compensation Contribution limit as established and modified by the Secretary of the Treasury pursuant to Code Section 402(g). For example, in the 2008 Plan Year, and that Plan Year only, such limit shall be eleven thousand dollars (\$11,500). For purposes of this Plan Subsection 4.8(a)(2), Catch-up Contributions made pursuant to Plan Section 5.9 shall not be taken into account.

- (b) **Maximum Pay Period Amount.** The maximum amount of Compensation which a Participant may agree to defer for a given Pay Period shall in all instances be limited to his or her gross Compensation for that Pay Period less withholding for FICA and any other applicable taxes, for pension contributions, cafeteria or other health and welfare plan deferrals, pre-tax transportation deferrals, garnishments, qualified child medical support orders, and for any other payroll deductions.
- (c) **Minimum Contribution Amount Restrictions.** Any Deferred Compensation requested by the Participant for a given Pay Period shall be specified as a whole percentage, but in no event shall such amount equal less than one percent (1%) of Compensation.

The Participant shall at all times bear primary responsibility for assuring that the provisions set forth under (a) through (c) above are observed, and no costs or liabilities (such as loss of earnings or additional income tax, penalty and interest) falling on the Participant as a result of intentional or unintentional violation of these provisions shall be assumable by the State, Employer, Participating Employers, Plan, Plan Administrator, Board, Plan Trustees, or their employees, officials, agents, assignees and successors.

4.9 Administrative Modification of Requested Deferred Compensation Amounts. The Plan Administrator shall be authorized to temporarily modify or revoke each Participant's Participation Agreement and Deferred Compensation Contributions as may from time to time be necessary to avoid violation of Deferred Compensation Contribution limitations under Plan Section 4.8 or Employer Contribution limitations under Plan Section 5.6. Unless subsequently modified, the Participant's Deferred Compensation Contributions shall be resumed on the first Pay Period of the succeeding Plan Year in accordance with the Participation Agreement or other election in place on the last day before the required administrative modification discussed above.

4.10 Designation of Beneficiary. A Participant may designate a Beneficiary or Beneficiaries who will receive any balance in the Participant's Account in the event of his or her Death in accordance with the following:

- (a) A designation of Beneficiary shall be effective when a valid Beneficiary Form is received from the Participant by the Plan Administrator. Participating Employers are obligated to forward all Beneficiary Forms, if any, that are received from Participants to the Plan Administrator. Designation of a Beneficiary shall be limited by the spousal waiver rules further described in Plan Section 4.11. Participants shall designate by specific percentages (which may be equal or unequal) each Beneficiary's share of the Participant's Account.
- (b) No Beneficiary shall have any rights or entitlement to any benefits under this Plan until he or she becomes a Vested Beneficiary, and a Participant may, at any time, change his or her Beneficiary or Beneficiaries pursuant to (a) above, except as may be restricted by the provisions of Plan Section 4.11.
- (c) A Participant may designate both primary and contingent Beneficiaries. A contingent Beneficiary or Beneficiaries shall acquire such rights or entitlement as provided under (b) above only after the Death of any and all primary Beneficiaries.
- (d) If a Beneficiary dies prior to, or simultaneously with, the Participant, only the surviving Beneficiaries shall become Vested Beneficiaries. If more than two (2) Beneficiaries have been designated by the Participant to receive different percentages of entitled benefits, surviving Beneficiaries shall share in the same proportion to each other as was indicated in the original designation.
- (e) A Participant may designate a living person, a trust, an estate, or other legal entity as a Beneficiary. If a Beneficiary has not been designated, or a designation is ineffective due to the Death of any and all Beneficiaries prior to or simultaneously with the Participant, or a designation is ineffective for any other reason, then the Estate of the Participant shall be the Beneficiary (except as may be otherwise provided pursuant to Plan Section 4.11).
- (f) Upon the Death of the Participant, Vested Beneficiaries shall have all the rights of the original Participant except those expressly reserved to Participants by any other Plan provision (including, but not limited to, the right to defer from Compensation and the right to select such Account distribution commencement times or methods as are provided only for Participants).
- (g) In the event of a conflict between the provisions of this Plan Section 4.10 and the terms of any annuity contract purchased and distributed pursuant to the provisions of Plan Subsection 7.3(a)(3), the terms of such annuity contract shall prevail. Likewise, in the event of a conflict between the provisions of this Plan Section 4.10 and the provisions of Plan Section 4.11, the provisions of Plan Section 4.11 shall prevail.

4.11 Priority and Waiver of Spousal Beneficiary Rights. Notwithstanding any provisions of Plan Section 4.10 to the contrary, for such period of time as a Participant is and remains married, the spouse of such Participant shall be deemed to be the sole Beneficiary entitled to any and all benefits payable under the Plan upon the Death of the Participant except as may be otherwise provided hereunder, pursuant to the provisions of Code Section 401(a)(11) and U.S. Treas. Regs. §1.401(a)-20. The deemed entitlements of a surviving spouse shall prevail irrespective of any otherwise-valid Beneficiary designation filed by the Participant to the contrary unless such spousal rights have been explicitly waived by way of a properly executed Spousal Waiver Form as provided under the following paragraph, and shall likewise prevail over any

operation of Plan Subsection 4.10(e) so as to otherwise deem the estate of the Participant as the default Beneficiary absent any affirmative Beneficiary designation by the Participant prior to his or her Death.

A married Participant may choose to cancel application of sole Beneficiary rights of the spouse under the Plan (thereby permitting affirmative designation of other Beneficiaries instead of or in addition to such spouse) by obtaining a written Spousal Waiver Form signed by his or her spouse and notarized by a properly licensed Notary Public. The Participant may withdraw the waiver of spousal beneficiary rights at any time by filing a new Beneficiary designation naming his or her spouse as sole primary Beneficiary; however, spousal consent to waiver, once granted, may not be rescinded or withdrawn by such spouse. A married Participant may designate a new non-spouse Beneficiary without need of a further written consent of his or her spouse only if the initial Spousal Waiver Form agreed to by the spouse expressly permits future Beneficiary designations by the Participant without further spousal consent.

4.12 Qualified Military Service. Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to Qualified Military Service will be provided in accordance with Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") and Code § 414(u).

- (a) **Reemployment.** Plan Participants who are reemployed in accordance with the requirements of USERRA and Code § 414(u) shall be treated as not having incurred a Termination of Service under the Plan during such Qualified Military Service. Such period of Qualified Military Service shall be counted for purposes of eligibility and vesting under the Plan.
- (b) **Required Deferred Compensation Contributions.** After returning to employment, a Plan Participant may make up any Deferred Compensation Contributions that he or she would have made to the Plan for the period of Qualified Military Service. A Participant must make-up any Deferred Compensation Contributions that are required for Matching Contributions for the period of Qualified Military Service as provided in subsection (c) below. A Participant must make-up any such Deferred Compensation Contributions within the time period that begins on the date of the Participant's reemployment and ends on the date that is three times the period of Qualified Military Service or five (5) years, or the Participants' date of Termination of Service, whichever is earlier. The make-up Deferred Compensation Contributions shall not be adjusted for earnings. The Participant may make-up all or a portion of any required Deferred Compensation Contributions and shall receive Matching Contributions that are directly proportionate to the amount of Deferred Compensation Contributions that are made up. The Employee shall designate the Plan Year to which such Deferred Compensation Contributions relate. The Employer shall allocate its Matching Contribution based on the Participant's required make-up Deferred Compensation Contributions in the time and manner as such Matching Contributions were made for active Participants.
- (c) **Matching Contributions.** So long as the Participant makes the required Deferred Compensation Contributions, the Participating Employer shall make Matching Contributions on behalf of a Participant who returns to employment with the Participating Employer in accordance with USERRA, following a period of Qualified Military Service. Such Matching Contributions shall be made within 90 days after the date the Participant is

reemployed by the Participating Employer or when Matching Contributions are normally made for the year in which Qualified Military Service was performed, whichever is later. Such Matching Contributions shall be made for the period of Qualified Military Leave based on the contribution rates in effect for the Plan Year(s) in which the Participant was in Qualified Military Service.

- (d) **Additional Contributions.** The Participating Employer shall make Additional Contributions on behalf of a Participant who returns to employment with the Participating Employer in accordance with USERRA, following a period of Qualified Military Service, if such Additional Contributions were made for active Participants during that time. Such Additional Contributions shall be made within 90 days after the date the Participant is reemployed by the Participating Employer or when Additional Contributions are normally made for the year in which Qualified Military Service was performed, whichever is later. Such Additional Contributions shall be made for the period of Qualified Military Leave based on the contribution rates in effect for the Plan Year(s) in which the Participant was in Qualified Military Service.
- (e) **Death During Qualified Military Service.** If a Participant dies during a period of Qualified Military Service, the Participant shall be treated as having returned to employment with the Participating Employer on the day before his death and died the next day. Such Participant shall receive credit for vesting purposes for the period of Qualified Military Service. The Participating Employer shall make no Matching Contributions or Additional Contributions on behalf of any such Participant for the period of Qualified Military Service.
- (f) **Compensation.** For purposes of this Section, a Participant's Compensation during the period of Qualified Military Service shall be treated as equivalent to the Compensation he or she would have received during such period but for the period of Qualified Military Service. Such determination shall be based on the rate of pay the Employee would have received during that time; provided, however if the Compensation the Employee would have received during such period is not reasonably certain, Compensation for this purpose shall equal the Employee's average Compensation during the 12 months immediately preceding the Qualified Military Service (or, if shorter, the period of employment immediately preceding the Qualified Military Service).
- (g) **Code § 415.** Any contributions made pursuant to this Section are not subject to the limits under Code § 415 in the Plan Year(s) in which they are made; rather, such contributions are subject to such limits in the Plan Year(s) to which the contributions relate.

ARTICLE 5. PLAN CONTRIBUTIONS

5.1 Deferred Compensation Contributions. Participating Employers shall reduce each Participant's Compensation per Pay Period by the Deferred Compensation amounts applicable to each Pay Period and contribute such amount to the Plan as the Deferred Compensation Contributions for that Pay Period. Contributions to the Plan must be received by the Plan Administrator as soon as possible following the end of each Pay Period but not later than fifteen (15) days after the end of the Pay Period.

All contributions made into the Deferred Compensation Contribution Account shall be considered "nonforfeitable" and "fully Vested" on behalf of the deferring Participants, as such terms are

applied in Code Section 411(a). Such Deferred Compensation Contributions on behalf of each Participant shall be credited to the Deferred Compensation Contribution Sub-Account for that Participant.

5.2 Administrative Modification of Deferred Compensation Contributions. The Plan Administrator shall be authorized to take such action or actions as may be necessary to prevent violation of either the Deferred Compensation Contribution limitations under Plan Subsection 4.8(a)(2) or the Employer Contribution limitations under Plan Section 5.6 with respect to Deferred Compensation Contributions. Said action may relate to past and/or future Deferred Compensation Contributions, and may include (but is not limited to) the following:

- (a) Returning Deferred Compensation Contributions to some or all Participants as corrective compensation payments. With regard to Deferred Compensation Contributions in excess of Plan Subsection 4.8(a) which shall hereinafter be referred to as "Excess Deferrals":
 - (1) Any corrective compensation payments of Excess Deferrals, plus any income or minus any loss attributable to such Excess Deferrals, must be distributed to the applicable Participant no later than April 15th following the calendar year in which such Deferred Compensation Contributions were made;
 - (2) Any Participant who has an Excess Deferral during a calendar year may receive a distribution of such Excess Deferral as specified in Subsection 5.2(a)(1) above, provided that:
 - (A) The Participant requests (or is deemed to request) the distribution of the Excess Deferral;
 - (B) The distribution occurs after the date on which the Excess Deferral arose; and
 - (C) The Plan Administrator designates the distribution as a distribution of an Excess Deferral;
 - (3) If a Participant makes a Deferred Compensation Contribution under this Plan and in the same calendar year makes a contribution to another Code Section 401(k) plan containing a cash or deferred arrangement ("401(k) plan"), a Code Section 408(k) plan ("simplified employee pension plan"), a Code Section 408(p) plan ("SIMPLE retirement account"), or a Code Section 403(b) plan ("tax sheltered annuity") and, after the return of any Deferred Compensation Contribution in excess of the Plan Subsection 4.8(a)(2) limitation pursuant to Plan Subsections 5.2(a)(1) and 5.2(a)(2), the aggregate of all such Deferred Compensation Contributions and contributions to the other plans exceed the limitations contained in Code Section 402(g), then such Participant may request that the Plan Administrator return all or a portion of the Participant's Deferred Compensation Contribution for the calendar year plus any income and minus any loss attributable to such excess deferrals from this Plan;

In the event an Excess Deferral arises out of contributions to a retirement plan (including this Plan) sponsored by the State, the Participant making the Excess Deferral shall be automatically deemed to have requested a return of the Excess Deferral. A return of such Excess Deferral shall in that case be first made from this

Plan prior to making any return of the Excess Deferral from any other plan described in this Subsection 5.2(a)(3).

- (4) Any request for a return of Excess Deferrals arising out of contributions to a plan described in Plan Subsection 5.2(a)(3) above which is maintained by an entity other than the State must:
 - (A) Be made in writing;
 - (B) Be submitted to the Plan Administrator not later than March 1st following the Plan Year in which the Excess Deferral arose;
 - (C) Specify the amount of the Excess Deferral (not more than 100%); and
 - (D) Contain a statement that if the Excess Deferral is not distributed, it will, when added to amounts deferred under other plans or arrangements described under Code Sections 401(k), 408(k), 408(p), and 403(b) for the year in which the Excess Deferral occurred, exceed the Code Section 402(g) limitation.
 - (5) Deferred Compensation Contributions may only be returned to the extent necessary to eliminate a Participant's Excess Deferral. Excess Deferrals which have been returned as corrective compensation payments shall not be treated as Annual Additions under Code Section 415. Excess Deferrals which have been returned as corrective compensation payments shall be treated as Annual Additions under the Plan for purposes of Code Section 415. Deferred Compensation can be returned only up to that minimum amount necessary to avoid a violation of Code Section 415, but never in an amount greater than one hundred percent (100%) of the Participant's Deferred Compensation Contribution for the year of the violation;
 - (6) The income or loss allocable to an Excess Deferral that is returned to a Participant pursuant to this Plan Subsection 5.2(a) shall be determined using any reasonable method adopted by the Plan to measure income earned or loss incurred during the Plan Year;
 - (7) Any Matching Contributions allocable to an Excess Deferral that is returned to a Participant pursuant to this Plan Subsection 5.2(a) shall be forfeited notwithstanding the provisions of Plan Article 9. For this purpose, however, the Deferred Compensation Contributions that are returned to the Participant as an Excess Deferral shall be deemed to be first those Deferred Compensation Contributions for which no Matching Contributions were made and second those Deferred Compensation Contributions for which Matching Contributions were made.
- (b) Temporarily suspending the ability of some or all Participants to defer Compensation and to have Deferred Compensation Contributions made to the Plan on their behalf;
 - (c) Temporarily reducing the percentage of Compensation which some or all Participants may defer and have contributed to the Plan on their behalf;
 - (d) Temporarily capping the cumulative Plan Year dollar amount of Compensation which some or all Participants may defer and have contributed to the Plan on their behalf; or

- (e) Prohibiting some or all Participants from making Deferred Compensation Contributions to this Plan within the same Plan Year in which any such Participants defer Compensation under a Code Section 457 or Code Section 403(b) plan sponsored by the State.

5.3 Matching Contributions. The State Legislature may, from time to time, appropriate or grant funds and allocate or grant such funds to the various Participating Employers for the purpose of making supplemental contributions to this Plan on behalf of Participants, in addition to any Deferred Compensation Contributions to be made pursuant to Plan Section 5.1. For any Pay Period within any Fiscal Year for which supplemental contribution funds have been so appropriated or granted, each Participating Employer shall make Matching Contributions to the Plan out of funds available to it for that purpose on behalf of all Participants who have Deferred Compensation Contributions under Plan Section 5.1 for that Pay Period. Except as otherwise provided below, all Matching Contributions due from Participating Employers shall be transmitted to the Plan Administrator as soon as possible following the end of each Pay Period but not later than five (5) days after the end of the Pay Period. Participating Employers whose Matching Contributions are paid by the Department of Revenue or the Superior Courts on behalf of county tax commissioners and state court employees, must transmit Matching Contributions within five (5) days of receiving an invoice from the Plan Administrator. Any Matching Contributions so made by any Participating Employer on behalf of a Participant deferring Compensation shall be credited to the Matching Contribution Sub-Account for that Participant. However, Matching Contributions shall not be made or accrued for Pay Periods within any Fiscal Year for which Matching Contribution funds have not been appropriated or granted to the Participating Employers through the legislative process.

A fixed Matching Contribution percentage may be established by law, on all Deferred Compensation Contributions by the State Legislature in the relevant state appropriations act prior to the beginning of any Pay Period for which the Matching Contribution funds have been appropriated or granted. A fixed Matching Contribution percentage may also be established by a Participating Employer that enters into an agreement with the Plan. If, however, such Matching Contribution percentage is not established in the applicable appropriations act, then the Matching Contribution percentage) will be established by the Board and approved by the Governor's Office of Planning and Budget. In addition to the fixed Matching Contribution percentage, the appropriations act (or, as applicable, the Board) may also establish a minimum Matching Contribution dollar amount per Participant per Pay Period, a maximum Matching Contribution dollar amount per Participant per Pay Period, or both.

The amount of Matching Contribution due from any Participating Employer each Pay Period on behalf of any Participant for which a Deferred Compensation Contribution is also due shall be one of the following:

- (a) The product of the Pay Period Deferred Compensation Contribution amount due on behalf of the Participant times the established Matching Contribution percentage rate;
- (b) The minimum Pay Period Matching Contribution dollar amount, if such minimum amount has been established and if the established minimum amount is greater than that calculated under Plan Subsection 5.3(a), above; or

- (c) The maximum Pay Period Matching Contribution dollar amount, if such maximum amount has been established and if the established maximum amount is less than that calculated under Plan Subsection 5.3(a), above.

Notwithstanding any of the provisions of the preceding paragraph, if Matching Contributions are due from a Participating Employer for a Pay Period but the funds available to such Participating Employer are insufficient to provide each Participant employed by such Participating Employer the full amount of that Matching Contribution which would otherwise be due as calculated above, then such funds as are available shall be paid to the Plan and allocated to each such Participant employed by the Participating Employer in the ratio that the preliminary Matching Contribution due for that Participant (as calculated above) bears to the sum of the preliminary total Deferred Compensation Contributions due for all Participants of the Participating Employer (as calculated above).

5.4 Administrative Modification of Matching Contributions. The Plan Administrator shall be authorized to take such action or actions, consistent with the provisions of Plan Sections 3.6 and 3.7, as may be necessary to prevent violation of the employer contribution limitations under Plan Section 5.6 with respect to Matching Contributions. Said action may relate to past and/or future Matching Contributions and may include (but is not limited to) the following:

- (a) Returning Matching Contributions to some or all Participating Employers or to the General Fund of the State;
- (b) Temporarily suspending the obligation of some or all Participating Employers to make Matching Contributions on behalf of deferring Participants;
- (c) Temporarily placing a maximum limit on the amount of Participant Deferred Compensation Contributions to which the Matching Contributions are to apply (e.g., limiting Matching Contributions to the first ten percent (10%) of Deferred Compensation Contributions); or
- (d) Temporarily reducing any established maximum Matching Contribution dollar amount which must be applied by some or all Participating Employers in calculating the Matching Contributions on behalf of deferring Participants.

5.5 Additional Contributions. An Employee of a Community Service Board or the Georgia Lottery Corporation shall commence receiving Additional Employer Contributions for each Plan Year in which he or she has attained one (1) Contribution Eligibility Year, provided that he or she also satisfies one of the following:

- (a) The Employee was hired on or after July 1, 1994 and, in his or her capacity as an Employee of a Community Service Board, and that capacity only, is not eligible to currently contribute to accrue a benefit under any of the State's defined benefit programs;
- (b) The Employee has executed a valid election to opt out of participation in any of the State's defined benefit programs during an applicable election period if given such an opportunity;
or

- (c) The Employee is an Employee of the Georgia Lottery Corporation and is, in such a capacity, ineligible to participate in any of the State's defined benefit programs.

Any Additional Contribution so made by a Participating Employer on behalf of a Participant shall be credited to the Additional Contribution Sub-Account pursuant to Plan Section 6.2.

The Amount of Additional Contribution due from a Participating Employer for each Pay Period shall be the product of the Participant's Compensation (if any) for such Pay Period times the Additional Contribution percentage rate established by Plan Subsection 2.1(c).

Failure to make required Additional Contributions by a Participating Employer that has adopted this Plan and voluntarily committed itself to make such Additional Contributions will allow the Plan Administrator to terminate that Participating Employer's eligibility to make any form of prospective contributions. The Participants of a Participating Employer so designated as ineligible by the Plan Administrator will be deemed for purposes of this Plan to have incurred a Termination of Service following thirty (30) days notice by the Plan Administrator.

Notwithstanding any provision of this Plan to the contrary, failure in any one Plan Year to be credited for a Contribution Eligibility Year shall preclude an otherwise eligible Participant from receiving an Additional Contribution in the following year.

5.6 Statutory Limitations on Employer Contributions. Notwithstanding any provisions of the Plan to the contrary, the benefits payable under this Plan shall not exceed the limits of Code Section 415 and the regulations promulgated thereunder, the terms of which are hereby incorporated by reference. For purposes of this Section and Code Section 415, the limitation year shall be the Plan Year. The aggregated total of all Employer Contributions, from all Participating Employers shall be subject to the following limitations (in addition to any other limitations set forth elsewhere in this Plan), as required by the Code and applicable Treasury Regulations promulgated thereunder so as to maintain the qualified status of the Plan:

- (a) **Maximum Annual Addition for Plan Years Beginning Prior to January 1, 2002.** For all Plan Years beginning prior to January 1, 2002, in order to meet the Code Section 415(c) contribution limitation requirements for "defined contribution" plans (as such plans are described in Code Section 414(i)), the aggregated total "Annual Addition" (as such term is defined herein and under Code Section 415(c)(2)) during any Plan Year on behalf of a Participant in this Plan, both (i) to this Plan and (ii) to any and all other defined contribution plans qualified or qualifiable under Code Section 401(a) which are maintained by the State or any of its Employer agencies thereunder, shall not exceed the lesser of:
- (1) Thirty thousand dollars (\$30,000) or such other dollar amount which results from application of any annual cost of living adjustments approved by the Secretary of the Treasury, pursuant to Code Section 415(d), or
 - (2) Twenty-five percent (25%) of the Participant's total Compensation, as such term is defined under Code Section 415(c)(3), for the Plan Year.
- (b) **Maximum Annual Addition for Plan Years Beginning On or After January 1, 2002.** For all Plan Years beginning on or after January 1, 2002, and except to the extent permitted under Plan Section 5.9 and Code Section 414(v), the "Annual Addition" that may

be contributed or allocated to a Participant's Account under the Plan for any Plan Year shall not exceed the lesser of:

- (1) Forty thousand dollars (\$40,000), as adjusted for increases in the cost-of-living under Code Section 415(d); or
- (2) One hundred percent (100%) of the Participant's Compensation, within the meaning of Code Section 415(c)(3) for the Plan Year.

(c) **Annual Addition Defined.** For the purposes of applying the above limitation, Annual Addition shall mean the sum of:

- (1) Total Employer Contributions on behalf of a Participant made to this Plan, excepting Catch-up Contributions made pursuant to Plan Section 5.9, and all other employer contributions made to another defined contribution plan or to a Code Section 403(b) plan during a given Plan Year, whether such other plan is sponsored by the State;
- (2) Any forfeitures under this Plan or other State defined contribution plans of Employer Contributions on behalf of any other members, Employees or Participants which may subsequently have been credited on behalf of that Participant during the Plan Year;
- (3) The amount of non-deductible "employee contributions" (as such term is applied in the Code), if any, made during the Plan Year to any State defined contribution plans on behalf of the Participant; and
- (4) The amount, if any, allocated on behalf of the Participant to an individual medical account (as defined in Code Section 415(l)(2)) which is part of a "defined benefit" plan (as such term is described in Code Section 414(j) and applied elsewhere in the Code) maintained by the State or any of its Employer agencies.

For purpose of the Annual Addition computation described above, no part of the Employer Contributions to this Plan shall be deemed to constitute non-deductible employee contributions, since the Plan does not provide for additions (either mandatory or elective) from Participant Compensation other than CODA additions pursuant to Code Section 401(k). Nor shall Deferred Compensation Contributions, Matching Contributions or Employer Contributions, as the terms are defined and applied in the Plan, be taken to include any Qualified Rollover Contributions made to the Plan pursuant to Plan Section 5.8.

(d) **Limitation on Benefits from Multiple Plans For Plan Years Beginning on or Prior to December 31, 1999.** For all Plan Years beginning on or prior to December 31, 1999, in order to meet the Code Section 415(e) contribution limitation requirements with respect to simultaneous defined benefit plan participation, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction (as such terms are defined herein and in Code Sections 415(e)(2) and 415(e)(3)) for any given Plan Year shall not exceed one (1.0), with respect to any Participant in this Plan who at any time during the Plan Year is also a participant in any defined benefit pension or retirement plan or plans maintained by the

State or any of its Employer agencies, where such defined benefit plans are qualified or qualifiable under Code Section 401(a). This Plan Subsection 5.6(d) shall not apply to Plan Years beginning after December 31, 1999. For purposes of this Plan Subsection 5.6(d), Defined Benefit Plan Fraction and Defined Contribution Plan Fraction shall be defined as follows:

- (1) **Defined Benefit Plan Fraction.** The Defined Benefit Plan Fraction with respect to a participant for the Plan Year shall be a numerical quotient:
 - (A) The numerator of which shall be the aggregated total projected annual benefits (determined as of the close of the Plan Year) of the Participant under any and all State defined benefit plans in which he or she was also a participant during the Plan Year, and
 - (B) The denominator of which shall be the aggregated total, calculated for each State defined benefit plan in which the Plan Participant was also a participant during the Plan Year, of the lesser of the following:
 - (i) The product of 1.25 multiplied by the dollar limitation in effect under Code Section 415(b)(1)(A) for such Plan Year (*i.e.*, ninety thousand dollars (\$90,000) or such other dollar amount which results from application of any annual cost of living adjustments approved by the Secretary of the Treasury), or
 - (ii) The product of 1.4 multiplied by the amount which may be taken into account under Code Section 415(b)(1)(B) with respect to such Participant under such defined benefit plan for such Plan Year (*i.e.*, one hundred percent (100%) of the Participant's average annual Compensation during the period of consecutive Plan Years not exceeding three (3) such years during which the Participant both was an active participant in such defined benefit plan and had the greatest aggregate Compensation from any of the Participating Employers).
- (2) **Defined Contribution Plan Fraction.** The Defined Contribution Plan Fraction with respect to a Participant for the Plan Year shall be a quotient –
 - (A) The numerator of which shall be the aggregated total of the sum of the Annual Additions (as defined under Plan Section 5.6) on behalf of the Participant for all Plan Years of participation in the defined contribution plan (determined as of the close of the Plan Year), for any and all State defined contribution plans for which an Annual Addition has been made during any Plan Year, and
 - (B) The denominator of which shall be the aggregated total, calculated for each State defined contribution plan to which an Annual Addition has been made in any Plan Year on behalf of the Participant, of the lesser of the following:
 - (i) The product of 1.25 multiplied by the dollar limitation in effect under Code Section 415(c)(1)(A) for the current Plan Year (*i.e.*, thirty

thousand dollars (\$30,000) or such other dollar amount which results from application of any annual cost of living adjustments approved by the Secretary of the Treasury), or

- (ii) The product of 1.4 multiplied by the amount which may be taken into account under Code Section 415(c)(1)(B) with respect to such Participant under such defined contribution plan for such current Plan Year (*i.e.*, twenty-five percent (25%) of the Participant's total Compensation from any of the Participating Employers for the current Plan Year).

Notwithstanding any of the foregoing, the numerator of the Defined Contribution Plan Fraction shall be adjusted as necessary pursuant to Treasury Regulations 1.415-7(d)(1) and Questions T-6 and T-7 of Internal Revenue Service Notice 83-10, both as may be from time to time amended.

If it appears to the Plan Administrator that the Employer Contribution or Annual Addition on behalf of any Participant for the Plan Year either has exceeded the maximums allowable hereunder or is likely to exceed such maximums if continued at currently approved rates or amounts, the Plan Administrator shall be authorized to take such action or actions pursuant to Plan Sections 5.2, 5.4 or 5.6 as may be necessary to reduce or cap that Participant's Employer Contributions for the Plan Year to levels at or below any and all of the maximum levels allowable under (a) and (b) above.

5.7 Priority of Administrative Modifications to Employer Contributions. If the amount of Employer Contributions actually made to the Plan for a Plan Year has already exceeded the amount of such total Employer Contributions which is allowable pursuant to Plan Section 5.6, then the Plan Administrator shall return such excess amount to the Employer or Participating Employers, or to the General Fund of the State, or directly to the Participants, where applicable, pursuant to Plan Sections 5.2, 5.4 and 5.6. To the extent that a Deferred Compensation Contribution has been distributed on behalf of a Participant under Section 5.2, the amount by which the Annual Addition contributed on behalf of a Participant during the year exceeds the limitations contained in Section 5.6 will be reduced by the amount of the Deferred Compensation Contribution that was distributed under Section 5.2 and a redetermination shall be made as to whether the limitation in Section 5.6 has been exceeded. In taking such action or actions, the Plan Administrator shall endeavor, insofar as is practicable and permitted by applicable law, to offset any such excess Employer Contributions by first returning any Deferred Compensation Contributions for which no Matching Contributions were made during the Plan Year to such Participants as corrective Compensation payments; secondly, any Deferred Compensation Contributions for which Matching Contributions were made during the Plan Year to such Participants as corrective Compensation payments and the corresponding Matching Contributions shall then be forfeited; and finally, any excess Employer Contributions still remaining with respect to those Participants shall then be returned from any Additional Contribution portions of Employer Contributions made on behalf of such Participants. Any Matching Contributions allocable to any Deferred Compensation Contribution that is returned to a Participant as an excess Employer Contribution shall be forfeited notwithstanding the provisions of Plan Article 9.

If any Employer Contribution is made by a Participating Employer under a mistake of fact, such Employer Contribution may be returned to that Participating Employer within one (1) year after allocation of such contribution.

5.8 Qualified Rollover Contributions. Subject to approval by the Plan Administrator, amounts may be transferred to this Plan on behalf of Employees from certain other eligible retirement plans as Qualified Rollover Contributions. For purposes of this Section, amount qualifying for such treatment shall consist of any of the following:

- (a) Amounts transferred to this Plan directly from the trust of another pension, profit-sharing or stock bonus plan qualified under Code Section 401(a), provided that the trust from which such funds are to be transferred permits such a transfer and such amounts represent pre-tax contributions and/or earnings;
- (b) The portions of pre-tax amounts distributed to Employee from another Code Section 401(a) qualified plan which are eligible for tax-free rollover treatment pursuant to Code Section 402(a)(5) and which are transferred to this Plan within sixty (60) days of the time such distributions were received by the Employee;
- (c) Amounts transferred to this Plan from an individual retirement account as described in Code Section 408(d)(3)(A)(ii);
- (d) Amounts transferred to this Plan directly from a plan qualified under Code Section 403(a);
- (e) Amounts transferred to this Plan directly from an annuity arrangement described under Code Section 403(b), excluding after-tax employee contributions;
- (f) Amounts transferred directly from an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or
- (g) Amounts distributed to an Employee from a plan qualified under Code Section 403(a), an annuity arrangement described under Code Section 403(b) or an eligible plan under Code Section 457(b) provided that such amounts were eligible for tax-free rollover treatment at the time of their distribution and are contributed to the Plan within sixty (60) days of the time such amounts were received by the Employee.

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 State, 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 pursuant to the provisions of Plan Article 7.

5.9 Catch-up Contributions. After December 31, 2001, all Participants who have attained age fifty (50) before the close of the Plan Year shall be eligible to make Catch-up Contributions in accordance with, and subject to the limitations of, Code Section 414(v). For the 2002 Plan Year, such limitation shall be one thousand dollars (\$1,000). For the 2003 Plan Year, the limitation shall be two thousand dollars (\$2,000). For the 2004 Plan Year, the limitation shall be three thousand dollars (\$3,000). For the 2005 Plan Year, the limitation shall be four thousand dollars (\$4,000). For the 2006 Plan Year, the limitation shall be five thousand dollars (\$5,000). Subsequent to the 2006 Plan Year, the limitation shall be as set by the Internal Revenue Service, as indexed for inflation pursuant to Code Section 414(v)(2)(C) or as otherwise modified by law. No Catch-up Contributions shall be taken into account for purposes of calculating the limitations placed under Plan Sections 4.8 (Restrictions on Requested Deferred Compensation Amounts) or 5.6 (Statutory Limitations on Employer Contributions). All amounts deferred under this Plan Section 5.9 shall be held in the Participant's Account as part of the Deferred Compensation Contribution Sub-Account, and may be invested in the same or substantially similar manner as other assets held in the Participant's Deferred Compensation Contribution Sub-Account.

ARTICLE 6. PLAN INVESTMENTS AND PARTICIPANT INVESTMENT ACCOUNTS

6.1 Plan Accounts. The Board shall cause to be established an Account for each Participant enrolling in the Plan for the purpose of, as applicable, deferring Compensation, receiving credit for Matching Contributions (if any), or receiving credit for Additional Contributions (if any), pursuant to Plan Section 4.2 which shall be the basis for any distributions payable to the Participant under Plan Article 7 which are directly or indirectly attributable to such Deferred Compensation, Matching Contributions, or Additional Contributions. Each such Account shall further be subdivided into a Deferred Compensation Contribution Sub-Account, a Matching Contribution Sub-Account, an Additional Contribution Sub-Account and Rollover Contribution Sub-Account. All Sub-Accounts for each Account shall then be separately credited or debited, as applicable, pursuant to Plan Sections 6.2 and 6.3.

6.2 Allocation of Investment Earnings or Losses. Deferred Compensation Contributions, Matching Contributions, Additional Contributions and Qualified Rollover Contributions, less any Plan administrative expenses under Plan Section 3.5 or Investment Fund administrative and sales charges under Plan Section 6.4 which are to be assessed against such Contributions prior to investment, shall be credited or debited to Deferred Compensation Contribution Sub-Accounts and Rollover Contribution Sub-Accounts as if they were invested according to investment requests then in effect on behalf of the Participants, pursuant to Plan Section 6.5. Any earnings or losses, both realized and unrealized, shall be based upon the actual investment experience of any applicable Investment Fund. Earnings and losses will be measured from the Accounting Date coincident with or immediately preceding the date any Contributions are withdrawn from any Investment Fund. The allocation to each Deferred Compensation Contribution Sub-Account, Matching Contribution Sub-Account, Additional Contribution Sub-Account or Rollover Contribution Sub-Account shall reflect the proportion a Participant's Account or Sub-Account bears to all other Accounts or Sub-Accounts of the same type which have requested a particular Investment Fund.

6.3 Accounting Dates and Investment Fund Valuation. Any Investment Fund under this Plan shall be valued at fair market value on a reasonable and consistent basis as of each Accounting Date. The benefits due to each Participant or Vested Beneficiary shall be based upon the Participant's or Vested Beneficiary's Account as of the Accounting Date coincident with or immediately preceding such distribution.

6.4 Investment Fund Administrative and Sales Charges. In addition to the administrative expenses incurred by the Plan pursuant to Plan Section 3.5 which may be assessed against Participant Accounts and/or individual Sub-Accounts shall also be liable for any sales and administrative charges contractually imposed on the Plan by the organization or organizations managing any or all Investment Funds of the Plan. Such expenses may include, but are not limited to, any of the following:

- (a) Front-end charges, either on a percentage or flat dollar basis, levied against Plan Contributions prior to placement in the Investment Fund or Funds;
- (b) Ongoing period charges, either on a percentage or flat dollar basis, levied against Investment Fund balances and deducted from Participants' Accounts or Sub-Accounts at current market value; or
- (c) Back-end charges, either on a percentage or flat dollar basis, levied against some or all withdrawals and redemptions from the Investment Fund or Funds.

6.5 Making and Changing Investment Requests. A Participant shall, at the time of enrollment, make an investment request in the manner approved for that purpose by the Plan Administrator. At the discretion of the Plan Administrator, such an investment request may either apply to all Sub-Accounts of a Participant's Account or the Participant may be permitted and required to designate investment requests for each Sub-Account separately. Once made, an investment request shall remain in effect for all subsequent contributions to the Participant's Account until changed by the Participant in the manner approved by the Plan Administrator for such purpose. All changes in investment requests or investment allocations shall be applied prospectively only. A Participant may request investment of contributions in more than one Investment Fund.

Absent receipt of an investment request, the Plan Administrator shall invest all Additional Contributions, or any other Contribution for which an investment request has not been made, in an age-based investment option or such other investment option as the Board may, in its discretion, select for such purpose.

The investment request may subsequently be changed by the Participant with respect to Contributions previously invested, in the manner approved by the Plan Administrator for such purposes.

6.6 Participant Statements. Each Participant shall be provided with a statement providing an accounting of his or her Account at least annually. Any statement with respect to an Account shall also provide separate accounting of the Deferred Compensation Contribution Sub-Account, Matching Contribution Sub-Account, Rollover Contribution Sub-Account and Additional Contribution Sub-Account components of such Account, if moneys have been contributed to such

Sub-Accounts. Any Account statement shall include, but is not limited to, the amount of any Contributions to the Account during the Plan Year (or such other shorter period of time covered by the statement) and any other amounts credited or debited to the account up to the most recent Accounting Date coincident with or immediately preceding the end of the Plan Year (or such other shorter statement period). Such accounting shall be made not later than forty-five (45) days after the end of each Plan Year.

6.7 Investment of Funds. The Plan Trustees may establish any or all of the following categories of Investment Funds for investment of Contributions under this Plan:

- (a) Investment Fund A shall be invested by the Plan Administrator in insurance company contracts (either on a group or individual basis) designed to provide a fixed annuity or other guaranteed return, or in bank investment contracts designed to provide a guaranteed return. Assets directed to this Fund may be placed in short-term conservative investments until a more permanent placement is selected. Assets directed to this Fund would not typically be placed in short-term investments for more than twelve (12) months;
- (b) Investment Fund B shall be invested by the Plan Administrator primarily in savings and loan or commercial bank deposits, commercial paper or pooled investment vehicles, such as mutual funds, whose investment policy emphasizes such investments;
- (c) Investment Fund C shall be invested by the Plan Administrator primarily in corporate or government bonds or pooled investment vehicles, such as mutual funds, whose investment policy emphasizes such investments;
- (d) Investment Fund D shall be invested by the Plan Administrator primarily in common or preferred stocks, similar equity securities or other property expected to offer growth possibilities or pooled investment vehicles, such as mutual funds, whose investment policy emphasizes such investments; or
- (e) Investment Fund E shall be invested by the Plan Administrator in loans to Participants from the balances of their Deferred Compensation Accounts or Rollover Contribution Accounts, pursuant to Plan Article 8.

The Board may establish more than one Investment Fund for each category described above if deemed appropriate. If more than one Investment Fund for a category is established, such Investment Funds shall be differentiated in a manner prescribed by the Plan Administrator.

The Plan Administrator shall be specifically authorized to invest any Plan assets on behalf of the Board and the Plan and to contract with and utilize outside investment managers to the extent deemed appropriate by the Plan Administrator. The Plan Administrator also shall have the authority to add to, amend or eliminate any or all of the Investment Funds under any of the above categories with the approval of the Board, and the Board shall have the authority to add to, amend or eliminate any such categories, provided that in such event, the Plan Administrator shall notify any Participant who has requested that his or her Plan Account or Sub-Accounts be measured as if invested in the Investment Fund(s) which have been eliminated. This notification requirement does not, however, apply to the ongoing portfolio transactions executed by management of a particular Investment Fund nor does it apply to the periodic replacement of contractual investment vehicle components within any generic pooled Investment Fund provided by the Board.

Participants with Account values measured as if invested in eliminated Investment Funds shall then have the opportunity to request redesignation of their investment from among the available Investment Funds with respect to future Employer Contributions.

Upon elimination of an Investment Fund by the Board (as distinguished from portfolio transactions within an Investment Fund or generic Investment Fund pool), investment of future Contributions to such eliminated Investment Fund shall be suspended on a date announced by the Board or Plan Administrator. If the Participant fails to submit a redesignation for investment of future Employer Contribution by such date, the Plan Administrator shall be authorized to administratively redirect, without further notice, investment of future Contributions as if invested in an available Investment Fund that has as its primary investment objective the protection of principal, an age-based fund or any other Investment Fund that the Board, in its sole discretion, deems appropriate.

Such Participant in an eliminated Investment Fund shall also have the opportunity to change the investment request with respect to future Contributions or revoke the election to defer Compensation, regardless of any other provisions of this Plan. Such Participant shall also have the opportunity to change the investment request with respect to investment of prior Contributions, subject to the same possible restrictions set forth in Plan Section 6.5. The Plan Administrator shall further be authorized to, in his or her discretion, keep such portion of the Plan assets in cash or cash equivalents, either pending the selection and purchase of suitable investments as requested by Participants or as he or she may from time to time deem to be necessary or advisable so as to maintain sufficient liquidity to meet the obligations of the Plan. Any earnings on such cash or cash equivalents may either be credited to Participant Accounts or reserved to fund Plan administrative expenses.

6.8 Limited Obligation to Participants. Neither the State nor the Plan shall undertake to guarantee or indemnify the Investment Funds or Participants' Accounts against any loss, depreciation or adverse performance (either absolute or relative to other investment alternatives under or outside the Plan.) The Plan shall be obligated to pay benefits to Plan Participants or Vested Beneficiaries under the terms and conditions of this Plan. All persons having an interest in any of the Investment Funds shall look solely to such Investment Funds for payment with respect to such interest, and the reasonable, equitable and nondiscriminatory decision of the Plan Administrator as to the value of each Investment Fund as of each Accounting Date shall be conclusive and binding upon all persons having any such interest, direct or indirect, in such Investment Funds. However, nothing in these limitations and disclaimers shall be taken to void, preclude or diminish any guarantees or indemnifications to the Plan of Investment Fund principal or earnings either which may be provided by investment organizations with whom the Plan Administrator has contracted for the provision of investment services or which may otherwise be provided under applicable law.

ARTICLE 7. PLAN DISTRIBUTIONS AND ASSET TRANSFERS

7.1 Statutory Distribution Requirements. Under this Plan, distributions of an Account shall be governed by the distribution requirements set forth in Code Section 401(a)(9) and the proposed Treasury Regulations thereunder. Distributions under this Section shall also be made in compliance with any other Treasury Regulations, Rulings, Procedures, etc., governing distributions from eligible governmental retirement plans under Code Section 401(a) or other

applicable Code Sections, as such may from time to time be promulgated by the Internal Revenue Service of the United States.

In the event of any conflict between the provisions of this Section and the distribution provisions of the referenced Code Sections (and any Treasury Regulations, Rulings, or Procedures thereunder), the provisions of the Code shall prevail. Similarly, in the event of any conflict between any distribution options exercised by Participants or Beneficiaries under this Article 7, and the provisions of the Code, the provisions of the Code shall prevail. Nothing in the provisions of this Article 7, however, shall be deemed to be in conflict with the requirements of the cited statutory and regulatory provisions merely because these provisions of the Plan may be more restrictive than the requirements imposed by the Code and the Treasury Regulations, Rulings, and Procedures.

7.2 Permissible Distribution Events. Distribution of any or all of a Participant's Account shall be made in accordance with the provisions of Code Section 401(a)(9) and the following provisions:

- (a) **Earliest Commencement of Distribution.** Pursuant to Code Section 401(k)(2)(B), distribution of either a Deferred Compensation Contribution Sub-Account or a Rollover Contribution Sub-Account, but not Matching Contribution Sub-Account or Additional Contribution Sub-Account, shall not begin prior to the occurrence of any one of the following five (5) events:
- (1) Termination of Service (as defined in Plan Section 2.1(xx)) of the Participant. A Participant who is in Qualified Military Service for more than 30 days shall be treated as having a Termination of Service for purposes of taking a distribution from his Deferred Compensation Contribution Sub-Account or Rollover Contribution Sub-Account; provided however, the Participant must suspend his Deferred Compensation Contributions for at least six (6) months beginning on the date of any such distribution;
 - (2) Death of the Participant;
 - (3) Attainment of age 59 1/2 and any subsequent age by the Participant prior to Termination of Service; or
 - (4) Determination of a Financial Hardship pursuant to Plan Section 7.6; or
 - (5) A Qualified Reservist Distribution.

However, distribution of any fully Vested portion of either a Participant's Matching Contribution Sub-Account or a Participant's Additional Contribution Sub-Account shall not begin prior to the occurrence of one of the following two (2) events, and these events only:

- (6) Termination of Service of the Participant, or
- (7) Death of the Participant.

- (b) **Latest Commencement of Distribution.** Pursuant to Code Section 401(a)(9) and notwithstanding any other provision herein to the contrary, distribution of the fully vested portion of a Participant's Account shall begin not later than April 1 of the calendar year following the later of:
- (1) The calendar year in which the Participant attains age 70 ½ (or would have attained such Age had he or she lived), or
 - (2) The calendar year in which the Participant incurs a Termination of Service.
- (c) **Elective Commencement of Distribution.** A Participant or Beneficiary may at any time request a distribution of his or her Account in a form and manner prescribed by the Plan Administrator, insofar as such elected time –
- (1) Is not earlier than that required under (a) above;
 - (2) Is not later than that required under (b) above; and
 - (3) Is not, in the case of a Beneficiary other than the Participant's surviving spouse, later than five (5) years following the later of:
 - (A) The Death of the Participant, or, if applicable,
 - (B) The Death of the Participant's surviving spouse, where such surviving spouse was the previous Beneficiary of the allocable share of the Participant's Account.
- (d) **Change in Distribution Commencement Election.** To the extent distribution from an Account (other than a Financial Hardship distribution pursuant to Plan Section 7.6) has not begun or is not within thirty (30) calendar days of beginning, a Participant may withdraw his or her election to commence distributions and substitute a new election in its place. Such election must be submitted in that manner approved by the Plan Administrator, who shall have absolute discretion regarding whether the election is valid. A new election to commence distribution shall, in no cases, violate the requirements of Plan Subsections 7.2(c)(1), 7.2(c)(2) or 7.2(c)(3).
- (e) **Commencement of Distribution Absent Election.** If no manner of distribution has been elected within sixty (60) days of the last day of the Plan Year in which a Participant is required to receive a distribution of his or her Account pursuant to the terms of Plan Subsection 7.2(b), above, then the Participant's Account shall be distributed pursuant to the terms of Plan Subsection 7.3(b).
- (f) **Account Distributions to Beneficiaries.** Notwithstanding any provisions of Plan Section 7.3 to the contrary, distribution of any portion of the value credited to any Account established on behalf of a Participant to any Beneficiary shall only be initiated and completed upon becoming a Vested Beneficiary following the Death of such Participant pursuant to the provisions of Code Section 401(a)(9) and Proposed Treasury Regulations 1.401(a)(9)-5.

(g) **Determination of Minimum Annual Distributions.** The total dollar amount distributed from the Account to the Participant during any minimum distribution year shall be not less than the applicable minimum annual distribution dollar amount provided hereunder:

(1) **Non-Annuity Distribution.** If the method of distribution is not in the form of fixed monthly payments under an annuity contract with an insurance company, the following provisions shall apply:

(A) **Minimum Distribution Year.** A minimum distribution year for which a minimum annual distribution must be made shall consist of any and all Plan Years BEGINNING with the LATER of:

(1) The Plan Year in which the Participant attains (or would attain) age 70 ½; or

(2) The Plan Year in which the Participant has a Termination of Service.

(B) **Minimum Distribution Basis.** The basis to be used in determining the minimum annual Distribution for a given minimum distribution year shall be the value of the Account as of the Accounting Date coincident with or most immediately **preceding** the end of the Plan Year preceding such minimum distribution year, INCREASED by the amount of any Deferred Compensation and DECREASED by the amount of any distributions allocated to the Account balance as of dates within such preceding Plan Year but later than the applicable Account Date provided herein.

With respect to the Participant's second (2nd) minimum distribution year (*i.e.*, the Plan Year immediately following the earliest Plan Year provided under Plan Subsection 7.2(g)(1)(A) above), the minimum distribution basis shall also be decreased by the amount of any actual distributions made to the Participant within the first sixty (60) days of the second minimum distribution year which do not exceed (when added to all actual distributions made within the first (1st) minimum distribution year) the minimum annual distribution amount attributable to the first minimum distribution year as provided below.

(C) **Minimum Annual Distribution.** For each minimum distribution year, the minimum annual distribution amount which must be paid from the Account to the Participant by December 31 of such Plan Year shall be the amount obtained by calculating the quotient of the minimum distribution basis applicable to the current minimum distribution year, as provided under Plan Subsection 7.2(g)(1)(B), divided by the applicable life expectancy. If the Participant's spouse is not his designated Beneficiary under the terms of this Plan, the applicable life expectancy shall be the applicable determination period described in Prop. Reg. 1.401(a)(9)-5 Q&A 4, as determined using the Participant's age as of the Participant's birthday in the minimum distribution year. Otherwise, the applicable life expectancy shall be the longer of the period determined in accordance with the preceding sentence or the joint life

expectancy (as determined under Table VI of Treas. Reg. 1.72-9) of the Participant and the Participant's spouse, provided that the Participant's spouse is at least ten (10) years younger than is the Participant, using the Participant's and spouse's attained ages as of the Participant's and the spouse's birthdays in the minimum distribution year. If the Participant's Spouse is not at least ten (10) years younger than is the Participant, then the Participant's applicable life expectancy shall be used.

The minimum annual distribution for the first minimum distribution year shall be commenced and completed by not later than April 1 of the first Plan Year following the end of the first minimum distribution year.

- (2) **Annuity Contract Distribution.** If the method of distribution is in the form of fixed monthly payments under an annuity contract with an insurance company, the minimum annual distribution shall be the amount payable to the Participant under the terms of the contract for the minimum distribution year. A period certain annuity contract shall not meet the requirements of this Section, however, if it provides for a period certain that ends after the close of the applicable distribution period.

Notwithstanding anything in the preceding paragraph to the contrary, if an annuity contract distribution commences after the date minimum annual distributions were required to commence under this Plan Subsection 7.2(g), then the provisions of Plan Subparagraph 7.2(g)(1), above, shall apply to the distribution.

7.3 Permissible Distribution Methods. At the time distribution of benefits from a Plan Account is scheduled to commence pursuant to Plan Section 7.2, only such benefits as are at that time fully Vested pursuant to Plan Article 9 shall be distributed and such distribution shall be made in accordance with the following provisions:

- (a) **Election of Distribution Method by Participant.** A Participant may elect to receive his or her benefits under the Plan in one or more of the following manners:
- (1) In a **single lump-sum payment** of all, or a portion of, the current value of the Participant's Account. If an initial lump-sum payment consists of less than the total value of a Participant's Account (or of a Beneficiary's allocable share of such Account), the value remaining in the Account may continue to be distributed in accordance with one or more of the other authorized distribution methods;
- (2) In **periodic installment payments** (A) over a specified period of years not extending beyond the life expectancy of the Participant or, if married at the time distributions are to commence, the joint life expectancy of the Participant and his or her spouse, determined at the time distributions are to commence according to the applicable expected return multiple tables promulgated by the Secretary of the Treasury, or (B) in a specified dollar amount (not less than fifty dollars (\$50) per payment), provided that the specified dollar limit be sufficient to distribute the entire value of the Participant's Account in a number of years equal to or less than the life expectancy of the Participant or, if married at the time distributions are to commence, the joint life expectancy of the Participant and his or her spouse. The

installments may be made in monthly or other longer regular increments not to exceed annually. Any portion of the Account or Sub-Account which has not been distributed shall continue to be credited and/or debited pursuant to Plan Section 6.2.

The amount of benefits due for any given installment shall be based on a straight-line amortization of the Account or Sub-Account balance, calculated by dividing such balance as of the Accounting Date coincident with or immediately preceding the distribution of such installment by the number of installments then remaining to be made; provided, however, that the Plan Administrator shall be authorized, at his or her, discretion, to make installment payments of a fixed dollar amount throughout any period of up to twelve (12) consecutive months based on the amount of the amortized installment calculated as of the first month of that period.

- (3) As **fixed monthly annuity payments**. If a Participant selects to receive his or her benefits through an annuity, an annuity will be purchased for such Participant through an insurance company qualified to do business in the State, and shall meet all requirements for a qualified trust under Code Section 401(a) other than the requirement that it be a trust, shall be thereafter nontransferable by the Participant and his or her Beneficiaries within the meaning of such term under Treasury Regulations 1.401-9(b), and shall expressly contain such provisions as are necessary to establish and maintain such nontransferability.

Annuity options available to a Participant shall include annuities covering:

- (A) "Single Lifetime Annuity" -- Fixed monthly payments made for the remaining lifetime of the annuitant only. At the annuitant's Death, payments shall cease without residual benefit to any Beneficiary;
- (B) "Joint and Survivor Annuity" -- Fixed monthly payments may be made for the remaining lifetimes of the joint annuitants. Upon the Deaths of both annuitants, payments shall cease without residual benefit to any other Beneficiary; or
- (C) "Single Lifetime with Guaranteed Period Annuity" - Fixed monthly payments shall be calculated based upon, but not necessarily equal to, the remaining lifetime of the annuitant. The period of months calculated shall be the "guaranteed period" and payments shall continue to be paid during the guaranteed period, regardless of whether the annuitant remains alive throughout the period. Should the annuitant die prior to the expiration of the guaranteed period, monthly payments would continue to the annuitant's designated Beneficiary until the completion of the guaranteed period. If the annuitant lives beyond the guaranteed period, monthly payments will continue to that annuitant until Death, at which time payments will cease and no residual benefit will be paid to any other Beneficiary. Any guaranteed period certain shall not extend beyond the applicable latest distribution date.

For purposes of any annuity contract purchases, if a Participant is married at the time Account distribution is to commence and wishes to select an annuity calculation other than a Joint and Survivor Annuity, then the Plan Administrator

shall require a written waiver signed by the Participant's spouse agreeing to such selection.

Distribution of an annuity contract written by a licensed insurance company shall constitute the full and complete discharge of the Plan's obligation and liability to the Participant with respect to that portion of the Account or Sub-Account so directed for the purchase of the contract, and any future benefits payable to the Participant or his or her Beneficiaries shall depend solely upon the terms of the annuity contract agreed to by the Participant and the Plan Administrator.

However, any of the provisions of the preceding paragraph to the contrary notwithstanding, the present value of the annuity contract so distributed shall not be deemed to be an amount actually distributed or made available to the Participant under Code Section 402(a), insofar as the annuity contract remains nontransferable and a qualified trust under Code Section 401(f). To such extent, benefit payments under the contract shall be taxable to the Participant under Code Section 72 only as and when received. For purposes of the taxability of annuity contract benefits thereunder, the Participant's basis of investment in the contract shall be deemed to be zero (\$0.00).

(4) As a **direct rollover** to another plan pursuant to the provisions of Plan Section 7.8.

(b) **Distribution Method Absent Election.** If no election of a method of distribution for Plan benefits is made and approved, then distribution of Plan benefits shall be made in the form of annual cash installment payments as described and provided in Plan Subsection 7.3(a)(3) above over a period of either five (5) years (a total of six (6) payments) or any such lesser number of years as may be required under Plan Subsection 7.2(a) or Plan Subsection 7.2(b) above beginning at such distribution commencement time as shall be required under Plan Section 7.2, unless the Account balance at the time of distribution commencement shall fall within the purview of the de minimis provisions of Plan Section 7.5, in which case such provisions shall govern.

At the discretion of the Plan Administrator, any election of distribution method hereunder may either apply to all Sub-Accounts of a Participant's Account or the Participant (or Beneficiary) may be permitted and required to designate a distribution method for each Sub-Account separately.

7.4 Application for Benefits. The Plan Administrator may require a Participant to complete and file with the Plan Administrator certain forms as a condition precedent to the payment of benefits. The Plan Administrator may rely upon all such information given to it, including current mailing addresses. It is the responsibility of all Participants in the Plan to keep the Plan Administrator informed of their current mailing addresses.

7.5 Distribution Commencement Time and Method for *de minimis* Accounts. If the aggregated Vested balance of an Account (or the portion of such Account allocable to the interest of a given Vested Beneficiary) as of the Accounting Date coincident with or immediately preceding the date of the Participant's Termination of Service or Death (or Death of the previous Beneficiary, if such occurs prior to complete distribution) does not exceed one thousand dollars (\$1,000.00), then distribution of the Account (or the allocable portion thereof) shall be paid in the method of a single lump-sum cash payment as soon as administratively convenient. For purposes of this Plan

Section 7.5, the value of a participant's vested, nonforfeitable Account balance shall be determined without regard to that portion of the account balance that is attributable to rollover contributions (and earnings allocated thereto) within the meaning of Code Sections 402(c), 403(a), 403(b)(8), 408(d)(3)(A)(ii) and 457(e)(16).

7.6 Financial Hardship Distribution. A distribution of all or a portion of the current value of a Deferred Compensation Contribution Sub-Account and/or Rollover Sub-Account prior to commencement or completion of distribution otherwise elected or mandated pursuant to Plan Section 7.3 may be permitted to the extent a Participant experiences a qualifying immediate and heavy financial need creating a hardship which cannot be alleviated from other resources reasonably available to the Participant, pursuant to the facts, circumstances, conditions, standards, and limitations set forth by U.S.Treas.Reg. 1.401(k)-1(d)(2), and any subsequent authoritative revenue rulings, notices, and other documents of general applicability published by the U.S. Commissioner of Internal Revenue. Financial Hardship distribution shall not be permitted from a Participant's Matching Contribution Sub-Account or Additional Contribution Sub-Account, whether or not amounts allocated to such Sub-Accounts are deemed fully Vested.

Any Participant desiring a distribution by reason of Financial Hardship shall make application, in a form and manner prescribed by the Plan Administrator, identifying, demonstrating and documenting the existence and magnitude of the alleged heavy needs and the insufficient availability of other resources with which to meet those needs. The Plan Administrator shall have the authority to require such evidence as the Plan Administrator, in its sole discretion, deems necessary to approve the request.

(a) **Qualifying Financial Hardship Circumstances.** Consistent with the provisions of Plan Section 3.3, in making determinations as to whether a qualifying Financial Hardship exists, the Plan Administrator, or his or her designees, shall apply reasonably uniform and non-discriminatory standards. Before June 15, 2006, such determinations shall be made in accordance with the Plan as last amended and restated effective October 25, 2001. Effective June 15, 2006, circumstances qualifying as immediate heavy financial needs of the Participant shall be determined by applying the deemed immediate and heavy financial need standards promulgated under U.S.Treas.Reg. 1.401(k)-1(d)(3)(iii)(B). Qualifying heavy needs include:

- (1) Expenses for (or necessary to obtain) medical care that would be deductible under Section 213(d) of the Code, determined without regard for whether the expenses exceed 7.5% of adjusted gross income;
- (2) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Section 165 of the Code (determined without regard to whether the loss exceeds 10% of adjusted gross income);
- (3) Costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);
- (4) Payments necessary to prevent the eviction of the Participant from his or her primary personal residence or the foreclosure on a mortgage secured by that residence;

- (5) Payments of tuition, room and board, and other ancillary educational expenses of the Participant, Participant's spouse or Participant's dependent(s) (as defined under Code Section 152, and without regard to section 152(d)(1)(B)) incurred with respect to a regular course or program of study at a post-secondary educational institution or other institution of higher learning;
 - (6) Payments for burial or other funeral expenses incurred by the Participant with respect to the Death of the Participant's parent, spouse, children or dependents (as defined under Code Section 152, without regard to Code Section 152(d)(1)(B)).
- (b) **Distribution Deemed Necessary to Satisfy Financial Need.** Given a finding by the Plan Administrator that a qualifying heavy financial need exists with respect to a Participant making application for a Financial Hardship distribution, such a Financial Hardship distribution shall not be authorized unless the distribution is deemed necessary to satisfy the immediate and heavy financial need. Such a distribution shall be deemed necessary if:
- (1) The Participant has received all other distributions (excluding financial hardship distributions) currently available to him or her from the Plan or any other retirement plan which covers Employees of his Participating Employer;
 - (2) The Participant has received all other loans currently available to him or her from the Plan or any other plan which covers Employees of his or her Participating Employer; and
 - (3) The Participant suspends making contributions under the Plan for the twelve month period beginning with the date the Participant receives the Financial Hardship distribution or any other retirement or deferred compensation plan maintained by his or her Participating Employer, or effective January 1, 2009, for the six month period beginning with the date the Participant receives the Financial Hardship distribution. Notwithstanding the preceding sentence, a Participant shall not be required to suspend making mandatory contributions to a defined benefit pension plan or health and welfare which covers him or her.
- (c) **Distribution of Approved Financial Hardship.** If application for a Financial Hardship distribution is approved, the distribution shall be further limited to an amount not to exceed the value of the Participant's elective Deferred Compensation Contribution Sub-Account and/or Participant's Rollover Contribution Sub-Account, not including earnings attributed to such Deferred Compensation Contribution Sub-Account or Rollover Contribution Sub-Account, as of the Accounting Date coincident with or immediately preceding such distribution. The allowable distribution shall then be payable in method determined by the Plan Administrator as soon as possible, but not later than fifteen (15) days following approval by the Plan Administrator.
- (d) **Tax Treatment of Financial Hardship.** Any Financial Hardship distribution shall constitute current taxable retirement income to the recipient, reportable on an IRS Form 1099-R, and shall, pursuant to the provisions of Plan Section 7.10, be subject to withholding at the source of Federal Income Tax under Code Section 3405 unless such recipient elects to waive such withholding, and is also subject to withholding of State of Georgia income tax

unless a permanent resident of another state. Finally, to the extent that the recipient of a Financial Hardship distribution has not attained age 59 1/2 prior to receipt of such distribution, then the payment will likely be subject to the ten percent (10%) Federal penalty tax on premature distributions under Code Section 72(t). Such penalty shall not be withheld by the Plan Administrator.

7.7 Order and Priority of Distribution.

- (a) The amount payable due for purpose of a distribution from the applicable portion of a Participant's Account or any Sub-Account thereunder shall be withdrawn from the Investment Fund(s) to which such value has been credited in the Account on a proportional, pro-rata basis from each Investment Fund so credited. In the case of an Account, value due distribution shall also be calculated and withdrawn proportionally from any Investment Funds credited to the Deferred Compensation Contribution Sub-Account, the Matching Contribution Sub-Account, and the Additional Contribution Sub-Account, except to the extent that any other provision of the Plan specifies and requires a different method (including proportional distribution required pursuant to Financial Hardship distribution under Plan Section 7.6 to be from only the Deferred Compensation Contribution Sub-Account of such Account). However, the Plan Administrator shall be authorized to apply some other reasonable and equitable method of withdrawal in instances where proportional withdrawal may be determined to be administratively unfeasible.
- (b) Notwithstanding the provision of Plan Subsection 7.7(a) above, any Participant may request that the Plan Administrator withdraw amounts payable from one or more Investment Funds prior to withdrawing any amounts from other Investment Funds. The Plan Administrator shall not, however, be obligated to comply with such request.

7.8 Direct Rollovers.

- (a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in a manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover.
- (b) As used in this Plan Section 7.8, and this Plan Section 7.8 only, the following terms shall have the following meanings:
 - (1) An "Eligible Rollover Distribution" means any distribution of all or any portion of a Participant's Account, except that an Eligible Rollover Distribution does not include: 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 (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); all or any portion of a Financial Hardship Distribution; the portion of any distribution that is not includible in gross income; or any other distribution that is expected to total less than \$200 during the year. The definition of Eligible Rollover Distribution also includes a distribution to a surviving spouse.

- (2) An "Eligible Retirement Plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 08(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, a qualified defined contribution plan described in Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution, or effective January 1, 2008, a Roth IRA described in Code Section 408A.
 - (3) A "Distributee" means a Participant, former Participant, a Participant or former Participant's surviving spouse, or a nonspouse Beneficiary who is a designated Beneficiary as defined in Code Section 401(a)(9)(E) who is eligible to receive a distribution under the Plan.
- (c) A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to:
- (1) An individual retirement account or annuity described in Code Section 408(a) or (b);
 - (2) A qualified defined contribution plan described in Code Sections 401(a) or 403(a);
 - (3) On or after January 1, 2007, to a qualified defined benefit plan described in Code Section 401(a); or
 - (4) An annuity contract described in Code Section 403(b) that agrees to separately account for amounts so transferred, (and earnings thereon), including separately accounting for the portion of such distribution that is includible in gross income and the portion that is not.
- (d) Notwithstanding any other provisions of this Plan to the contrary, a nonspouse designated Beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

7.9 Distribution to Minors and Incompetents. If the Plan Administrator shall receive satisfactory evidence that a Participant or Beneficiary entitled to receive distribution of any benefit under this Plan is, at the time when such benefit becomes distributable, a Minor, or is adjudicated by a court of law with competent jurisdiction, to be mentally incompetent to receive such benefit and to give a valid release therefor and that another person or an institution is then maintaining or has custody of such Participant or Beneficiary, and that no guardian of the person or other representative of the estate of such Participant or Beneficiary shall have been duly appointed, the Plan Administrator may authorize distribution of such benefit to such other person or institution, including a custodian under any State Gifts to Minors Act (who shall be an adult, a guardian of the minor or a trust company), or a court of law with competent jurisdiction for

distribution pursuant to that Court's order, and the release for such other person or institution shall be a valid and complete discharge for the distribution of such benefit under the Plan.

7.10 Distribution to Missing Persons. If the Plan Administrator is unable, after any benefit becomes due under the Plan to any person, to authorize distribution because the identity or whereabouts of such person cannot be ascertained, and after notice by certified mail has been sent to the last known address or such person, the Plan Administrator may direct that such benefit and all other subsequent benefits with respect to such person shall lapse after a period of five (5) years with said benefits then to be distributed pro rata on an Account value basis to other Participants, to be returned (if attributable to Matching Contributions) to the Participating Employer or to the General Fund of the State or to be used to offset Plan administration costs.

7.11 Incomplete Distribution Upon Reemployment. If a Participant has incurred a Termination of Service, has not received a complete distribution from any and all Accounts or Sub-Accounts pursuant to Plan Article 7, and such Participant is rehired by a Participating Employer (or if an incompletely distributed Plan Beneficiary is or shall be employed by such an Employer), then benefit distribution shall not be suspended, but shall continue in accordance with the distribution commencement and method then in effect (or as such commencement or method may be subsequently modified pursuant to Plan Sections 7.2 and 7.3.) If such Participant (or Beneficiary) shall subsequently make a new Participation Agreement pursuant to Plan Section 4.2, all Participant Deferred Compensation Contributions, Matching Contributions or Additional Contributions therefrom shall be credited to an Account segregated and separate from the Account from which such incomplete distribution is payable.

7.12 Income Tax Withholding from Distributions. All cash distributions from the Plan to Participants or Vested Beneficiaries pursuant to Plan Article 7 shall be subject to withholding at the source of Federal income tax pursuant to the provisions of Code Section 3405(a) for periodic payments as defined in Code Section 3405(e)(2) and Treas. Reg. 35.3405-1T (Q&A 9) or Code Section 3405(b) for nonperiodic payments. Notwithstanding the preceding sentence, all cash distributions which are Eligible Rollover Distributions as defined in Plan Subsection 7.8(b)(1) shall be subject to twenty percent (20%) withholding pursuant to the provisions of Code Section 3405(c) unless the Distributee expressly elects in writing to have such distributions paid directly to an Eligible Retirement Plan as defined in Plan Subsection 7.8(b)(2). Distributions rolled over in accordance with Plan Section 7.8 shall not be subject to withholding. Payable distributions transferred to a Participant or Vested Beneficiary in the form of an annuity contract qualified under Code Section 401(f) pursuant to Plan Subsection 7.3(a)(3) shall be deemed to be distributions which it is reasonable to believe are not includible in the gross income of the recipients, thereby excluding such distributions from such withholding requirements. Subsequent payments to a recipient under any annuity contract so distributed will, however, be subject to withholding under Code Section 3405 by the annuity underwriter.

Distributions to Participants and Vested Beneficiaries pursuant to Plan Article 7 shall also be subject to the withholding at the source of Georgia income tax unless the Plan Administrator knows such Participant or Beneficiary to be a resident of a state other than Georgia. Generally, this shall mean that all distributions except those which it is reasonable to believe are not includible in gross State income of the recipients shall be subject to withholding as if the distributions were payment of wages for pay periods equivalent to the scheduled distribution frequencies (total lump-sum distributions being treated as payments for an annual pay period),

based on filing status and withholding allowance certified by the recipients via withholding certificates provided by the Plan Administrator.

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

7.14 Statutory Distribution Requirements after January 1, 2003. The provisions of this Section 7.14 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) shall not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Notwithstanding any other provision of this section to the contrary any required minimum distribution made in 2009 shall be treated as Eligible Rollover Distribution).

The requirements of this Article will take precedence over any inconsistent provisions of the Plan.

All distributions required under this Article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Code.

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

- (1) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (2) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (i) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.
 - (ii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by

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

- (iii) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's Death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's Death.
- (iv) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Subsection 7.14(a)(2), other than Subsection 7.14(a)(2)(i), will apply as if the surviving spouse were the Participant.

For purposes of this Subsection 7.14(a)(2) and Subsection 7.14(c), unless Subsection 7.14(a)(2)(iv) applies, distributions are considered to begin on the Participant's required beginning date. If Subsection 7.14(a)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Subsection 7.14(a)(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 7.14(a)(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 will be made in accordance with Subsections 7.14(b) and 7.14(c) of this Article. 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 Section 401(a)(9) of the Code and the Treasury regulations.

(b) **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 will 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 U.S. Treas. Regs. 1.401(a)(9)-9, 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 U.S. Treas. Regs. 1.401(a)(9)-9, 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 7.14(b) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of Death.

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

(1) **Death On or After Date Distributions Begin.**

- (a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's Death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

- (i) 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.
- (ii) 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.
- (iii) 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.

- (b) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's Death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's Death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of Death, reduced by one for each subsequent year.

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

- (a) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's Death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Subsection 7.14(c)(1).
- (b) 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.
- (c) 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 7.14(a)(2)(i), this Subsection 7.14(c) will apply as if the surviving spouse were the Participant.

(d) **Definitions.**

- (1) **Designated Beneficiary.** The individual who is designated as the Beneficiary under Section 4.10 of the Plan and is the designated Beneficiary under section 401(a)(9) of the Code and U.S. Treas. Regs. 1.401(a)(9)-1, Q&A-4.
- (2) **Distribution calendar year.** 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 proceeding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's Death, the first distribution calendar year is the calendar year in which distributions are required to begin under Subsection 7.14(a)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (3) **Life expectancy.** Life expectancy as computed by use of the single life table in U.S. Treas. Regs. 1.401(a)(9)-9.
- (4) **Participant's Account balance.** The Account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or

forfeitures allocated to the Account balance 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 the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

- (5) **Required beginning date.** The date specified in Section 7.2(g)(1)(A) of the Plan.

7.15 Plan-to Plan Transfers. A transfer of Plan assets may be made directly to and from this Plan, and to and from another governmental qualified defined contribution plan under Internal Revenue Code Section 401(a), at the request of a Participating Employer as defined in Section 2.1 (jj) (2), (3), (4), (5) or (6) with respect to Plan assets attributable to the Accounts of the Employees of that Participating Employer who are Plan Participants if:

- (a) Both plan documents provide for such transfers; and
- (b) Each Participant or Beneficiary will have an Account balance immediately after the transfer at least equal to the Account balance immediately before the transfer.

The Board shall develop such procedures, and may require such information from a Participating Employer desiring to make such a transfer, as it deems necessary or desirable to determine that the proposed transfer will meet the requirements of the Internal Revenue Code and all applicable state and federal laws.

ARTICLE 8. PARTICIPANT LOANS

8.1 Availability and Effect of Participant Loans. Participant Loans are not available under the Plan.

ARTICLE 9. VESTING AND FORFEITURE OF PLAN ACCOUNT BALANCES

9.1 Applicability of Plan Benefit Vesting. No portion of any Plan Account or Sub-Account shall be distributed to either a Participant or his or her Vested Beneficiaries pursuant to the provisions of Plan Article 7, nor shall such portion be withdrawn as a Participant Loan or taken into account in the calculation of the maximum portion of such Account subject to such Participant Loan pursuant to the provisions of Plan Article 8, except and only to the extent that such portion shall be deemed to be "Vested" and "not subject to forfeiture".

Deferred Compensation Contributions to a Deferred Compensation Contribution Sub-Account pursuant to Plan Section 5.1 and Qualified Rollover Contributions to a Rollover Contribution Sub-Account pursuant to Plan Section 5.8 shall be considered immediately Vested at the time contributed to the Trust Fund. Consequently, the current values (as of the latest Accounting Date) of such Deferred Compensation Contribution Sub-Account and Rollover Contribution Sub-Account shall at all times be non-forfeitable and fully subject to distribution under Plan Article 7. On the other hand, Matching Contribution amounts credited to a Matching Contribution Sub-Account and Additional Contribution amounts credited to an Additional Contribution Sub-Account are not automatically and immediately Vested, and shall become non-forfeitable only pursuant to the

vesting schedule for Matching and Additional Contributions set forth in Plan Section 9.2 below. 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 distribution event pursuant to Plan Section 7.1.

9.2 Matching and Additional Contributions Vesting Schedule and Forfeiture.

(a) Any and all amounts credited to a Participant's Additional Contribution Sub-Account, including applicable earnings or appreciation, shall in general become Vested and non-forfeitable based on the number of Vesting Service Years completed and in accordance with the applicable vesting schedule set forth below (except in such cases where the "forfeiture exceptions" set forth in Plan Section 9.3 apply):

(1) For Participants incurring a Termination of Service prior to January 1, 2002, the following schedule shall apply:

| Years of Vesting Service | Non-Forfeitable Percentage |
|-----------------------------|-------------------------------|
| Less than 3 | 0% |
| 3 | 20% |
| 4 | 40% |
| 5 | 60% |
| 6 | 80% |
| 7 or More | 100% |

(2) For Participants incurring a Termination of Service on or subsequent to January 1, 2002, the following schedule shall apply:

| Years of Vesting Service | Non-Forfeitable Percentage |
|-----------------------------|-------------------------------|
| Less than 2 | 0% |
| 2 | 20% |
| 3 | 40% |
| 4 | 60% |
| 5 | 80% |
| 6 or more | 100% |

(3) For Participants incurring a Termination of Service on or after January 1, 2010, the following schedule shall apply:

| Years of Vesting Service | Non-Forfeitable Percentage |
|-----------------------------|-------------------------------|
| Less than 1 | 0% |
| 1 | 20% |
| 2 | 40% |
| 3 | 60% |
| 4 | 80% |
| 5 or More | 100% |

- (b) Any and all amounts credited to a Participant's Matching Contribution Sub-Account, including applicable earnings or appreciation, shall in general become Vested and non-forfeitable based on the number of Vesting Service Years completed and in accordance with the applicable vesting schedule set forth below (except in such cases where the "forfeiture exceptions" set forth in Plan Section 9.3 apply):

| Years of Vesting Service | Non-Forfeitable Percentage |
|-----------------------------|-------------------------------|
| Less than 1 | 0% |
| 1 | 20% |
| 2 | 40% |
| 3 | 60% |
| 4 | 80% |
| 5 or more | 100% |

- (c) If a Participant incurs a Termination of Service for any reason other than the forfeiture exceptions set forth in Plan Section 9.3, below, he or she shall receive, pursuant to Plan Section 9.1, the entire current value (as of each distribution date) of the Deferred Compensation Contribution Sub-Account (and of any Rollover Contribution Account), but shall only receive the current value of that portion of the Matching Contribution Sub-Account and Additional Contribution Sub-Account as shall be obtained by multiplying the earned non-forfeitable percentage from the applicable table listed in this Plan Section 9.2 by the balance of the Additional Contribution Sub-Account and Matching Contribution Sub-Account, as of the Termination of Service (determined as of the Accounting Date coincident with or immediately preceding the Participant's date of Termination of Service).

The portion of such Matching Contribution Sub-Account and such Additional Contribution Sub-Account not so vested shall be immediately forfeited as of the Termination of Service, and shall be transferred from the Participant's Account into a temporary Plan Forfeitures Accumulation Account pending further disposition pursuant to Plan Section 9.4.

Any non-vested portion of a Matching Contribution Sub-Account or of an Additional Contribution Sub-Account which could not, on account of its non-vested nature, either be transferred to a Participant pursuant to a Participant Loan under Plan Article 8 or be used to calculate the maximum allowable Participant Loan amount thereunder shall not be deemed to be forfeited pursuant to the provisions of this Section. Such amount shall simply remain unavailable for consideration under the Participant Loan provisions until such time as it may become fully Vested or, if earlier, until actually forfeited following Termination of Service.

- (d) Notwithstanding any provisions of the Plan to the contrary, if a Participant Transfers employment, without a break in service of more than thirty-one (31) days, from a Participating Employer that provides for Matching Contributions to a Participating Employer that provides for Additional Contributions, Vesting Service Years shall include the years of continuous service following the Transfer of the Participant for purposes of determining the Participant's Vested percentage in his or her Matching Contributions.

However, years of service prior to the Transfer shall not be counted as Vesting Service Years for purposes of Additional Contributions with the new Participating Employer. If a Participant Transfers employment, without a break in service of more than thirty-one (31) days, from a Participating Employer that provides for Additional Contributions to a Participating Employer that provides for Matching Contributions, Vesting Service Years shall include the years of continuous service following the Transfer of the Participant for purposes of determining the Participant's Vested percentage in his or her Additional Contributions. However, years of service prior to the Transfer shall not be counted as Vesting Service Years for purposes of Matching Contributions with the new Participating Employer.

9.3 Forfeiture Exceptions. Notwithstanding any provisions of Plan Section 9.2 to the contrary, the balance of an affected Participant's Matching Contribution Sub-Account or Additional Contribution Sub-Account shall become fully Vested upon occurrence of the EARLIEST of (a), (b), (c) or (d), below:

- (a) The termination or partial termination of the Plan by the Employer;
- (b) A complete discontinuance of contributions under the Plan;
- (c) The Participant's Death prior to either Termination of Service or attainment of full Vesting pursuant to Plan Sections 9.2(a), 9.2(b), 9.2(c) and 9.2(d); or
- (d) The LATER to occur of either:
 - (1) The date upon which the Participant attains Normal Retirement Age, or
 - (2) The first day of the Plan Year in which occurs the fifth (5th) anniversary of the date upon which the Participant first commenced participation in the Plan.

9.4 Disposition of Accumulated Plan Forfeitures. Such portions of Participant Matching Contribution Sub-Account balances and Additional Contribution Sub-Account balances as shall from time to time be forfeited and transferred to the Plan Forfeitures Accumulation Account pursuant to Plan Section 9.2 shall be proportionally redeemed on some periodic basis by the Plan Administrator from the Investment Funds to which they were allocated, and the proceeds, at the discretion of the Plan Administrator, shall be:

- (a) Applied against accrued Plan administrative expenses;
- (b) Offset against Matching Contributions and/or Additional Contributions otherwise currently due from the Participating Employer from which such forfeiture originally arose; or
- (c) Reallocated to the Matching Contribution Sub-Accounts (if forfeited from Matching Contribution Sub-Accounts) and/or Additional Contribution Sub-Accounts (if forfeited from Additional Contribution Sub-Accounts) of Participants still actively employed as additional Matching Contributions and/or Additional Contributions.

ARTICLE 10. MISCELLANEOUS

10.1 Nonassignability. To the extent permitted by applicable law and except as may otherwise be provided in the Plan, no right or interest of a Participant, Beneficiary or any other person with respect to the Plan, Trust Fund assets of the Plan, and any Plan Account balance thereto or any benefit payable therefrom shall be transferable, assignable, commutable or conveyable by said Participant, Beneficiary or other person. Any attempt to so transfer, assign, commute or convey, including a transfer or assignment under a domestic relations order, shall not be recognized, and no liability shall attach to the Plan, Trust Fund, Board, Plan Trustees or Plan Administrator for any debts, contracts, liabilities, engagements, or torts emanating from such attempt. Neither shall any such right or interest be subject in any manner to alienation, anticipation, encumbrance, pledge, garnishment, attachment, execution, or levy of any kind, voluntary or involuntary, except as required by declaratory judgment or other operation of applicable law in a court of competent jurisdiction. Notwithstanding any other provision of the Plan to the contrary, the right or interest of a Participant with respect to the Plan, Trust assets of the Plan and any Plan Account balance thereto or any benefit payable therefrom may be reduced as permitted under Code Section 401(a)(13)(C).

The foregoing provisions notwithstanding, nonassignability shall not discharge the liability of a Participant to the Plan for indebtedness with respect to any outstanding unpaid Participant Loan balance resulting from the operation of Plan Article 8 provisions. If such Participant Loan shall remain unpaid at the expiration of the Participant Loan term, at the Termination of Service or Death of the Participant, or upon any conditions of default specified in the promissory note attached to such Participant Loan, such proportion of the Account value or benefits as shall equal such indebtedness shall be applied against discharge of that indebtedness. Neither shall nonassignability preclude either assessment of fees pursuant to Plan Sections 3.5 or 6.4, or corrective Account adjustments pursuant to Plan Sections 4.9, 5.2, 5.4, 5.6 or 5.7.

10.2 Unenlarged Employment Rights. A Participant by deferring Compensation or otherwise accepting benefits under the Plan shall not be deemed to agree to continue for any period in the employ of the State, or any Participating Employer. The State, and all Participating Employers expressly deny that by adopting the Plan, making deferral deductions from Compensation, making Employer Contributions to the Plan or appropriating funds therefor, or taking any other action with respect to the Plan, they obligate themselves in any way to continue the employment of any Participant for any period. No provision contained in this Plan shall be taken to modify the terms of any employment contract or agreement between a Participant and his or her Participating Employer.

10.3 Severability. If any provision of this Plan or the application thereof to any circumstance or person shall be for any reason invalid or unenforceable, the remaining provisions or applications to other circumstances or persons shall, nevertheless, continue in effect and shall not be invalidated thereby.

10.4 Conflicts. In the event any form or other document used in administering the Plan, including but not limited to enrollment forms or beneficiary designation forms, conflicts with the terms and provisions of the Plan contained herein, such terms and provisions of the Plan shall prevail.

10.5 Relationship to Other Plans. This Plan exists and serves in addition to any other retirement, pension or benefit systems established by the State and no deferral of Compensation,

payment of Employer Contribution, or distribution of benefits pursuant to this Plan shall cause the reduction of any retirement, pension or other benefit provided by law. The amount of contribution to any other retirement, pension or benefit system established by the State shall be based upon the compensation of the Employee before reduction in accordance with a Participation Agreement executed under this Plan.

10.6 Effective Date for Plan Implementation. The effective date to begin Compensation deferral and Deferred Compensation Contributions shall be as determined by the Board and the Plan Administrator, provided that sufficient appropriations or grants shall then be available for such purpose. Matching Contributions shall begin on such date as determined by the Board and Plan Administrator which shall not be earlier than that applicable to Deferred Compensation Contributions and on such date which appropriations or grants shall be both available and explicitly appropriated or granted pursuant to Plan Section 5.3. Implementation of the Plan Article 8 Participant Loan Provisions shall be dependant upon approval by the Board of Participant Loans.

Notwithstanding any other provision of the Plan contained herein, final adoption and implementation of this Plan shall be contingent upon and subject to the issuance of a favorable affirmative determination by the Internal Revenue Service regard whether the Plan meets the applicable requirements of Code Sections 401(a) and 401(k) for a qualified governmental plan containing a qualified cash or deferred arrangement. If such a favorable determination with respect to the Plan as it now exists or as it may subsequently be modified prior to such determination shall not be received by the end of twelve (12) months following commencement of Deferred Compensation Contributions to the Plan, then the Board, Plan Administrator and Plan Trustees may elect to declare the Plan to be retroactively void as of the effective date of such initial Deferred Compensation Contributions. If the Plan shall be so voided, Deferred Compensation Contributions, to the extent permissible by law, shall be returned to the respective Participating Employers making such Contributions for subsequent refund to the Participants as adjusted Compensation payments, and Matching Contributions (if any have been made) shall be returned either to the Participating Employers or to the General Fund of the State.

10.7 Applicable Law. This Plan shall at all times be construed, administered and governed in all respects under and by the laws of the State of Georgia and the United States Internal Revenue Code.

ARTICLE 11. PLAN AMENDMENT, CONSOLIDATION OR TERMINATION

11.1 Amendment of Plan. The Board shall have the authority to amend this Plan from time to time at any meeting following public notice of at least seven (7) calendar days before the meeting at which the amendments are to be presented for adoption. No amendment or modification shall adversely affect the rights of Participants or their Beneficiaries to receipt of Compensation deferred and any vested Matching Contribution and/or any vested Additional Contribution prior to such amendment or modification unless required by State or Federal law to maintain the tax status of the Plan and any Compensation previously deferred or Contributions previously made. Nor, barring any such necessary action with respect to maintenance of Plan tax status and as may be provided for elsewhere in the Plan, shall any amendment or modification authorize or permit any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of the Participants and their Beneficiaries.

11.2 Consolidation of Plan. The Board shall have the authority to merge or consolidate this Plan and Trust Fund with, or transfer its assets and liabilities to, any other plan qualified under Code Section 401(a), but only to the extent that benefits which would be received by any and all Participants of this Plan (or their Vested Beneficiaries) immediately after such transfer, consolidation or merger shall be at least equal to the benefits the Participants or Vested Beneficiaries would have received if the Plan had been terminated immediately before the transfer, consolidation or merger.

11.3 Termination of Plan. The Board shall have the authority to terminate this Plan, or to substitute a new Plan. Upon termination of the Plan, each Participant shall be deemed to have revoked the election for the deferral of Compensation as of the date of such termination, and the Participant's full Compensation shall be restored to a nondeferred basis. Furthermore, as of the effective date of any such termination, all rights to benefits credited to any and all Plan Accounts or Sub-Accounts (including Matching Contribution Sub-Accounts) shall, pursuant to the requirements of Code Section 411(e)(2) (as cross-referenced therein to the requirements of Code Section 401(a)(7) as such existed on September 1, 1974), be deemed to be immediately fully Vested and not subject to forfeiture. The Plan shall otherwise continue in effect until all Accounts have been distributed in accordance with the provisions of the Plan (except in the case of a retroactive voiding of Plan implementation pursuant to Plan Section 10.6, in which instance the provisions of such Plan Section shall govern.)

As first approved by the State Personnel Board December 18, 1985, and as subsequently last amended and restated by the Board as of January 1, 2013.

EMPLOYEES RETIREMENT SYSTEM OF GEORIGIA

Title

Date: _____

Witness

Date: _____