

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

As First Approved by the
State Personnel Board
July 25, 1979

And Amended and Restated in its Entirety
January 1, 2009

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ARTICLE 1. INTRODUCTION AND PURPOSE OF PLAN

1.1 Establishment of Plan. This Plan shall be known as the State of Georgia Employees' Deferred Compensation Plan ("Plan") and is created in accordance with Ga. Laws 1974, p.198, as amended, O.C.G.A. 45-18-30 through 45-18-36, and Section 457 of the United States Internal Revenue Code. The Plan was originally adopted July 25, 1979. Effective June 3, 2005, the Plan was amended and restated in its entirety to transfer the administration of the Plan to the Board of Trustees of the Employees' Retirement System of Georgia. Effective January 1, 2009, the Plan is again amended and restated in its entirety.

1.2 Purpose of Plan. The purpose of this Plan is to allow Employees to designate a portion of their Compensation to be deferred on a pre-tax basis each month by the various State agencies (or other defined Employers) and invested in a selected range of investment products approved by the Board of Trustees until termination of employment, the Death of the Employee, or until the Employee experiences a qualifying Unforeseeable Emergency causing severe financial hardship. Participation in this Plan shall not be construed to establish or create an employment contract between the Employee and the State of Georgia or any Employer.

ARTICLE 2. DEFINITIONS

2.1 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" or "Deferred Compensation Account"** means the record established by the Board for each Participant to reflect that Participant's deferrals, distributions, transfers, charges and allocable investment gains or losses.
- (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 frequently, although never more frequently than once per day, to reflect, as closely as possible, the earnings and/or losses with respect to any individual Account from the time Deferred Compensation is invested in various Investment Funds until it is eventually distributed in accordance with the Plan.
- (c) **"Age 70 1/2"** means that date six months following the date on which falls the seventieth (70th) anniversary of the Participant's birth, whether or not the Participant dies prior to such date.

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- (d) **“Alternate Payee”** means the spouse, former spouse, child or other dependent of a Plan Participant who is entitled, by operation of a valid Domestic Relations Order pursuant to Plan Section 6.5, to receive payment of some or all of the value of the Participant’s Account instead of, or in addition to, the Participant, at such time as Distribution of such Account value must otherwise commence to the Participant pursuant to Plan Section 6.3.
- (e) **“Beneficiary”** means the person, persons or legal entity entitled to receive any remaining undistributed Account value under the Plan which becomes payable in the event of the Participant’s Death as designated by the Participant or otherwise provided for in accordance with Plan Section 6.9.
- (f) **“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 meets all applicable requirements of Plan Section 6.9.
- (g) **“Board”** means the Board of Trustees of the Employees’ Retirement System of Georgia, which is the statutory body responsible for administration of the Plan.
- (h) **“Change Participation Agreement”** means that form established by the Plan Administrator, in its sole discretion, for use in changing a Participant’s Deferred Compensation or for other purposes as determined by the Plan Administrator. Such form may be in writing or in an electronic medium.
- (i) **“Code”** means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute.
- (j) **“Compensation”** means “Earnable Compensation” as that term is defined under the Employees’ Retirement System of Georgia in O.C.G.A. 47-2-1(15). Compensation does not include any remuneration payable to an Employee for personal services rendered to any Employer for overtime payments, bonuses, or supplements of short duration. Compensation shall include before-tax or salary deferral contribution made to this Plan or any other plan of the Employer under a Code Section 132(f) qualified transportation plan, or under Code Section 125, 401(g)(3), 457 or 414(h) on behalf of a Participant for such Plan Year. Effective for calendar years beginning on and after January 1, 2007, Compensation shall generally not include payments made after Termination of Service, unless such payments meet the requirements of Treasury Reg. 1.415(c)-2(e)(3).
- (k) **“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.
- (l) **“Deferred Compensation”** means that portion of the Participant’s Compensation which the Participant and Employer mutually agree to defer under this Plan.
- (m) **“de minimis Inactive Account”** means an Account with total current value (not including rollovers but reflecting cumulative deferrals, charges, earnings, allocable investment gains or losses, etc.) greater than zero but less than or equal to \$5,000, belonging to a Plan Participant who is currently still working for an Employer but for

whom no Deferred Compensation has been deducted and deferred for at least the last two (2) years, thereby making such Account available for a *de minimis* Inactive Account Distribution under Plan Section 6.8 (as requested by the Participant or directed by the Executive Director).

- (n) **“Domestic Relations Order (“DRO”)”** means a judgment, decree, or other order under state domestic relations law relating to the provision of child support, alimony, or marital property rights which requires transfer (and subsequent payment) of accumulated Plan Account value to either the spouse, former spouse, child, or dependent(s) of a Participant *after* Participant’s eligibility for benefit payment under Plan Article 6. A valid DRO is an allowable exception to the general rules prohibiting Plan benefits from being assigned or alienated.
- (o) **“Employee”** means a member of the State Legislature or a person who is paid for providing direct personal services for any Employer, is under the administrative or supervisory control of such Employer, and receives his or her Compensation in a direct payment from such 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. Employee shall also include any individual defined as “employee” under the Employees’ Retirement System of Georgia in O.C.G.A. 47-2.
- (p) **“Employer”** means the Georgia Legislature, the State Judiciary, all the various constitutional offices and executive agencies, commissions, and boards of the State of Georgia, the State University System of Georgia, and any other specified instrumentalities or authorities of the State or its political subdivisions, including cities, counties and local agencies or boards, whose Employees are authorized by Law to defer Compensation under this Plan. Employer shall include all entities included as an “Employer” under the Employees’ Retirement System of Georgia in O.C.G.A. 47-2.
- (q) **“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.
- (r) **“Includible Compensation”** means Compensation for service performed for the Employer which is currently includible in gross income.

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- (s) **“Investment Fund”** means a specific investment vehicle or pool of vehicles with similar characteristics established by the Board or Plan Administrator for investment at the Board’s discretion of allocated portions of Deferred Compensation amounts.
- (t) **“Latest Distribution Date”** means the latest date by which distribution of all Account value (or all amounts payable under an annuity contract thereunder) MUST have begun to be distributed to the Participant or Beneficiary.
- (u) **“Minimum Distribution Year”** means any Plan Year for which a Minimum Annual Distribution determination must be made to the Participant or Beneficiary pursuant to the distribution provisions of Plan Sections 6.3 and 6.4.
- (v) **“Minimum Annual Distribution”** means the minimum total dollar amount that must be distributed to the Participant or Beneficiary within a given Plan Year, under Plan Sections 6.3 and 6.4.
- (w) **“Normal Retirement Age”** means either:
 - (i) The age of the Participant as of that Participant’s Projected Retirement Date, as such Date may be designated in accordance with Plan Subsection 3.5(b), or
 - (ii) Age 70-½, if no earlier Projected Retirement Date has been designated prior to Termination of Service.
- (x) **“Participant”** means any Employee who has enrolled in this Plan as provided in Plan Article 3 and for whom his or her Account has not been fully distributed.
- (y) **“Participation Agreement”** means the contract by which the Employee and the Employer agree that a portion of the Employee’s Compensation will be deferred in accordance with the provisions of this Plan, which may be in writing or in an electronic medium.
- (z) **“Pay Period”** means a regular accounting period established by the Employer for measuring and paying Compensation earned by Employees. A Pay Period can be monthly, semi-monthly, bi-weekly, or weekly, and does not need to be equal in frequency or length for all Employers.
- (aa) **“Plan”** means the State of Georgia Employees’ Deferred Compensation Plan as set forth herein and as it may be amended from time to time.
- (bb) **“Plan Administrator”** means the Executive Director acting on behalf of the Board with respect to administration of the Plan. 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.
- (cc) **“Plan Trustees”** means the Board of Trustees of the Employee’s Retirement System of Georgia.

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- (dd) **“Plan Year”** means the twelve-month accounting and reporting period coincident with the calendar year. The first Plan Year shall end on December 31 of the year in which deferrals are first made under the Plan.
- (ee) **“Projected Retirement Date”** means the date which is earlier than the Participant's attainment of Age 70-½ established as the Participant's Normal Retirement Age in accordance with Subsection 3.5(b)(2).
- (ff) **“Required Distribution Date”** means the latest date by which the initial distribution of value from a Deferred Compensation Account must have commenced to a Participant or a Beneficiary.
- (gg) **“Termination of Service”** means the severance of the Participant's employment relationship with the Employer by means of: Death, retirement; discharge; 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. For purposes of this definition, an interruption in State service for a period of less than 30 days, Transfer among the various branches or agencies of State Government defined as Employers, or an approved leave of absence without pay of one year or less shall not be considered a Termination of Service.
- (hh) **“Transfer”** means a break in service of thirty-one (31) days or less between leaving the employ of one Employer and commencing employment with another Employer.
- (ii) **“Trust Fund”** means the aggregate assets of the Plan, whether in cash or investments or any other form of property, 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.
- (jj) **“Unforeseeable Emergency”** means severe financial hardship as determined in the exclusive jurisdiction of the Plan Administrator under Plan Section 6.7.
- (kk) **“Vested Beneficiary”** means the person, persons or other legal entity designated by a Plan Participant (pursuant to Plan Section 6.9) as a Beneficiary of some specified portion of Deferred Compensation Account value as may remain following the Participant's Death (or deemed to be such a Beneficiary in the absence of any affirmative designation by the Participant), for whom Plan Account value has in fact become legally payable in accordance with Plan Section 6.9 as the result of the Death of the Participant, entitling the Beneficiary to the Account Distribution choices provided pursuant to Plan Section 6.4.

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 and 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. PARTICIPATION IN THE PLAN

3.1 Eligibility. Any Employee who is receiving Compensation on or after the date the Plan becomes effective shall be eligible to become a Participant in accordance with Plan Section 3.2, including an Employee who is a member of the Board or is on the staff of the Executive Director.

3.2 Enrollment. Any Employee eligible to participate in accordance with Plan Section 3.1 may become a Participant on the first day after receipt by the Plan Administrator of a Participation Agreement as described in Plan Section 3.3. Such Participation Agreement have an election for the Employee to defer a part of his or her Compensation in whole percentages, except that such deferral cannot be less than the percentage set forth in Plan Section 3.4 and cannot exceed the percentage set forth under Plan Section 3.5. The deferral shall commence not earlier than with the first Pay Period beginning on or after the first day of the calendar month following the date that the Participation Agreement is properly provided to the Employer or the Plan Administrator. Any eligible Employee under Plan Section 3.1 whose account balance under another plan has been approved pursuant to Plan Section 3.9 for rollover or transfer into this Plan shall be enrolled as a Participant and subject to all Plan provisions, and that Employee's deferral of Compensation shall commence as of the first day of the first month after the Employee is otherwise eligible and has met the conditions of this Plan Section 3.2.

3.3 Participation Agreement. The Board or Executive Director shall approve a form Participation Agreement which may be in writing or in an electronic medium. Such agreement shall, among other provisions, contain the percentage of Compensation to be deferred, specify the percentage by type or types of Investment Funds, which the Board may use for the purpose of measuring benefits to the Participant, designate the Participant's Beneficiary or Beneficiaries and incorporate the terms, conditions, and provisions of this Plan by reference.

The Participation Agreement shall also contain a provision whereby the Participant together with his heirs, successors and assigns shall hold harmless the Board and Employers and their officials, agents, employees, assignees and successors from any and all liability hereunder for all acts performed in good faith, including acts relating to the investment of Deferred Compensation and the Employee's investment preference hereunder.

3.4 Minimum Monthly Deferral. Each Participant who requests a deferral from Compensation by executing a Participation Agreement must agree to defer a minimum of one percent (1%) of Compensation.

3.5 Maximum Deferral.

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(a) **For Plan Years Beginning On or After January 1, 2002**, the total amount of a Participant's Deferred Compensation shall not exceed the limits provided in Plan Subsections 3.5(b)(1), (2) or (3), below:

(1) **Normal Deferral Plan Year Ceiling.** Except as may be provided in this Plan Subsection 3.5(b), deferrals under this Plan during any given Plan Year cannot exceed the LESSER of:

(A) The applicable dollar limit for the Plan Year as described in Code Section 457(e)(15)(A) and as adjusted from time to time pursuant to Code Section 457(e)(15)(B), OR

(B) One hundred percent (100%) of the Includible Compensation payable to the Participant by any and all eligible Employers during the Plan Year.

(2) **Catch-up Deferral Plan Year Ceiling.** Each Participant may irrevocably designate a Projected Retirement Date to be that Participant's Normal Retirement Age attainment date for purposes of the Plan. For any or all of the three (3) Plan Years immediately preceding the Plan Year in which such designated Projected Retirement Date falls, the Participant may elect to defer a higher Plan Year maximum amount, which shall be limited to the lesser of:

(A) Twice the limit described in Plan Subsection 3.5(b)(1)(A), above, for that Plan Year , OR

(B) The sum of:

(i) The normal Plan Year deferral limit for the current Plan Year as set forth in Plan Subsection 3.5(b)(1), above, PLUS

(ii) Any previously unutilized deferral eligibility, from all prior Plan Years in which the Employee was eligible to be a Plan Participant (the cumulative total of all Plan Year deferral limits for which the Participant could have Deferred Compensation, not including Plan Years beginning prior to January 1, 1979, less the cumulative total of all amounts actually deferred by the Participant during any and all such Plan Years).

For purposes of determining the unutilized deferral for taxable years prior to January 1, 2002, amounts deferred by a Participant under a Code Section 403(b) or 401(k) plan or any amounts with respect to which a deduction was allowed under Code Section 501(c)(18) shall be treated as Deferred Compensation under this Plan.

Any Projected Retirement Date so designated under this Plan Subsection 3.5(b)(2) must not be LATER than the end of the month in which the Participant would attain Age 70 1/2, AND must not be EARLIER than the earliest date at which the Participant would, upon Termination of Service, be eligible through membership in one of the various retirement systems established by State law for the benefit of State Employees to retire without consent of the State and to receive immediate

retirement benefits without actuarial or similar benefit reductions due to retirement prior to attainment of minimum age or service requirements under that system. If a Participant is not a member of any of the State retirement systems, the earliest allowable Projected Retirement Date shall be determined as if the Participant had been a contributing member of the Employees' Retirement System for all periods of active State service.

No Participant may elect to defer Compensation under this Plan Subsection 3.5(b)(2) at any time other than during the single consecutive three-year period determined by the once-in-a-lifetime designation of the Projected Retirement Date, even if the Participant does not make such deferrals during all three Plan Years, or later re-enrolls in this Plan, or later participates in another eligible Code Section 457 deferred compensation plan.

- (3) **Age 50 Catch Up Provision.** Each Participant who has attained age 50 before the end of the Plan Year, may be eligible to make an Age 50 catch-up Contributions in accordance with Code Section 414(v) for each such Plan Year, equal to the applicable dollar amount specified under Code Section 414(v). Such catch-up Contributions shall not be taken into account for purposes of Codes Sections 457(e)(15), 415, or 457(b)(3)(B)(ii) (relating to the underutilized deferral described in Plan Section 3.5(a)(2)(B)(2)).

This Age 50 catch up provision may not be used in any year in which the Participant has elected a catch-up deferral in accordance with Plan Section 3.5(a)(2).

- (4) **Net Pay Deferral Ceiling Per Pay Period.** In addition to the limitations on Plan Year deferrals under Plan Subsections 3.5(b)(1) and 3.5(b)(2) above, deferrals per Pay Period in all instances shall be limited to the Participant's Compensation less withholding for the Employee portion of the Social Security Tax, and any other applicable taxes, pension contributions, cafeteria or other health and welfare plan deferrals, pre-tax transportation deferrals, garnishments, qualified child medical support orders, or other authorized payroll deductions.

- (b) In the event the contributions made to the Plan pursuant to Sections 3.5(a) of the Plan, alone or when combined with similar contributions made by the Employee to other eligible 457(b) plans, causes the contribution limitations of Plan Section 3.5(a) to be violated, then the amounts in excess of these Plan limitations will be treated as excess deferrals. Any excess deferral resulting from such failure will be distributed to the Participant, along with allocable net income, as soon as administratively practicable after it is determined that an excess deferral has been made.

3.6 Participant Modifications to Amount Deferred. The amount of Deferred Compensation per Pay Period, subject to the limits of Plan Section 3.5, may be increased or decreased by the Participant only by proper application. Such application shall use the Change Participation Agreement approved by the Plan Administrator and may be in writing or in an electronic medium. The Plan Administrator shall reserve the final authority to approve or deny any requested deferral amount modifications (other than a Participant Revocation of Compensation Deferral pursuant to Plan Section 3.7) if, for example, the Change Participation Agreement is not properly completed, or would cause the Participant's Deferred Compensation to

be less than one percent (1%), or if it would create total contributions in excess of the Plan maximum. Such a change will take effect no earlier than the first open Pay Period of the month following that month in which the Participant's Change Participation Agreement is received and approved by the Plan Administrator.

3.7 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 possible 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 6 and its applicable Subsections. 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 3.2.

3.8 Duration of Election to Defer Compensation. Once a Participant elects to defer his or her Compensation under the Plan, 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 election pursuant to Plan Section 3.6;
- (d) Revocation pursuant to Plan Section 3.7; or
- (e) The election must be modified or revoked by the Plan Administrator in order to prevent violation of the limitations under this Plan.

3.9 Acceptance of Account Balances From Other Plans. Subject to approval by the Plan Administrator, amounts may be transferred to this Plan on behalf of Employees directly, or through the Employee, by means of a rollover or transfer from another governmental 457(b) plan. Prior to accepting any such amounts, 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 be eligible for rollover or transfer. The Plan Administrator shall not approve any amount that might in any way jeopardize or potentially create adverse tax consequences for the State, the Plan or any Plan Participants.

In the event of such a transfer:

- (a) The Employee (or, if applicable, Beneficiary) whose Plan Account is transferred will have an Account balance in the Plan immediately after the transfer equal to such individual's Account under the Plan immediately before the transfer;
- (b) The Employee (or, if applicable, Beneficiary) whose Plan Accounts is transferred shall not be eligible to defer additional amounts into the Plan until such individual qualifies as a Participant under Plan Subsection 3.1, and
- (c) The transferred Accounts shall thereafter be valued in accordance with the investment choices elected by the Participants at the time of transfer pursuant to Plan Subsection 5.1(f).

Such transferred amounts shall at all times be considered fully vested and shall not be subject to forfeiture for any reason. Once such transfers have been made, they may not be withdrawn by or distributed to the Participant except pursuant to the provisions of Plan Article 6.

3.10 Timely Transfer of Deferrals to Trust Fund. The Employer shall expeditiously remit to the Plan all Deferred Compensation salary deferrals deducted from Employees' Compensation each Pay Period in sufficient time to assure crediting of such deferrals to the Participants' Accounts and their investment through the Plan's Trust Fund. Notwithstanding any contrary provision of the Plan, in accordance with Code Section 457(g), all amounts of Compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under law of Georgia.

All amounts of Compensation deferred under the Plan shall be transferred to a trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the accounts of Participants. To comply with this requirement, all amounts of Compensation deferred under the Plan shall be transferred to a trust established under the Plan not later than fifteen (15) business days after the end of the month in which the Compensation would otherwise have been paid to the Employee.

ARTICLE 4. ADMINISTRATION

4.1 Responsibilities of the Board. The Board shall act as the principal agent of the State in matters concerning the establishment, implementation and administration of the 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 this Plan and to make discretionary policy decisions affecting the rights or benefits of Participants under this Plan. The Board, as well as the Plan Administrator, the Plan Trustees, the Plan, 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 8 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 (if any) of the Executive Director where such distribution request is based upon alleged qualifying Unforeseeable Emergency as provided in Plan Section 6.7.

The Board, except as is set forth in the preceding sentence, shall have the authority to delegate any and all of its authority and powers in regard to the administration of the Plan to the Executive Director, who shall act as Plan Administrator on behalf of the Board. This delegation may include, but is not limited to, authorization to sign contracts and employ staff for services on behalf of the Board.

4.2 Responsibilities of the Executive Director. The Executive Director shall act as the Plan Administrator with respect to this Plan, 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 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, pursuant to Plan Section 4.3, determinations of qualified Unforeseeable Emergency. 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 findings and interpretations shall be final and conclusive as to all interested parties for all purposes of the Plan.

The Executive Director may employ such personnel as may be necessary to carry out his or her duties as Plan Administrator hereunder and to provide the Board with the necessary staff support for the proper exercise of its duties regarding implementation, operation, and modification of the Plan. The Executive Director may also invite proposals from qualified corporations or other qualified entities to provide investment, administrative, or other services to the Plan, and may, following evaluation of such proposals and his or her determination of the proposal or proposals deemed most suitable, execute a contract or contracts with one or more firms so selected. So long as such action would not be deemed *prima facie* arbitrary and capricious by a disinterested observer, 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.

4.3 Delegated Responsibilities for Determination of Qualifying Unforeseeable Emergency. The Executive Director shall be authorized to delegate to either designated staff or any entity contracted to provide administrative or other services to the Plan the initial determination as to whether any Participant has suffered a qualifying Unforeseeable Emergency and is entitled to an In-Service Distribution thereby under Plan Section 6.7. In carrying out determinations of eligibility for Unforeseeable Emergency distributions, the Executive Director and his or her designees shall apply the standards for qualifying Unforeseeable Emergency set forth either explicitly under Plan Section 6.7 or incorporated by reference thereunder. Any member of staff designated by the Executive Director hereunder who is otherwise eligible shall be entitled to defer Compensation; however, no such designated member 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 other Plan Participants.

4.4 Responsibilities of the Plan Trustees. The Executive Director and the appointed members of the Board shall 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 (as required under Code Section 457(g)) that no part of the corpus or income of the Trust Fund maintained pursuant to the Plan or any monies 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.

In the exercise of their fiduciary responsibilities, the Plan Trustees shall specifically follow the investment policies adopted and promulgated by the Board with respect to the Plan as well as any other fiduciary or other guidance adopted by the Board. Plan Trustees may also look to the standards of fiduciary conduct prescribed in the Employee Retirement Income Security Act of 1974 ("ERISA") for general guidance in the exercise of such responsibilities, although as a *bona fide* governmental benefit plan, this Plan is explicitly exempted from mandatory compliance with the provisions of ERISA. Specific 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 thereunder, and any pending litigation to which either the Board, Plan Administrator, Plan Trustees or the Plan is 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 Plan Trustees shall cause to be carried out a detailed audit of the Plan's official books and records by a qualified accountant at least once during each period of twenty-four (24) consecutive months. 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. This paragraph can be, but is not required to be, complied with by an audit conducted by the State Department of Audits so long as the scope of any such audit shall be equivalent to or greater than that specified herein.
- (c) **Annual Report.** The Plan Trustees shall cause to be prepared an annual report with respect to each Plan Year completed after the effective date of amendment of the Plan by the Board to first include the language of this Plan Section 4.4. Such 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 of Deferred Compensation to the Plan, Plan 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.

4.5 Administration Cost. Under Ga. Laws, 1974, p.198, as amended (O.C.G.A. Sec.45-18-30 through Sec.45-18-36), the Plan must operate without cost to the State except for the incidental expense of administering the payroll salary deduction or reduction and the remittance thereof. Consequently, any cost beyond these incidental costs shall be charged as an administration expense to the amount deferred. The Board or the Executive Director shall determine, in a manner deemed fair and equitable, the administration expense associated with administering or implementing the Plan. The Board or the Executive Director may withhold or collect, or have withheld or collected, such costs, in a manner deemed equitable, from any or all of the following:

- (a) The Compensation deferred pursuant to the Plan;
- (b) The income produced from the Compensation deferred pursuant to the Plan;
- (c) The income produced from any investment; or
- (d) From the organization receiving such investment.

ARTICLE 5. PARTICIPANT ACCOUNTS AND INVESTMENTS

5.1 Deferred Compensation Accounts, Valuation and Investment.

- (a) **Deferred Compensation Accounts.** The Board shall cause to be established an Account for each Participant which shall be the basis for any distributions payable to the Participant, Beneficiary, or Alternate Payee under Plan Article 6. Each Participant's Account shall be credited with the amount of any Compensation deferred and shall be further:
 - (1) Credited or debited, as applicable, any increase or decrease resulting from investments made pursuant to Plan Section 5.3;
 - (2) Debited with any applicable expenses incurred by the Board or the Executive Director in maintaining and administering this Plan;
 - (3) Debited for the amount of any distribution; and
 - (4) Debited in an amount equivalent to the present value of any annuity option selected in accordance with Plan Article 6, and the value of such a Participant's Deferred Compensation Account shall thereafter be determined in accordance with the terms of such annuity option.
 - (b) **Multiple Deferred Compensation Accounts.** Notwithstanding any other provisions of this Plan Subsection, the Board shall cause to be established additional Deferred Compensation Accounts for an eligible Participant if EITHER:
 - (1) The Participant has been reemployed following a Termination of Service, has been approved for new deferrals from current Compensation, and has either:
 - (A) Commenced, but not completed, distribution of value from the existing Account in accordance with the provisions of Plan Article 6, or
 - (B) Already attained age 70 1/2 prior to reemployment,
- OR
- (2) Has, while maintaining an Account in his or her own right as a participating Employee, become entitled as a designated Beneficiary to receive distribution from the Account of a deceased Participant.

Each Account shall then be separately credited or debited for investment activity in accordance with the provisions of this Section.

In addition to the foregoing, a separate Account shall be established in the name of any Alternate Payee directed to receive some or all of the value of a Participant's Account pursuant to the terms of any DRO which has been issued to the Plan by a court of law with competent jurisdiction. In such event, the Participant's Account shall be debited, and a new Account in the name of the Alternate Payee established and credited, for the amount or portion of the Participant's Account directed to be paid to the Alternate Payee under the terms of the DRO, even if such amount or portion is not yet eligible for current distribution to such Payee under the terms of Plan Section 6.5. Any amount transferred into an Account in the name of an Alternate Payee cannot exceed the total value of the Participant's Account at the time of the transfer.

- (c) **Allocation of Investment Earnings or Losses.** Deferred funds, less any Plan administrative expenses or Investment Fund administrative and sales charges which are to be assessed against such Contributions prior to investment, shall be credited or debited to the Participant's Account as if they were invested according to investment requests then in effect on behalf of the Participant. 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 Deferred Compensation is withdrawn from any Investment Fund.
- (d) **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 amount due to a Participant or Beneficiary as a withdrawal or distribution shall be paid in cash, and based upon the Participant's Deferred Compensation Account as of the Accounting Date coincident with or immediately preceding such distribution.
- (e) **Administrative Costs.** Expenses of maintaining and administering the Plan, other than the incidental expenses of payroll deduction, shall be borne by the Participants and/or any organizations managing Investment Funds provided for under Plan Section 5.3.
- (f) **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. Once made, an investment request shall remain in effect for all subsequent contributions to the Participant's Deferred Compensation Account until changed by the Participant in the manner approved by the Plan Administrator for such purpose or changed due to the discontinuance of the Investment Fund or option. 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.

The investment request may also be changed by the Participant with respect to Deferred Compensation previously invested, upon proper application to the Plan Administrator and subject to any restrictions on such change imposed by contract with the organization or organizations managing the Investment Funds. A change in investment of previous Deferred Compensation shall be made effective at such time following receipt and approval of the application as may be established by the Plan Administrator, and shall be based

upon the fair market value of the portion of each Investment Fund allocable to the Participant's Deferred Compensation Account as of the Accounting Date coincident with or most immediately preceding the date on which the requested change is implemented.

- (g) **Participant Statements.** Each Participant shall be provided with an accounting of his or her Deferred Compensation Account at least annually. This statement shall include, but is not limited to, the amount deferred during the statement period and any amounts credited or debited during the Plan Year (or such other shorter period of time covered by the Statement) up to the most recent Accounting Date. Such accounting shall be made not later than sixty (60) days after the end of the Plan Year.

5.2 Plan Assets Held In Trust. As required by Internal Revenue Code Section 457(g), any Plan assets, whether in cash or investments which the Plan Trustees may earmark to pay or measure any Deferred Compensation hereunder, shall, at all times be held for the exclusive benefit of Participants in the Plan (and their Beneficiaries) in formal trust through the Plan's Trust Fund, until distributed in accordance with the benefit payment provisions of Section 6. But notwithstanding deferral investments being held in trust and regardless of the amounts of Compensation deferred, the maximum amount of benefits that may be returned to Participants will be the market value (as of the dates of distribution) of the investments made by the Plan Trustees, as requested by such Participants in their respective Participation Agreements.

5.3 Investment of Funds. The Board may establish any or all of the following categories of Funds for investment of Deferred Compensation:

- (a) Investment Fund A - which shall be invested by the Plan Administrator (in the discretion of the Board) 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 - which shall be invested by the Plan Administrator (in the discretion of the Board) 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 - which shall be invested by the Plan Administrator (in the discretion of the Board) primarily in corporate or Government bonds or pooled investment vehicles, such as mutual funds, whose investment policy emphasizes such investments;
- (d) Investment Fund D - which shall be invested by the Plan Administrator (in the discretion of the Board) 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 - which shall be invested by the Plan Administrator (in the discretion of the Board) primarily in a balanced portfolio of both debt and equity securities, providing both growth and current income opportunities at a modest level of volatility, or pooled

investment vehicles, such as mutual funds whose investment policy emphasizes such investments.

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 eliminate any or all of the Investment Funds under any of the above categories and the Board shall have the authority to eliminate any such categories.

Upon elimination of a Fund by the Board (as distinguished from portfolio transactions within a Fund or generic Fund pool), investment of future deferrals to such Fund shall be suspended on a date announced by the Board or Plan Administrator. If the Participant fails to submit a redesignation of future Deferral Contributions by such date, such Participant will be deemed to have instructed the Plan Administrator to redirect, without further notice, measure of future deferrals into an available Investment Fund as the Plan Administrator (in its exclusive discretion) deems appropriate.

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 Deferred Compensation Accounts or reserved to fund Plan administrative expenses.

ARTICLE 6. DEFERRED COMPENSATION ACCOUNT DISTRIBUTIONS AND ASSET TRANSFERS

6.1 Statutory Distribution Requirements. Under this Plan, distributions of a Deferred Compensation Account shall be governed by the distribution requirements set forth in Code Section 457(d) (and U.S. Treas. Reg. 1.457-6 thereunder), the distribution requirements set forth in Code Section 401(a)(9) (and the Proposed Treasury Regulations thereunder) as modified by Code Section 457(d)(2)(B) (for distributions before January 1, 2002) and the excess accumulations excise tax requirements set forth in Code Section 4974 (and U.S. Treas. Reg. 54.4974-2). Distributions under this Section shall also be made in compliance with any other Treasury Regulations, Rulings, Procedures, etc., governing distributions from eligible plans under Code Sections 457 or minimum plan payments under Code Sections 457(d)(2) and 401(a)(9), or any other applicable Code Section, 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 6, and the provisions of the Code, the provisions of the Code shall prevail. Nothing in the provisions of this

Article 6, 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.

6.2 Permissible Methods of Account Distribution. The Board and the Executive Director shall provide for the distribution of value from a Deferred Compensation Account as described in this Plan Section 6.2. The Participant (or Beneficiary) may elect payments from a Deferred Compensation Account in accordance with one or more of the following described distribution methods, and only these described methods, provided the prescribed election form is filed with the Board or Executive Director NOT LATER than fifteen (15) days prior to the scheduled or required date of distribution commencement. The distribution methods described herein shall not obligate the Board and the Executive Director to make all authorized distribution methods available.

- (a) **Lump Sum Payment.** Payment may be made as an initial single lump sum payment of all, or a portion of, the current value of the Deferred Compensation Account. If an initial lump sum payment consists of less than the total value of a Participant's Deferred Compensation Account (or of a Beneficiary's allocable share of such Deferred Compensation Account), the value remaining in the Deferred Compensation Account may continue to be distributed in accordance with one or more of the other authorized distribution methods.
- (b) **Periodic Installment Payments.** 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 with investment earnings or losses.

The amount of benefits due for any given installment shall be based on a straight-line amortization of the Deferred Compensation 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.

- (c) **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 U.S. Treas. Regs. 1.401-9(b), and shall expressly contain such provisions as are necessary to establish and maintain such nontransferability.

The Participant (or Beneficiary) may choose, subject to the provisions of Plan Subsections 6.3 and 6.4, one (1) of the following payment calculation formulas:

- (1) **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.
- (2) **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.
- (3) **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.

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 Deferred Compensation 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.

- (d) **Changes to Elected Distribution Method.** The Distribution Method elected by the Participant or Beneficiary pursuant to Plan Subsection (c) above MAY be changed by such Participant or Beneficiary at any time PRIOR TO his or her Required Distribution Date, provided an acceptable alternate Distribution Method is available under the terms and conditions of this Plan. Once distributions of benefits commence, the Participant (or Beneficiary) shall no longer be permitted to electively modify the method except as permitted under Code Section 401(a)(9) and its accompanying regulations.

The provisions of this Plan Subsection shall not, however, be deemed to preclude the Board from modifying a commenced Distribution Method, when required under Federal statute or regulation. Neither shall the provisions of this Plan Subsection override the authority of the Board and the Executive Director to add to, delete from, or otherwise modify the range of distribution options generally made available to Participants and Beneficiaries, so long as any such changes are consistently applied and do not conflict with Federal statutory and regulatory requirements.

6.3 Account Distributions To Participants. Notwithstanding any provisions of Plan Section 6.2 to the contrary, distribution to a Participant of the value credited to any Account established on behalf of that Participant as an Employee shall only be initiated and completed in accordance with the provisions set forth in the following Plan Subsections:

- (a) **Earliest Commencement of Participant Distribution.** Distribution to the Participant of the Account value shall not commence prior to the EARLIEST of:
- (1) The Participant's most recent Termination of Service;
 - (2) The determination of a qualifying Unforeseeable Emergency pursuant to Plan Section 6.7;
 - (3) Request for and granting of a qualifying *de minimis* Inactive Account Distribution by the Executive Director, or his or her designees, pursuant to Plan Section 6.8; or
 - (4) The calendar year in which the Participant attains the age of 70 ½ years.
- (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
 - (2) The calendar year in which the Participant incurs a Termination of Service.

If a Participant dies before the commencement of benefit payments under the Plan, distributions shall commence no later than the latest applicable date set forth in Section 6.4

- (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 Plan Subsection 6.3(a) above;
 - (2) Is not later than that required under Plan Subsection 6.3(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) **Participant Distribution Method And Period Restrictions.** An original Participant's choice of distribution methods as set forth under Plan Section 6.2 and available Distribution periods shall be limited and restricted as follows:

(1) **Account Value for Terminated Participant Not Over \$1,000.** If a Participant undergoes a Termination of Service and the total Account value IS NOT greater than \$1,000 as of the Accounting Date coincident with or most immediately preceding the date of that Termination, distribution shall only be made in the form of a single Lump Sum Payment of the total Account value.

(2) **Account Value for Terminated Participant Over \$1,000.** If a Participant undergoes a Termination of Service and the total Account value IS greater than \$1,000 as of the Accounting Date coincident with or most immediately preceding the date of that Termination, distribution shall only be made by the methods and over the periods as follows:

(A) **Latest Distribution Date for Terminated Participant.** If a distribution method request was properly filed by the Terminated Participant, the distribution of total Account value (or distribution of total guaranteed monthly benefits under an annuity contract with an insurance company), once commenced, must be fully distributed on or before the applicable Latest Distribution Date specified below:

(i) **Lump Sum Payment.** If the elected payment schedule is in the form of a Single Lump Sum Payment, the Required Distribution Date is the Latest Distribution Date.

(ii) **Period Certain Payment.** If the elected payment schedule is in the form of Period Certain Recurring Installments or a Period Certain Annuity Contract, the Latest Distribution Date shall generally be the Life Expectancy determination date as provided under Plan Subsection (e), ADVANCED by the number of years (and fractional years) of the Life Expectancy (or Joint Survivor Expectancy) as determined under Plan Subsection 6.3(e), rounded to the closest month-end.

However, the Latest Distribution Date under a Period Certain annuity contract ONLY shall instead be specified by the date of the Participant's birthday falling within the LATER of:

(a) The Plan Year in which the Participant would attain age 70 1/2, or

(b) The Plan Year in which the Participant has a Termination of Service,

ADVANCED by the number of years (and fractions of years) provided under the Uniform Lifetime Table in A-2 of U.S. Treas. Reg. 1.401(a)(9)-9 for the Participant's age as of such birthday, rounded to

the closest month-end, if such Latest Distribution Date would be EARLIER than that provided by the Life Expectancy determination effective date under the preceding sentence.

- (iii) **Life Annuity Payment.** In the case of annuity contract payments to be made over the lifetime of the Participant (or over the joint lifetimes of Participant and Spouse), the Latest Distribution Date shall be the date of Death of the Participant (or the LATER of:
 - (a) The date of Death of the Participant, or
 - (b) The date of Death of the Spouse).

- (B) **Minimum Distributions for Terminated Participant.** If a distribution method request was properly filed by the Terminated Participant, payments made to the Participant during any Minimum Distribution Year must not be less than the Minimum Annual Distribution determined in accordance with Plan Subsection 6.3(e).

- (C) **No Payout Method Election Filed by Terminated Participant.** If a distribution method request was not properly filed by the Terminated Participant, liquidation of the Deferred Compensation Account shall be made as recurring annual installment payments, with a Latest Distribution Date consisting of the EARLIER of:
 - (1) The appropriate Life Expectancy determination date ADVANCED by the years (and fractional years) of the Remaining Life Expectancy, or
 - (2) The fourth (4th) anniversary of the Participant's Required Distribution Date.

- (3) **Unforeseeable Emergency of Participant Determined.** If an amount of Deferred Compensation has been approved pursuant to a determination of qualifying Unforeseeable Emergency under Plan Section 6.7 for distribution to the Participant (either before or after Termination of Service, and either before or after any commencement of distributions following Termination of Service as otherwise provided under this Section), then the Required Distribution Date solely with respect to the amount so approved pursuant to Plan Section 6.7 shall be fifteen (15) days following such approval. Such amounts shall, except as otherwise explicitly directed by the Executive Director (or his or her designees), be paid to the Participant as a single Lump Sum Payment (either of, as approved, total Account Value or a specified dollar or percentage portion thereof).

- (4) ***de minimis* Inactive Account Distribution Authorized.** If a qualifying *de minimis* Inactive Account Distribution of a still-working Participant's Account balance not exceeding \$5,000 has been determined and approved pursuant to Plan Section 6.8, then the Required Distribution Date with respect to the approved Distribution shall be thirty (30) days following such approval. Such balance shall be paid to the Participant as of a single Lump Sum Payment of the total Account value.

(e) **Determination of Minimum Annual Distributions.** The total dollar amount distributed from the Deferred Compensation 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:

(i) the Plan Year in which the Participant attains (or would attain) age 70 1/2, or

(ii) 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 Deferred Compensation 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 Clause (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 Deferred Compensation 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 Clause (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 U.S. Treas. Regs. 1.401(a)(9)-5 Q&A 4 (a), 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 period determined in accordance with U.S. Treas. Reg. 1.401(a)(9)-5, Q&A 4(a), as determined using the joint life expectancy of the Participant and his spouse, using the Participant and spouse's attained ages as of the Participant and the spouse's birthdays in the distribution calendar year.

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 described in Subsection 6.2(c) 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 Section 6.3(e), then the provisions of Plan Section 6.3(e)(1) shall apply to the distribution.

6.4 Account Distributions to Beneficiaries. Notwithstanding any provisions of Plan Section 6.2 to the contrary, distribution of any portion of the value credited to any Deferred Compensation Account established on behalf of a Participant to any Beneficiary (as designated by the original Participant pursuant to Plan Section 6.9) shall only be initiated and completed upon becoming a Vested Beneficiary following the Death of such Participant in accordance with the provisions set forth in Plan Section 6.9 and in the following Plan Subsections of this Section 6.4.

- (a) **Delayed Distribution Election by Beneficiary.** A Vested Beneficiary may, under certain conditions, elect a Delayed Distribution Month postponing the commencement of distribution of his or her allocable share of any remaining value in the Participant's Account if the request is filed in a manner approved by the Executive Director no later than sixty (60) days following the end of the calendar month in which occurred the Death of the Participant, subject to the provisions and restrictions of Plan Subsections 6.4(b) and (c) below. Such designation of a Delayed Distribution Month, once elected, shall be irrevocable.
- (b) **Earliest Commencement of Beneficiary Distribution.** Distribution to a Vested Beneficiary of any value of the Participant's Account allocable to that Beneficiary following the Participant's Death and pursuant to the most current valid Beneficiary designation made by such Participant under Plan Section 6.9 shall not commence prior to the EARLIEST of:
- (1) The Death of the Participant and no Delayed Distribution Month is timely elected by the Vested Beneficiary under Plan Subsection 6.4(a),

- (2) The determination of an Unforeseeable Emergency under Section 6.7 with respect to the Vested Beneficiary by the Executive Director, or his or her designees, after the Death of the Participant but before a properly elected Delayed Distribution Month under Plan Subsection 6.4(a), or
 - (3) The arrival of the Delayed Distribution Month previously elected by a Vested Beneficiary under Plan Subsection 6.4 (a).
- (c) **Latest Commencement of Beneficiary Distribution.** Distribution of the remaining value of the Participant's Account (or the remaining monthly payments due under an annuity contract, if any) at the Death of the original Participant shall be made pursuant to the provisions of Code Section 401(a)(9) and U.S. Treas. Reg. 1.401(a)(9)-5.

6.5 Account Distributions to Alternate Payees under a DRO. Notwithstanding any other provisions of the Plan to the contrary, distribution of some or all of the value credited to the Deferred Compensation Account established on behalf of a given Participant to any designated Alternate Payee pursuant to a DRO issued by a Court of Law with competent jurisdiction, as described hereunder, shall and must be initiated and completed to such Alternate Payee in accordance with the provisions set forth in the following Subsections of this Section.

- (a) **Plan Subject to Limited DRO Application.** As explicitly set forth in Plan Section 7.1, Code Section 457, and certain other provisions of Federal and State Law, benefits under this Plan generally are payable only to the Plan Participant (or, following the Participant's Death, his or her designated or deemed Beneficiaries) and cannot be given, either voluntarily or involuntarily, to another party. However, upon issuance by a state court of a DRO, benefits accrued on behalf of a participant may instead be paid to one or more third parties named in such order with respect to those participants for whom payment of benefits has already commenced under the provisions of such plan.
- (b) **Notification and Suspension of Benefits Upon Receipt of DRO.** Upon receipt by the Plan of a DRO issued by a state court under domestic relations law and which directs the Plan to pay some portion of accrued value of the Deferred Compensation Account of a Participant to one or more other individuals, the Executive Director shall both:
 - (1) Promptly issue written notification that a purported DRO has been received to the Plan Participant, to any and all Alternate Payees designated by the DRO to receive benefit payments, and to any representatives of such Alternate Payees designated in the DRO to receive copies of any official notices issued by the Plan regarding such DRO, such notification to contain a copy or summary of the procedures adopted by the Executive Director to be used in making a determination as to whether such DRO constitutes a valid DRO with which the Plan will comply; and
 - (2) If the Participant to whose Account the DRO applies is, or soon will be, receiving Distribution of Account value pursuant to Plan Section 6.3, direct that such portion of any Distribution currently or subsequently payable to the Participant as would represent value otherwise payable to Alternate Payees under the DRO shall be suspended and remain unpaid to any recipient until completion of the determination process set forth under Plan Subsection 6.5(c) below.

- (c) **Determination of DRO Validity.** The Executive Director (or his or her designees) shall, as soon as practicable, complete the examination of the Order to determine whether such order constitutes a DRO with which the Plan may and must legally comply. To be deemed to be a valid DRO, examination by the Executive Director must determine that the Order possesses ALL of the following characteristics:
- (1) The Order MUST be an order, judgment, or decree of a state court of competent jurisdiction pursuant to state domestic relations law or community property law (a property settlement agreement that has not been approved and issued by a court does not qualify);
 - (2) The Order MUST relate only to the provision of child support, alimony payments, and/or marital property rights for which the Participant is obligated to one or more named Alternate Payees, who in turn may only be comprised of a Participant's Spouse, Former Spouse, Child, or other Dependent of the Participant as such term is defined under Code Section 152 (a living person of any other relationship to the Participant, an estate, a trust, or any other legal entity shall NOT constitute a valid Alternate Payee);
 - (3) The Order MUST explicitly identify and unambiguously specify ALL of the following items:
 - (A) the full name and last known mailing address of the Participant;
 - (B) the full name and current mailing address of each named Alternate Payee;
 - (C) the full official name of the Plan to which the Order applies;
 - (D) either the Dollar Amount or Percentage of the Participant's Account value which is ordered to be paid by the Plan to each named Alternate Payee, or the manner in which such Dollar Amount or Percentage is to be determined for each named Alternate Payee; and
 - (E) the number of payments or period of time to which the Order applies;
 - (4) The Order MUST explicitly recognize the rights of any named Alternate Payee(s) to all or a portion of the named Participant's benefits under the named Plan, and cite the legal basis of such rights;
 - (5) The Order MUST NOT require the Plan to provide a benefit or optional form of Distribution to any named Alternate Payee which would not otherwise be permissible under the provisions of the Plan and available to the Participant pursuant to Plan Section 6.3;
 - (6) The Order MUST NOT require payment of the benefit or Distribution of the Account value to any named Alternate Payee prior to commencement of Distribution of such Account value as is not subject to the Order to the Participant (or, if no portion of such Account value would remain available for payment to the Participant upon execution of the Order, does not require Distribution to any named Alternate Payee

prior to the earliest date upon which Distribution could have commenced to such Participant had the Order not been issued);

- (7) The Order MUST NOT require the Plan to pay increased benefits or a greater aggregate amount of Account value to all named Alternate Payees than would or could have been made available to the Participant had the Order not been issued);
- (8) The Order MUST NOT require the Plan to pay benefits to a Former Spouse of the Participant in the form of a joint and survivor annuity; AND
- (9) The Order MUST NOT require the payment of benefits which are already required to be paid to another Alternate Payee under a DRO previously determined to be valid.

- (d) **If Order is NOT Determined to be a valid DRO.** If the Executive Director determines that the DRO fails to meet ANY one of the tests for determination of a valid DRO pursuant to the provisions of Plan Subsection 6.5(c) above, the Executive Director shall then send notice of such adverse determination to the Participant and to all named Alternate Payees under the Order (and, if designated under the Order, such Payees' named representatives), including identification of the specific defect(s) which invalidate the Order; the Order may then be amended by the court, at its discretion, to cure any such defect(s) and reissued to the Plan. If such invalid Order is not amended, the Executive Director shall take the appropriate steps to resist the Order and to resolve the question of whether the Order is a valid DRO in a court of competent jurisdiction.

If an Order has not been determined by the Executive Director to constitute a valid DRO after eighteen (18) months following the earliest date that payments would, under the terms of the Order, be due to commence to any named Alternate Payee had the Plan immediately complied with such Order upon initial receipt, then the suspension of Account value Distribution to the Participant pursuant to Plan Subsection 6.5(b)(2) shall be immediately lifted, and some or all of that value shall be distributed to such Participant, to the extent such a Distribution would have otherwise been due and valid pursuant to the Provisions of Plan Section 6.3. If an Order is determined to be a valid DRO AFTER expiration of such 18-month period, then such Order shall be effectuated only with respect to any Account value remaining as of such determination date, and the Plan shall not be liable to any Alternate Payee with respect to Account value distributed to the Participant prior to valid DRO determination.

- (e) **If Order IS Determined to be a valid DRO.** If the Executive Director determines that the DRO meet ALL of the tests of a valid DRO pursuant to the provisions of Plan Subsection 6.5(c) above, the Executive Director shall send notice of such favorable determination to the Participant, to all named Alternate Payees under the Order, and, if designated under the Order, such Payees' named representatives. As provided under Plan Subsection 5.1(a), separate Accounts shall then be established in the names of the designated Alternate Payees under the DRO, and the portion or portions of the Participant's Deferred Compensation Account value directed by the DRO to be paid to such Alternate Payee(s) shall be transferred from the Participant's Account into the Account(s) of the Payee(s), where such value will continue to be separately accounted for, credited and debited until fully distributed to such Payee(s) under the terms of the DRO. Following

debiting of the value allocable to Alternate Payees from the Participant's Account, the suspension of Account Distribution to the Participant imposed pursuant to Plan Subsection 6.5(b)(2) above shall be immediately lifted, and such undebited value remaining (if any) shall again become available for Distribution to the Participant, when and as such Distribution may otherwise be made pursuant to Section 6.3.

Transfer of value to an Alternate Payee's account does not automatically entitle the Payee to immediate commencement of Distribution. Distribution to an Alternate Payee may only commence and continue pursuant to the Provisions of Plan Subsection 6.5(f) below. An Alternate Payee shall otherwise (except for prohibition of any deferrals of Compensation as an Alternate Payee under the Plan) have the same rights, privileges, and responsibilities as a Plan Participant, including, but not limited to, receipt of periodic Account Statements, allocation of Investment Fund earnings, gains, or losses, assessment of Plan administrative charges, selection (and modification) of Plan investment choices (all pursuant to provisions of Plan Section 5.1), and, per Plan Section 6.9, the right to designate primary and contingent Beneficiaries under the Plan to receive any remaining portion of such Account value as might still remain following his or her own Death.

(f) **Allowable Alternate Payee Account Distributions.** Distribution of Account value to any Alternate Payee pursuant to a valid DRO shall only be made (and must be specified in the DRO) in accordance with the following provisions of this Plan Subsection:

(1) **Alternate Payee Distribution - General Rule.** The allowable methods and timing available for Alternate Payee Distributions shall generally be as specified pursuant to Plan Sections 6.2 and 6.3 respecting permissible Distribution of Account value to original Participants, modified by reading "Alternate Payee" in place of "Participant" at each place such term appears in such Plan Sections. Such reading shall be further specified, modified, or restricted as provided under the remaining Subparagraphs of this Plan Subsection. References within such Plan Sections to "the prescribed election form", "elect", "election", "request", or similar terms or phrases shall, with respect to any specified Distribution to an Alternate Payee under a DRO, in all cases be interpreted to refer to the most current valid DRO on file with the Plan as the sole and exclusive process by which such Distribution will be either originally elected or, pursuant to the Plan Section provisions, subsequently modified.

(2) **Permissible Methods of Alternate Payee Distribution.** The same range of permissible methods of Account Distribution as are both permitted under Plan Section 6.2 and currently made available to Participants by the Board shall be authorized for use with respect to Distribution of Alternate Payee Account value pursuant to a DRO, EXCEPT that the Joint And Survivor Annuity option under Plan Subsection 6.2(c)(2) providing monthly benefits for the remaining lifetimes of the annuitant and the annuitant's spouse shall NOT be available for Alternate Payee Account Distribution.

(3) **Alternate Payee Delayed Distribution Month.** In contrast with the Delayed Distribution Month Elections available to an original Participant under Plan Subsection 6.3(a), commencement of Distribution to an Alternate Payee pursuant to a DRO MUST be delayed at least until the month in which Distribution commences to the Participant (or would have commenced absent the DRO, if, as a result, no

Participant Account value remains); Distribution to an Alternate Payee can be irrevocably specified to commence in a month LATER than the commencement month applicable to the Participant, so long as such month is NOT LATER THAN the February following the end of the Plan Year in which the original Participant (NOT the Alternate Payee) attains age 70 1/2.

- (4) **Earliest Commencement of Alternate Payee Distribution.** As described in Plan Subsection 6.5(f)(3) above, commencement of Distribution to a DRO Alternate Payee under Plan Subsection 6.3(b) generally MAY NOT be earlier than the commencement of Distribution to the original Participant.

To the extent, however, that Distribution from the Account of the original Participant commences as a *de minimis* Inactive Account Distribution pursuant to Plan Section 6.8 (resulting from either an election of the Participant or an administrative distribution not requiring the Participant's consent), then the Alternate Payee's Account would thereby become subject to commencement of Distribution on the same basis. Administrative Distribution to the Alternate Payee could be carried out (if so initiated with respect to the Participant's Account) without consent of the Alternate Payee, and without being reflected in the terms of the DRO.

- (5) **Latest Commencement of Alternate Payee Distribution.** The latest permissible commencement of Distribution to a DRO Alternate Payee shall generally be as provided for commencement of Distribution to a Participant under Plan Subsection 6.3(c), applying the reading of such provisions pursuant to the Alternate Payee Distribution General Rule prescribed under Plan Subsection 6.5(f)(1) above, except that Latest Commencement shall also be permitted to extend to the end of the month following the month in which the current DRO was determined to be valid, pursuant to Plan Subsection 6.5(c) above.

- (6) **Alternate Payee Distribution Method And Period Restrictions, Life Expectancy Determination, and Minimum Annual Distributions.** With respect to DRO Alternate Payee Distributions, Participant Distribution Method And Period Restrictions under Plan Subsection 6.3(d), Determination of Participant Life Expectancy under Subsection 6.3(e), and Determination of Participant Minimum Annual Distributions under Subsection 6.3(f) shall, pursuant to the Alternate Payee Distribution General Rule prescribed in Plan Subsection 6.5(f)(1), be read to apply to the Alternate Payee in the same fashion as applied to the original Participant (including application of Participant Account Balance dollar thresholds to the Alternate Payee Account), except that any references to:

- (A) Participant's Attainment of age 70 1/2, or to
- (B) Determination of Participant's Remaining Life Expectancy

shall be applied to the Alternate Payee based on the original Participant's date of birth, not that of the Alternate Payee. Finally, any references to joint lifetimes of Participant and Spouse shall be applied to the Alternate Payee based on the single life of the Participant (thereby eliminating the availability of any Joint Survivor

Annuity option, and restricting Alternate Payee calculations to the period of the Participant's single life expectancy).

(7) **Tax Reporting on Alternate Payee Distributions.**

(A) **For all Plan Years beginning before January 1, 2002.** Any cash Distributions from the Plan to an Alternate Payee pursuant to a DRO will in general be subject to the same provisions of taxability, income tax withholding, and tax reporting as apply to all other Plan Distributions as prescribed by Plan Section 6.12, EXCEPT that such Alternate Payee Distributions shall be reported as current taxable wage income to the original Participant, NOT to the Alternate Payee receiving the Distribution. It further follows that the basis for calculation of income tax withholding deducted from an Alternate Payee Distribution shall be Income Tax Withholding Certifications filed by the Participant rather than by the Alternate Payee. Any reimbursement or adjustment to recompense the Participant for the adverse impact on his or her Tax Liability for the year in which the Alternate Payee Distribution is made would have to be negotiated between the Participant and the Alternate Payee outside of the Plan, and cannot be reflected in the taxation and reporting of the Alternate Payee Distribution.

(B) **For All Plan Years Beginning On or After January 1, 2002.** Any cash Distributions from the Plan to an Alternate Payee pursuant to a DRO will in general be subject to the same provisions of taxability, income tax withholding, and tax reporting as apply to all other Plan Distributions as prescribed by Plan Section 6.12. All amounts distributed will be taxable to the Alternate Payee and any required withholdings shall be withheld from that amount paid in distribution to the Alternate Payee.

6.6 Account Distributions From Transferred Balances. If, at the time a Deferred Compensation Account balance is transferred into the Plan from another eligible Agency deferred compensation plan pursuant to Plan Section 3.9, AND Minimum Annual Distribution (as provided under Plan Sections 6.3 or 6.4) had ALREADY commenced under the previous plan, then the Minimum Annual Distribution, Minimum Distribution Years, Distribution Method, Designated Beneficiary, remaining Life Expectancy, Latest Distribution Date, and all other variables controlling distribution after such transfer shall continue under this Plan on the same basis as was in effect under the preceding plan. Any subsequent changes requested by the Participant or Beneficiary shall be permitted only to the extent that such changes would be permitted under Plan provisions had the first Minimum Distribution Year and the first Minimum Annual Distribution originally occurred under the terms and provisions of this Plan.

6.7 Unforeseeable Emergency.

A distribution of all or a portion of a Participant's Deferred Compensation Account shall be permitted in the event a determination has been made pursuant to Plan Section 4.3 that such Participant, including one who has otherwise commenced (but not completed) distribution pursuant to Plan Section 6.3 (or Plan Section 6.4), has experienced an Unforeseeable Emergency qualifying pursuant to the general facts, circumstances, conditions, standards, and limitations set

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forth by Code Section 457(d)(1)(A)(iii) and U.S. Treas. Reg. 1.457-6(c)(2) (and any subsequent authoritative revenue rulings, notices, and other documents of general applicability published by the U.S. Secretary of the Treasury) which was beyond his or her control which would cause immediate and severe financial hardship if such distribution were not authorized, and which cannot be relieved either:

- (i) through reimbursement or compensation by insurance or otherwise;
- (ii) by liquidation of the Participant's assets, to the extent the liquidation of such would not itself cause severe financial hardship; or
- (iii) by cessation of deferrals under the Plan.

Any Participant desiring a distribution by reason of an Unforeseeable Emergency shall make application in a form and manner prescribed by the Board or the Executive Director, demonstrating and documenting the existence and magnitude of the financial need, the unavailability of other resources to meet such need, and the relationship between such need and a qualifying sudden and extraordinary unforeseeable event. The Executive Director or his or her designees shall have the authority to require such evidence as is necessary to determine the extent to which the Participant's Distribution request hereunder meets the qualifying conditions set forth in this Plan..

In making determinations as to whether a qualifying Unforeseeable Emergency exists, Plan staff designated pursuant to Plan Section 4.3 or the Executive Director shall apply reasonably uniform and non-discriminatory standards, taking into consideration applicable provisions of the Internal Revenue Code, Congressional Legislative Committee Reports, Regulations promulgated by the Secretary of the Treasury, and the provisions of this Plan or other promulgations of the Board thereto. Circumstances constituting a qualifying unforeseeable event shall be determined by applying the general "Facts and Circumstances" standards promulgated under U.S. Treas. Regs. 1.457-2(h)(4); such qualifying events thereunder may include, but shall not be limited to, the following (to the extent such circumstances shall have been evidenced to either already exist or to be imminent):

- (a) the sudden and unexpected illness or accident of the Participant, the Participant's spouse, or Dependent(s) (as defined under Code Section 152) of the Participant producing severe financial hardship as the result of either loss of household income or unreimbursable expenditures for necessary and appropriate medical or dental care as such care is described under Code Section 213(d), exclusive of any insurance premiums payable for such care;
- (b) a personal casualty or disaster loss to, or theft of, property of the Participant, the Participant's spouse or the Participant's Dependent(s) (as defined under Code Section 152) not connected with a trade or business or incurred in any transaction entered into for profit, as such loss is described under Code Section 165(c)(3), producing severe financial hardship as the result of unreimbursable expenditures incurred to replace or repair such property;
- (c) significant unreimbursable interment, cremation, or other funeral expenses which have produced severe financial hardship and which were incurred (and paid or legally owed) by the Participant or Participant's spouse, with respect to the death of the Participant's spouse or Participant's Dependent(s) (as defined under Code Section 152) including a legally

adopted child or a foster child (if placed by an authorized placement agency and otherwise meeting the requirements of Code Section 152(a)(9));

- (d) significant reduction in ongoing household income available to the Participant which has produced severe financial hardship as a result of loss of employment, reduction in rate of pay or scheduled work hours, or involuntary leave of absence without pay, of the Participant, Participant's spouse or Participant's Dependent(s) (as defined under Code section 152); or
- (e) severe financial hardship produced by significant unreimbursable expenses of the Participant, Participant's spouse or Participant's Dependent(s) (as defined under Code Section 152) which is demonstrably the result of events which were rare, unusual, nonrecurring in nature and beyond the ability or discretion of the Participant to control, anticipate or budget, and which would not normally be anticipatable by a reasonably intelligent and prudent person under like conditions and circumstances; such other events deemed to qualify shall be adjudged based on the demonstrated facts and circumstances of each case, but shall NOT be deemed to include any of the following circumstances:
 - (1) the initial costs of purchasing or constructing a primary personal residence (as such term is applied under Code Section 1034) of the Participant and/or Participant's spouse, including earnest money, down payment and closing costs, or any subsequent expenditures for capital improvements that principally serve to increase the utility and fair market value of such residence;
 - (2) the costs 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) incurred with respect to a regular course or program of study at a post-secondary educational institution or other institution of higher learning;
 - (3) the costs of initial acquisition, replacement, lease or repair of an automobile or other vehicle used for personal transportation of the Participant, Participant's spouse or Participant's Dependent(s) (as defined under Code Section 152) as the result of wear and tear, mechanical failure, reduced operating efficiency, or for any other reason except for a qualifying non-business casualty or theft loss pursuant to Plan Subsection (b) above; or
 - (4) discretionary expenditures on the part of the Participant, Participant's spouse or Dependent(s) (as defined under Code Section 152) arising from entertainment, leisure, or luxury activities or acquisitions, or in connection with operation of a trade or business or incurred in any transaction entered into for profit; or arising from a demonstrated continuing and ongoing pattern of discretionary expansion of indebtedness in excess of household income available to service such debt.

Given a finding by designated Plan staff, or the Executive Director that a qualifying unforeseeable emergency event has occurred with respect to a Participant making application for a Unforeseeable Emergency distribution, such distribution shall not be authorized, pursuant to the requirements of U.S. Treas. Regs. 1.457-2(h)(4) and 1.457-2(h)(5), for any amount in excess of the minimum amount reasonably necessary to meet the

immediate financial need, or to the extent that such need could or will be relieved by any and all of the following:

- (f) insurance reimbursement, grant, public assistance payment, or other compensation with respect to the cause of the financial need which is payable to the Participant, Participant's spouse or Participant's Dependent(s) (or which would be payable to same upon proper application);
- (g) application of any and all reasonably liquid assets available to the Participant, Participant's spouse or Participant's Dependent(s), to the extent such application would not itself produce severe and immediate financial hardship; or
- (h) a revocation pursuant to Plan Section 3.7 of any election to make deferrals from current Compensation as contributions to his or her Deferred Compensation Account under this Plan.

If an application for an Unforeseeable Emergency distribution is approved, the distribution shall in no event exceed the amount of the Participant's Deferred Compensation Account as of the Accounting Date next preceding or coincident with such withdrawal. The allowed distribution shall be payable in a method determined by the Executive Director, or his or her designees, and shall commence as soon as possible but not later than fifteen (15) days following either approval by Plan staff or approval of appeal by the Executive Director.

Any Unforeseeable Emergency distribution shall constitute current taxable salary income to the recipient, and shall, pursuant to the provisions of Plan Section 6.12, be subject to regular wage withholding at the source of Federal and State of Georgia Income Tax. Such minimum immediate need amount determined and approved by Plan staff, the Panel, or the Executive Director as set forth above can, therefore, include and take into account any mandatory withholding of federal and state income taxes reasonably anticipated to be owed by the Participant (or Vested Beneficiary) and deducted from the gross proceeds of the distribution.

6.8 *de minimis* Inactive Account Distributions. Pursuant to the provisions of Code Section 457(e)(9)(A), a Distribution to a Plan Participant of value from his or her Deferred Compensation Account may, under certain specific conditions, be permitted PRIOR TO Termination of Service, WITHOUT requiring the occurrence of a qualifying Unforeseeable Emergency under Plan Section 6.7. but ONLY if a determination is made by the Executive Director that ALL the conditions set forth in paragraph (a) are present.

- (a) **Qualifying Conditions for Distribution.** The Executive Director (or his or her designees) shall deem a Deferred Compensation Account to constitute a *de minimis* Inactive Account (as defined under Plan Subsection 2.1(n)) qualifying for a *de minimis* Inactive Account Distribution ALL of the following conditions are determined to be present:
 - (1) **Active Employment Status.** The Participant has not experienced a Termination of Service since his or her most recent date of hire;
 - (2) **No Recent Deferrals.** The Participant must not have had any salary deferrals deducted from pay and contributed to the Plan at any time during the 24 consecutive month period prior to the present determination date;

- (3) ***de minimis* Account Balance.** As of the determination date, the total current dollar value of the Deferred Compensation Account, including all cumulative deferrals, charges, earnings, and allocable investment gains or losses, may NOT be greater than a *de minimis* amount of \$5,000;
- (4) **No Prior Account Distributions.** As of the determination date, the Participant had never received (including during a prior period of employment with an Employer) a prior *de minimis* In-Service Distribution as defined in this Plan Subsection 6.8(a).
- (b) **Initiation of Qualifying Distribution.** Any Participant desiring a distribution by reason of maintaining a qualifying *de minimis* Inactive Account under the Plan shall make written application in a form and manner prescribed by the Board or the Executive Director. Upon receipt of such application and determination that said Deferred Compensation Account constitutes a valid qualifying *de minimis* Inactive Account pursuant to the requirements of Plan Subsection 6.8(a) above, the Executive Director shall cause Distribution of Account Value in the form and method provided under Plan Subsection (c) below.

The ability of a given Participant under the terms of this Subsection to electively initiate *de minimis* Inactive Account Distribution with respect to the value of his or her specific Account, however, does NOT preclude the Executive Director from also authorizing, from time to time, Distribution of value from any and all Deferred Compensation Accounts determined at such times to otherwise meet the Plan Subsection (a) *de minimis* Inactive Account Distribution qualification requirements WITHOUT the explicit consent of such Participants, if the Executive Director deems such Distributions to serve the best interests of the Plan and/or the affected Plan Participants.

- (c) **Form and Method of Qualifying Distribution.**
- (1) **Where Initiated By the Participant.** Any qualifying *de minimis* Inactive Account Distribution made pursuant to the provisions of this Subsection, where initiated by the Participant, shall ONLY be made in the form of an immediate single Lump Sum Payment of the total Deferred Compensation Account value, NOT LATER than thirty (30) days following official determination of qualifying *de minimis* Inactive Account status.
- (2) **Where Initiated by the Executive Director.** Where the qualifying *de minimis* Inactive Account Distribution is initiated by the Executive Director or his or her representatives, distribution shall be made as either:
- (A) If the Deferred Compensation Account value is less than one thousand dollars (\$1,000), distribution shall be ONLY in the form of an immediate single Lump Sum Payment of the total Deferred Compensation Account value; or

- (B) If the Deferred Compensation Account value is equal to or greater than one thousand dollars (\$1,000), distribution shall be made by means of a rollover to an Individual Retirement Account.

Nothing within this Subsection shall be deemed to prohibit or prevent any Participant receiving a *de minimis* Inactive Account Distribution of their full Account value hereunder from later recommencing salary deferrals pursuant to Article 3 of the Plan (if, at the time, the Participant otherwise meets the eligibility requirements thereunder), with such deferrals again credited and invested through his or her Deferred Compensation Account. As is provided under Subparagraph 6.8(a)(4), however, any such re-enrolled Participant could never again qualify for a subsequent *de minimis* Inactive Account Distribution.

6.9 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. Employers are obligated to forward all Beneficiary Forms, if any, received from Participants to the Plan Administrator. 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.
- (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 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 Subsection and the terms of an annuity contract distribution which has commenced under Plan Subsection 6.2(c)(3), the provisions for annuity distributions shall prevail. In a like manner, any conflict between the provisions of this Subsection and those of Sections 6.5 and 7.1 with respect to benefits required to be paid under a valid DRO, will be resolved in favor of the requirements of the DRO.

6.10 Leave of Absence. Any Participant who is granted a leave of absence without pay by the Employer for 365 calendar days or less shall continue as an inactive Participant in this Plan. If an approved leave of absence is terminated by the Employer or Participant without the resumption of paid status, the Participant shall be treated as having a Termination of Service under this Plan, as of the date of termination of such leave of absence. When a Participant has continued on a leave of absence without pay for more than one year, the Participant shall also be treated as having a Termination of Service under this Plan.

6.11 Direct Rollovers.

- (a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this section 6.11, 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 6.11, and this Plan Section 6.11 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 Unforeseeable Emergency distribution; or the portion of any distribution that is not includible in gross income. 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 408(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) An "Eligible Retirement Plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified defined contribution plan described in Code Section 401(a) that accepts the Distributee's Eligible Rollover Distribution, an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code 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, or effective January 1, 2008, a Roth IRA described in Code Section 408A.
- (4) 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 an 'inherited' individual retirement account or annuity."

6.12 Income Tax Withholding from Distributions. All cash distributions from the Plan to Participants or Vested Beneficiaries pursuant to Plan Article 6 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 U.S. Treas. Regs. 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 6.11(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 6.11(b)(2). Distributions rolled over in accordance with Plan Section 6.11 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) 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.

6.13 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 therefore 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.

6.14 Missing Persons. If the Executive Director is unable, after any benefit becomes due under the Plan to any person, to authorize payment 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 of such person, the Executive Director may direct that such benefit and all other benefits with respect to such person shall lapse and forfeit after a period of five (5) years following such mailing date with benefits then to be used to offset Plan administration costs or to be distributed pro rata on an account value basis to other Participants or to be used to offset Plan administration costs.

6.15 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 6.15, "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 6.15 shall not be considered a distribution for any purpose under the Plan.

ARTICLE 7. MISCELLANEOUS

7.1 Nonassignability and Anti-Alienation. Any Participation Agreement entered into between the Board and a Participant under this Plan and any investments, earnings, benefits, proceeds or payments emanating therefrom, cannot be sold, assigned, pledged, commuted, collateralized, transferred or otherwise conveyed by any Employee, Participant or Beneficiary; any

attempt by any party to so assign or transfer such Plan assets held in trust, pursuant to Plan Section 5.2 and Code Section 457, for the exclusive benefit of Participants (or their Beneficiaries) shall not be recognized by the Plan, the Board, or the Executive Director, and shall impose no liability thereon.

Except as otherwise required by law, any accumulated Plan Trust Fund value attributable to Deferred Compensation monies deferred pursuant to this Plan shall not be subject to attachment, garnishment or execution, or to transfer by operation of law in the event of bankruptcy or insolvency of the Participant or otherwise. Because deferrals and all other assets under the Plan must by Law be held in formal legal trust until payment of benefits to such Participants, because the U.S. Bankruptcy Code (11 U.S.C. 541(c)(2)) expressly excludes from a bankruptcy estate any funds held in a trust if the trust's anti-alienation provisions are enforceable under applicable nonbankruptcy law, and because 11 U.S.C. 522(d)(10)(E) specifically excludes from a bankruptcy estate "any payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, Death, age, or length of service", the Plan, the Board, and the Executive Director shall resist any demand of a bankruptcy trustee for turnover of funds credited to any Plan Account without formal adversarial proceedings and a court order requiring such turnover.

Notwithstanding any other provisions of the Plan to the contrary, however, the "exclusive benefit of Participants and Beneficiaries" provisions of Plan Section 5.2 and the foregoing anti-alienation provisions of this Subsection shall not be deemed to prohibit the distribution of some or all of the value of a Participant's Deferred Compensation Account to one or more designated Alternate Payees pursuant to the provisions of Plan Section 6.5 and in compliance with a valid DRO issued by a Court with competent jurisdiction.

7.2 Limited Liability. The Board, Employer and Committee shall be held harmless by the Participant together with his or her heirs, successors and assigns from any and all liability hereunder for all acts performed in good faith, including acts relating to the investment of Deferred Compensation and the Participant's investment preference hereunder.

7.3 Severability. If any provision of this Plan shall be for any reason invalid or unenforceable, the remaining provisions shall, nevertheless, continue in effect and shall not be invalidated thereby.

7.4 Conflicts. In the event any form or other document used in administering the Plan, including but not limited to, enrollment forms and designation of Beneficiary forms, conflicts with the terms of the Plan, the terms of the Plan shall prevail.

7.5 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 income under the Deferred Compensation program shall cause the reduction of any retirement, pension or other benefit provided by Law. The amount of contribution to any retirement, pension or benefit system established by the State shall be based upon the Employee's Compensation before reduction in accordance with a Participation Agreement.

7.6 Effective Date for Deferrals. The effective date to begin salary reduction under this Plan shall be as determined by the Board or the Executive Director.

ARTICLE 8. AMENDMENT OR TERMINATION OF PLAN

8.1 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 the receipt of Compensation deferred 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.

8.2 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 withdrawn from the Plan as of the date of such termination, and the Participant's full Compensation will be restored to a nondeferred basis. The Plan will otherwise continue in effect until all Deferred Compensation Accounts have been distributed in accordance with the Plan.

ARTICLE 9. APPLICABLE LAW

9.1 Applicable Law. This Plan shall be construed, administered and governed in all respects under and by the laws of the State of Georgia and the Code.

As first approved by the State Personnel Board July 25, 1979, and as subsequently last amended and restated by the Board as of January 1, 2009.

Title

Witness
