

STATE OF DELAWARE DEFERRED COMPENSATION PLAN

As Amended and Restated Effective January 1, 2017

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STATE OF DELAWARE
DEFERRED COMPENSATION PLAN

INTRODUCTION

The State of Delaware established a Deferred Compensation Plan for the benefit of its employees, effective as of July 1, 1971. Benefits are funded through the State of Delaware Deferred Compensation Plan Trust, effective as of October 1, 1999. The Plan is intended to satisfy the requirements of Section 457(b) of the Internal Revenue Code of 1986, as amended.

The State of Delaware Deferred Compensation Plan (the "Plan") has been amended and restated from time to time. The Plan is now hereby being amended and restated by the Plans Management Board, under the authority of 29 Del. C. § 2722, and Ch. 60A ("Board"), effective as of January 1, 2017 or as otherwise stated herein in order to amend the Plan to allow for Roth contributions, Roth rollovers, and in-plan Roth rollovers under new Section 402A(c)(4)(E) of the Internal Revenue Code as added by Section 902 of the American Taxpayer Relief Act of 2012 ("ATRA"), P.L. 112-240, as well as to make certain updating changes to conform to various federal law changes.

ARTICLE I
PURPOSE

- 1.1 The purpose of the Deferred Compensation Plan is to provide a vehicle through which all employees of the State of Delaware may, on a voluntary basis, provide for additional retirement income security by deferring a portion of their current earnings, on a pre-tax or post-tax basis.
- 1.2 Effective as of October 1, 1999, the State established the State of Delaware Deferred Compensation Plan Trust to hold and invest the Participant contributions and earnings thereon for the exclusive benefit of Participants and their beneficiaries.

ARTICLE II
DEFINITIONS

As used herein:

- 2.1 **"Account" or "Participant Account"** means the accounts maintained by the Trustee for the benefit of each Participant, reflecting all transactions which affect the valuation of such account, including such items as contributions allocated to the account, earnings and/or losses, withdrawals, expenses deducted from the account, and all other legitimate charges. The Administrator shall establish and maintain sub-accounts within a Participant's Account under the Plan. Each Participant shall be fully vested in his Account at all times. The sub-accounts are described in Article V.
- 2.2 **"Administrative Agent"** means such individuals or organizations as authorized by the Board to maintain account records or to otherwise administer the Plan as directed by the

Board. Such duties shall be specifically determined by the Board or the Board's designee and made in accordance with Article IX of the Plan.

- 2.3 **"Alternate Payee"** means the person(s) designated pursuant to an approved Domestic Relations Order described in Section 12.5 to receive part or all of the Participant's Account.
- 2.4 **"Anniversary Date"** means the annual reoccurrence of a Participant's Effective Date.
- 2.5 **"Beneficiary"** means the person, persons, or entity properly designated as the Participant's Beneficiary pursuant to Section 3.4, or determined pursuant to the provisions of the Plan to receive the Participant's benefits under the Plan in the event of the Participant's death; or in the absence of such a designation, the person, persons, or entity as determined under Section 3.5.
- 2.6 **"Board"** means the Plans Management Board of the State of Delaware, as established by Title 29, Delaware Code Section 2722, and Chapter 60A.
- 2.7 **"Code"** means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code includes not only the section but any comparable section or sections of any future legislation that amends, supplements or supersedes the section.
- 2.8 **"Compensation"** means wages within the meaning of Section 3401(a) of the Code and all other payments of Compensation to an employee by the State for which the State is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Code. Compensation shall be determined without regard to any rules under Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed; provided, however, that Compensation shall include any: (i) elective deferral as defined in Section 402(g)(3) of the Code, and (ii) any amount contributed or deferred by the State at the election of the Employee, and not includible in the Employee's income by reason of Sections 125, 132, 402(e)(3), 402(h)(1)(B), 402(k), or 457 of the Code.

Pursuant to Section 1.457-4(d)(1) of the Treasury Regulations, Compensation also includes any Compensation described in paragraphs (a) or (b), provided it is paid by the later of two and one-half months after the Employee's Severance from Employment or the end of the calendar year in which the Employee has a Severance from Employment.

(a) any payment that would have been paid to the Employee prior to a Severance from Employment if the Employee continued in employment with the State of Delaware and otherwise satisfies the definition of Compensation.

(b) a payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would be Compensation if paid prior to the Employee's Severance from Employment, and only if the Employee separately elects for such payment to be reduced on his or her Participant Agreement.

- 2.9 **"Custodian"** means any institution which may be retained by the Board, or the Board's Designee to hold custody of and administer, where appropriate, assets of the program.
- 2.10 **"Effective Date"** means for all employees who first become participants prior to December 31, 1978, shall be January 1, unless, prior to December 1, 1979, the participant elects the first day of any other month to be his or her effective date. The effective date of all employees who first became participants after December 31, 1978, shall be the first day of the month following the date on which the Employee filed the Participant Agreement in such form and manner as may be prescribed by the Administrator.
- 2.11 **"Elective Contributions"** means the amounts contributed to the Plan at the election of the Participant. Elective Contributions include Pre-Tax Elective Contributions and/or Roth Contributions. The Participant's election shall be filed with the Administrative Agent in such form or in such manner, as may be specified by the Administrator from time to time.
- 2.12 **"Employee"** means an individual who is employed by and performs services for the State of Delaware, including elected or appointed officials, and who receives Compensation wholly or in part directly from the State Treasurer or from the Treasury through an agency within the State that is wholly or in part supported by the State.
- 2.13 **"Employer"** means the State of Delaware, including all agencies, by whatever name known, that have working for them individuals who meet the definition of "Employee" above.
- 2.14 **"Enrollment"** means the procedure by which an Employee files an initial Participant Agreement electing to contribute to the Plan and becoming a participant in the Plan.
- 2.15 **"Includible Compensation"** means an Employee's actual wages for services performed for the Employer for the year as reported in box 1 of Form W-2, increased by any compensation reduction election under Sections 125, 132(f), 401(k), 403(b) or 457(b) of the Code (including an election to defer Compensation under this Plan). The amount of Includible Compensation is determined without regard to any community property laws.
- 2.16 **"Investment Options"** means the investment options offered from time to time under the Plan.
- 2.17 **"Normal Retirement Age"** means the age designated by the Participant that falls within the range of ages beginning at the earlier of age 65 or the age at which the Participant has the right to retire and receive, under the State pension plan applicable to the Participant, immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and ending at age 70½.
- 2.18 **"Participant"** means an Employee or former Employee who is enrolled in the Deferred Compensation Plan.

2.19 **"Participant Agreement"** means the multi-purpose form, or forms, which may be hard copy or electronic, as provided or approved by the Administrator through which an Employee voluntarily:

- (a) elects to contribute to the Plan by instructing the Employer to reduce the Compensation that would otherwise be paid to the Employee and to transfer such Compensation to the Trustee to invest in the Investment Options specified by the Employee;
- (b) prospectively changes such election, as to amount of Compensation contributed, the nature of the contribution (pre or post-tax), or the Investment Options; and
- (c) requests distribution of benefits, including specification of the desired manner in which distributions to be made and the beneficiary designation for the distribution.

Deferrals shall be deferred as soon as administratively practicable after the first of the calendar month following the calendar month in which the execution of the Participant Agreement providing for such deferral was completed. However, with respect to a new Employee, Compensation may be deferred for the calendar month during which the Participant first becomes an Employee if a Participation Agreement providing for such deferral is entered into on or before the first day on which the Participant performs services for the Employer. A Participant Agreement will remain in effect until it is revoked or revised by the Participant. The revised election will be effective prospectively in accordance with the deferral procedures described in this paragraph.

2.20 **"Plan"** means the State of Delaware Deferred Compensation Plan.

2.21 **"Plan Administrator" or "Administrator"** means the person, group or entity designated in accordance with the provisions of Article IX to administer and operate the Plan.

2.22 **"Pre-Tax Elective Contributions"** means the Elective Contributions contributed to the Plan by the Participant on a pre-tax basis.

2.23 **"Program"** means the deferred compensation program as is adopted by the Board which includes the Plan.

2.24 **"Regulations"** means regulations promulgated under the Code pursuant to the authority of the Secretary of the Treasury.

2.25 **"Roth Contributions"** means the Elective Contributions contributed to the Plan by the Participant as a Roth contribution on an after-tax basis.

2.26 **"Severance from Employment"** means the termination of the Employee's employment with the Employer for any reason, including death, disability or retirement. Whether a Severance from Employment has occurred will be interpreted by the Administrator taking

into account guidance issued in connection with Section 457 of the Code and the regulations promulgated thereunder.

- 2.27 **"State"** means the State of Delaware.
- 2.28 **"Trust"** means the trust fund established pursuant to the Plan and maintained in accordance with the terms of the Plan, as amended from time to time.
- 2.29 **"Trustee"** means Voya Financial, the Board or any successor trustee, that may be appointed by the Plan Administrator to administer the Trust, and includes the entity or person(s) holding the assets of a custodial account or holding an annuity contract in accordance with Section 457(b) of the Code.
- 2.30 **"Unforeseeable Emergency"** means a severe financial hardship of the Participant resulting from (a) an illness or accident of the Participant, the Participant's spouse, the Participant's dependent (as defined in section 152(a) of the Code) or the Participant's primary Beneficiary; (b) loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); (c) the need to pay for the funeral expenses of the Participant's spouse, the Participant's dependent (as defined in Section 152(a) of the Code) or the Participant's Beneficiary; or (d) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Participant's Beneficiary.
- 2.31 **"Valuation Date"** means each business day on which the New York Stock Exchange is open.

ARTICLE III **ELIGIBILITY AND PARTICIPATION**

- 3.1. **Eligibility.** All regular full-time or part-time Employees who are otherwise eligible for the State of Delaware employee benefits plans are eligible to participate in the Plan. Individuals hired on a temporary basis (including individuals classified as "casual/seasonal" employees) or as consultants shall not be eligible to participate in the Plan.
- 3.2. **Enrollment.** An Employee may enroll in the Plan by filing a Participant Agreement with the Administrative Agent in such manner as may be prescribed by the Plan Administrator. The Participant's elections as set forth in the Participant Agreement shall remain in effect until modified or revoked by the Participant in accordance with Section 3.3.
- 3.3. **Modification or Revocation of Compensation Deferral Election.** A participant may:
 - (a) discontinue deferral of Compensation at any time by filing a revised Participant Agreement with the Administrative Agent in accordance with the procedures specified by the Plan Administrator. Such election to discontinue deferral of

Compensation shall be effective in accordance with the procedures described in Section 2.19;

- (b) reduce or increase the amount of Compensation to be deferred, by filing a new Participant Agreement with the Administrative Agent in accordance with the procedures specified by the Plan Administrator reflecting any such change. The new Participant Agreement will be effective in accordance with the procedures described in Section 2.19; and
- (c) change the nature of the contribution from post-tax to pre-tax or from pre-tax to post-tax. The new Participant Agreement will be effective in accordance with the procedures described in Section 2.19.

- 3.4. **Designation of Beneficiary.** Each Participant from time to time may designate any person, persons (who may be named contingently or successively), or entity to receive such benefits as may be payable under the Plan upon or after his or her death, and such designation may be changed from time to time by the Participant by filing a new designation. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Administrator, and will be effective only when filed in writing with the Administrator during the Participant's lifetime. If the Participant is also a participant in the State of Delaware Match Plan (the "Match Plan") and there is no valid beneficiary designation on file under the Match Plan, the beneficiary designation under this Plan shall govern the distribution of benefits under this Plan and the Match Plan. If there is no beneficiary designation on file under this Plan or the State of Delaware Deferred Compensation Plan, Section 3.5 shall govern the distribution of benefits under this Plan.

A Beneficiary that has an account in the Plan because of the death of a Participant, or a person maintaining an account with the Plan under the terms of a Domestic Relations Order issued pursuant to Section 12.4 herein, may also designate a Beneficiary under the provisions of this Section 3.4, unless the Domestic Relations Order specifically provides otherwise. An ex-spouse who becomes an "alternate payee" pursuant to a Domestic Relations Order shall no longer be treated as the Participant's Beneficiary under the Plan, unless (i) the Participant designates the ex-spouse as a Beneficiary, and such designation is signed after the date on which the Domestic Relations Order became effective, or (ii) the Domestic Relations Order issued pursuant to Section 12.4 herein specifically provides otherwise.

- 3.5. **Absence of Beneficiary Designation.** In the absence of a valid beneficiary designation under this or the Match Plan, or if, at the time any benefit payment is due to a Beneficiary validly named by the Participant, or if no Beneficiary shall survive the Participant, the Participant's Account shall be paid to his or her estate. If a Beneficiary was receiving payments under the Plan, and the Beneficiary is a person and does not make a Beneficiary designation in a form acceptable to the Administrator and dies before the Account is fully distributed, any remaining value of the Account shall be paid to the Beneficiary's estate.

In determining the existence or identity of anyone or any entity entitled to a benefit payment, the Administrator may rely conclusively upon information supplied by the Participant, Beneficiary, the Participant's estate, or the Participant's Beneficiary's personal representative or the personal representative of the Participant's estate. The Administrator may also act and rely upon any information it may deem reliable upon reasonable inquiry, and upon any affidavit, certificate, or other paper believed by it to be genuine, and upon any evidence deemed by it to be sufficient. In the event of a lack of adequate information having been supplied to the Administrator, or in the event that any question arises with respect to any such payment, then, notwithstanding the foregoing, the Administrator, in its sole discretion, may distribute such payment to the Participant's or Beneficiary's (as applicable) estate or take other action, including legal action, without liability for any tax or other consequences which might flow therefrom.

ARTICLE IV **CONTRIBUTIONS**

- 4.1. **Maximum Deferral Contribution.** Except as permitted under Sections 4.2 and 4.3 of this Article IV, the annual amount that may be contributed to the Plan by the Participant (the "Basic Limitation"), which includes both Pre-Tax Contributions and Roth Contributions, may not exceed the lesser of:
- (a) The applicable annual dollar amount specified in Section 457(e)(15) of the Code; specifically:
 - (1) \$18,000 for 2016;
 - (2) \$18,000 for 2017;
 - (3) such above amount is subject to increase as may be permitted pursuant to any applicable cost-of-living adjustment under Section 415(d) of the Code; or
 - (b) 100% of the Participant's Includible Compensation for the taxable year.
- 4.2. **Age 50 Catch-Up.** A Participant who is (i) age 50 by the end of the taxable year and (ii) is not eligible for the Special Limitation described in Section 4.3 below, may make an age 50 catch-up contribution, provided such age 50 catch-up contribution does not exceed the limit set forth in Section 414(v) of the Code for the taxable year; specifically:
- (a) \$6,000 for 2016;
 - (b) \$6,000 for 2017;
 - (c) amount is subject to increase as may be permitted pursuant to any applicable cost-of-living adjustment under the Code.
- 4.3. **Special Limitation (or Section 457 Catch-Up).** For one or more of the Participant's last three taxable years ending before the Participant attains their designated Normal

Retirement Age, notwithstanding the limits set forth in Sections 4.1 and 4.2 above, the maximum amount that may be contributed shall be the lesser of:

- (a) Twice the dollar amount in effect under the Basic Limitation as set forth in Section 457(e)(15) of the Code for the taxable year; or
- (b) The underutilized limitation. For such purposes, the underutilized amount is the sum of:
 - (1) An amount equal to (i) the Basic Limitation set forth in Section 4.1 of the taxable year plus each calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, reduced by (ii) the Participant's annual contributions under the Plan during such years.
 - (2) An amount equal to such limitation as established under Section 457(b)(2) of the Code for each taxable year beginning after December 31, 1978 and before January 1, 2002, during which the Participant was eligible to participate, less the amount of the Participant's annual contributions to Pre-2002 contributions (as defined in Section 4.4 below) for such prior taxable year or years (disregarding any age 50 catch-up deferrals). In determining the underutilized limitation for taxable years prior to 2002, the special rules set forth in Treas. Reg. § 1.457-4(c)(3)(iv) shall be applied.

4.4. **Rules for Determining Applicable Limitation.** For purposes of determining the applicable limitation as determined under Plan Sections 4.1 through 4.3, the following rules shall apply:

- (a) **Participant Covered By More Than One Eligible Plan.** If the Participant is or has been a participant in one or more other eligible plans within the meaning of Section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the limitations set forth in Sections 4.1 through 4.3. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.
- (b) **Pre-participation Years.** In applying Plan Section 4.3, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) contributions made, if any, under the Plan during the year was subject to the Basic Limitation set forth in Plan Section 4.1 or any other plan ceiling required by Section 457(b) of the Code.
- (c) **Pre-2002 Contributions.** For purposes of Plan Section 4.3(b)(2), "Pre-2002 Contributions" means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension

(SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Plan Section 4.3(b)(2) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Section 457(b)(2) of the Code for that year. In no event can the maximum that may be deferred under the Plan for the taxable year be more than the Participant's Compensation for that year. The Special catch-up provision, as described in this Section, may only be used once under this Plan.

- 4.5. **Distribution of Excess Deferrals.** If the Administrator determines that the amount contributed by a Participant is in excess of the limitations set forth in Sections 4.1 through 4.3 above, the Administrator shall distribute such excess amount, with allocable net income, to the Participant as soon as administratively practicable. For purposes of determining whether there has been an excess deferral, all plans in which the Employee participates by virtue of his employment relationship with a single Employer shall be treated as a single plan.
- 4.6. **Rollover Contributions.** An Employee may rollover to the Trust the following:
- (a) Amounts from eligible deferred compensation plans (as defined in Section 457(b) of the Code) maintained by an eligible employer (as defined in Section 457(e)(1)(A) of the Code) to the Plan;
 - (b) But only if such rollovers are in cash or non-annuity products currently offered under the Plan and are Eligible Rollover Distributions.

For purposes of determining the Basic Limitation, the Catch-Up, or the Special Limitation, Rollover Contributions shall not be included.

- 4.7. **Roth Contributions.** As of July 1, 2015, the Plan will accept Roth Contributions made on behalf of Participants. A Roth Contribution includes an after-tax contribution, and all earnings, losses and fees on those amounts, made to the Plan as an Elective Contribution that is:
- (a) designated irrevocably by the Participant at the time of the election as a Roth Contribution that is being made to the Plan. As such, a Roth Contribution is made in lieu of all or a portion of the pre-tax Elective Contributions that the Participant is otherwise eligible to make under the Plan; and
 - (b) treated by the Employer as includible in the Participant's income during the taxable year in which the Participant contributed such amount to the Plan.

ARTICLE V **ACCOUNTS**

5.1. **Individual Accounts.** The Administrator shall establish and maintain an individual account or accounts for each Participant as described below. The Administrator shall establish and maintain such other accounts and records as it decides in its discretion to be reasonably required or appropriate in order to discharge its duties under the Plan. The Administrator shall notify the Trustee of all Accounts established and maintained under the Plan. Contributions by the Participant shall be transferred to the Trustee for the Participant's Account within a period that is not longer than is reasonable for the proper administration of the Participant's Account. The following Accounts shall be established for each Participant:

- (a) **Pre-Tax Elective Contribution Account.** There shall be established and maintained a separate Pre-Tax Elective Contribution Account for Pre-Tax Elective Contributions in the name of each Participant, which shall be fully vested at all times, and to which shall be credited or charged: (i) Pre-Tax Elective Contributions made to the Participant's account; (ii) withdrawals, and (iii) any income or expenses, gains or losses (whether or not realized, based on fair market value of invested assets) attributable or allocable thereto.
- (b) **Roth Contribution Account.** There shall be established and maintained a separate Roth Contribution Account for Roth Contributions in the name of each Participant, which shall be fully vested at all times, and to which shall be credited or charged: (i) Roth Contributions made to the Participant's account; (ii) withdrawals, and (iii) any income or expenses, gains or losses (whether or not realized, based on fair market value of invested assets) attributable or allocable thereto.
- (c) **Rollover Accounts.** There shall be established and maintained one or more separate Rollover Accounts in the name of each Participant, which shall be fully vested at all times, and to which shall be credited or charged: (i) certain rollover Contributions made to his or her account; (ii) withdrawals, and (iii) any income or expenses, gains or losses (whether or not realized, based on fair market value of invested assets) attributable or allocable thereto, as follows:
 - i. Amounts (other than designated Roth contributions as defined in Section 402A of the Code) rolled over from another Code Section 457(b) plan maintained by an employer defined in Section 457(e)(1)(A) of the Code) will be allocated to the Participant's 457(b) Rollover Account.
 - ii. Amounts (other than designated Roth contributions as defined in Section 402A of the Code) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Non-457(b) Rollover Account.
 - iii. Designated Roth contributions as defined in Code Section 402A rolled over from another Code Section 457(b) plan maintained by an employer as defined in Code Section 457(e)(1)(A) will be allocated to the Participant's Roth 457(b) Rollover Account;

- iv. Designated Roth contributions as defined in Code Section 402A rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participants' Roth Non-457(b) Rollover Account.
- 5.2. **Adjustment of Accounts.** As of each Valuation Date, each Account will be adjusted to reflect the fair market value of the assets allocated to the Account. In so doing: (i) each Account balance will be increased by the amount of contributions, income and gain allocable to such Account since the prior Valuation Date; and (ii) each Account balance will be decreased by the amount of distributions from the Account and expenses and losses allocable to the Account since the prior Valuation Date. Any expenses relating to a specific Account or Accounts, including without limitation, commissions or sales charges with respect to an investment in which the Account participates, may be charged solely to the particular Account or Accounts.
- 5.3. **Separate Accounting.** For purposes of accounting:
 - (a) Contributions and withdrawals of Roth Contributions will be credited and debited to the Roth Contribution Account maintained for each Participant.
 - (b) The Plan will maintain a record of the amount of Roth Contributions in each Participant's Account.
 - (c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Contribution Account and each of the Participant's other Accounts under the Plan.
 - (d) No contributions other than Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Contribution Account.

ARTICLE VI

INVESTMENT OF CONTRIBUTIONS

- 6.1. **Manner of Investment.** All contributions made to the Participant Accounts shall be held for investment by the Trustee.
- 6.2. **Participant Direction of Investments.** Participants shall direct the investment of their Accounts in accordance with rules and procedures established by the Administrator into one or more of the investment options selected by the Administrator and set forth in the Trust Agreement between the State and the Trustee, as may be amended from time to time. The Trustee shall have no duty to inquire into the investment decisions of a Participant or to advise the Participant regarding the purchase, retention, or sale of assets credited to his Account.
 - (a) **Initial Investment Election.** The Participant shall provide investment instructions in such form and manner as may be prescribed by the Administrator, selecting the investments in which amounts credited to his or her Account shall be invested. It is intended that all Participants (and Beneficiaries of deceased Participants) shall direct the investment of their Accounts in accordance with this Section 6.2.

- (b) **Change in Investment Election.** A Participant shall be permitted to change his or her investment elections both as to amounts credited to the Participant's Account and future contributions. Any change in investment elections shall be made in accordance with rules and procedures established by the Administrator.
 - (c) **Default Election.** In the event that the Administrator possesses at any time instructions as to the investment of less than all of the Participant's Account, the Participant (or Beneficiary of a deceased Participant) shall be deemed to have designated that the non-directed portion of the Account shall be invested in the American Funds Target Date Retirement Fund, or a fund with similar investment characteristics as selected by the Administrator. The American Funds Target Date Retirement Fund is one of a series of target retirement date funds, and contributions will be invested in a particular American Funds Target Date Retirement Fund based on the Participant's age at the time any contributions and target retirement date for which such Participant failed to provide investment direction for contributions are made to the Plan. The American Funds Target Date Fund is intended to be a Qualified Default Investment Alternative ("QDIA") as that term is defined under Department of Labor regulation Section 2550.404c-5.
 - (d) **Replacement of Investment Option.** If the Administrator is removing a particular investment option that had been available for selection by Participants, it may automatically transfer to a replacement option having similar investment characteristics the account balances of Participants that have been sent notice that the option is being removed from the Plan, and have failed to take action to make a new investment election for their Account.
- 6.3. **Account Transfers.** Participants may transfer part or all of their existing Account balances from one investment option to another in accordance with rules and procedures established by the Administrator.
- 6.4. **Liability for Participant-directed Investments.** Notwithstanding any other provision of the Plan and to the extent permitted by applicable law, neither the Board or the Board's Designee, nor the Administrator, nor any individual member, nor the State, nor any other officer or employee of the State who may be a fiduciary with respect to the Plan shall have any liability, fiduciary or otherwise, for any loss arising from or as a result of any investment designation by the Participant pursuant to Section 6.2, or by reason of the inability to make a change in designation on any particular date, and all such persons are specifically absolved of any statutory, judicial, legal or other responsibility with respect thereto (including any responsibility to determine the appropriateness of any individual Participant's investment designations).

ARTICLE VII

DISTRIBUTION OF BENEFITS

- 7.1. **Distribution Events.** A distribution of any of the Participant's Accounts from the Plan shall generally be made no earlier than the occurrence of one of the following events: (i) the Participant's Severance from Employment; (ii) the first day of the calendar year in

which the Participant attains age 70 ½; or (iii) Unforeseeable Emergency as determined by the Administrator. Exceptions to this general rule will be covered in Plan Sections 7.3 through 7.9 below.

- (a) **Severance from Employment.** Following a Severance from Employment, the Participant (or his or her Beneficiary, in the event of the Participant's death), may elect to take a distribution of his Account by submitting his or her request in such form and manner as prescribed by the Administrator.
- (b) **Attainment of Age 70 ½.** Notwithstanding the fact that the Participant has not had a Severance from Employment, after the first day of the calendar year in which the Participant attains age 70 ½, the Participant may elect to take a distribution of part or all of his or her Account(s) by submitting a request in such form and manner as prescribed by the Administrator.
- (c) **Unforeseeable Emergency.** A Participant may request a distribution due to an Unforeseeable Emergency by submitting a request to the Administrator, accompanied by evidence to demonstrate that the circumstances being experienced qualify as an Unforeseeable Emergency, including whether the Unforeseeable Emergency could be relieved. No distribution shall be permitted if the Unforeseeable Emergency could be relieved (i) through reimbursement or compensation from insurance or otherwise; (ii) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or (iii) by cessation of deferrals under the Plan. The Administrator shall have the authority to require such evidence as it deems necessary to determine if a distribution is permitted. If a request for a distribution due to an Unforeseeable Emergency is approved, the distribution shall be limited to an amount sufficient to meet the Unforeseeable Emergency (which may include the amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution). As noted in Section 4.4, such a distribution will subject the Participant to the limitation in Section 4.4.

7.2. **Method of Payment.** Subject to the minimum distribution requirements of Section 7.9 below, the Participant (or his or her Beneficiary) may elect upon a Distributable Event in Section 7.1, in such form and manner as may be prescribed by the Administrator, to have his or her Account distributed in any of the following methods:

- (a) **Lump Sum.** A distribution of the entire Account(s) of the Participant in a single lump sum. If the Participant (or Beneficiary) elects a lump sum form of payment, the Participant (or Beneficiary) may elect to make a direct rollover transfer to an eligible retirement plan pursuant to Section 7.4 below as to all or any portion of any of the Participant's Accounts.
- (b) **Installment Payments.** The Participant (or Beneficiary) may elect to take payment in installments.

7.3. **Distribution on the Death of the Participant.** Upon the death of a Participant while in the active employ of the State, or after Severance from Employment but before

commencement of his or her benefits, or before the Participant receives all of the amount to which he or she is entitled pursuant to the option under which benefits are being paid, the entire (or remaining) value of the Account shall be paid to the Participant's designated Beneficiary or, if there is no designated Beneficiary, in accordance with the provisions of Sections 3.4 or 3.5, as applicable.

- 7.4. **Direct Rollovers.** (a) Notwithstanding any provision of the Plan or a contract that would otherwise limit a Distributee's election under this Section and to the extent allowed under the applicable provisions of the Code and Treasury regulations, a Distributee who is a Participant, or who is a Designated Beneficiary and who is a spouse, surviving spouse or Alternate Payee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an eligible retirement plan specific under Section 7.1, at the time and in the manner prescribed by the Administrator, to have any portion or all of an "eligible rollover distribution" as defined by the Section 402(c)(4) of the Code paid directly to an "eligible retirement plan" as defined by the Section 402(c)(8)(B) of the Code, which includes 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 trust described in Code Section 401(a), effective January 1, 2002, an annuity contract described in Code Section 403(b), effective January 1, 2002, a plan eligible under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or effective January 1, 2008, a Roth individual retirement account as described in Code section 408A(e) specified by the Distributee in a direct rollover. A portion of distributions shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such after-tax portion may be transferred only to an IRA or annuity described in Sections 408(a) or (b) of the Code, or in a direct trustee-to-trustee rollover to a qualified trust under Sections 401(a) or 403(a) that is part of a defined contribution or defined benefit plan, or to an annuity contract described in Section 403(b) of the Code, and such trust or annuity contract separately accounts for amounts so transferred, including separate accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible. This is provided, however, that this provision shall not apply if the total "eligible rollover distribution" that the Participant is reasonably expected to receive for the calendar year is less than \$200 and that a Distributee may not elect a direct rollover with respect to a portion of an "eligible rollover distribution" if such portion totals less than \$500. The Administrator shall notify the Distributee in writing of the payment options available under the Plan, the Distributee's right to make a Direct Rollover, the Distributee's right to consider the payment options for at least 30 days and the federal income tax consequences relating to distributions from the Plan.

A direct rollover from a Roth Contribution Account under the Plan must be rolled over into another plan through a direct rollover to another Roth account. A direct rollover will not be offered if the distributions from a Participant's Roth Contribution Account during the calendar year are reasonably expected to total less than \$200.

Effective January 1, 2007, and notwithstanding anything in the Plan to the contrary that otherwise would limit a Distributee's election under this Section, and to the extent allowed under the applicable provisions of the Code and the Treasury regulations, a Distributee who is a Designated Beneficiary, but not a surviving spouse, spouse or former spouse who is an Alternate Payee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an "eligible rollover distribution" paid directly to an eligible retirement plan that is an individual retirement plan described in clause (i) or (ii) of Section 402(c)(8)(B) of the Code. If such a transfer is made, (i) the transfer shall be treated as an "eligible rollover distribution," (ii) the individual retirement plan shall be treated as an inherited IRA or individual retirement annuity (within the meaning of Section 408(d)(3)(C) of the Code, and (iii) Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such individual retirement plan.

7.5. Rollover of Roth Contribution Account.

If the distribution from the Roth Contribution Account is not directly rolled over in accordance with the provisions of Section 7.4, the Participant has the option to still do a rollover by making a deposit within 60 days into a Roth IRA, whether the payment is a qualified or nonqualified distribution. In addition, the Participant can do an indirect rollover by making a deposit within 60 days into another Roth account designated in another plan if the payment is a nonqualified distribution and the rollover does not exceed the amount of the earnings in the payment. **Note:** The basis portion (the amount the Participant contributed minus earnings on the Roth Contributions) cannot be rolled over to another Roth account designated in another plan, but can only be rolled over into a Roth IRA.

7.6. Transfer of Assets to Purchase Service Credits in State Pension Plan. Pursuant to such rules as may be established by the Administrator, a Participant may elect, at such time as he or she is otherwise entitled to a distribution (other than on account of Unforeseeable Emergency) to transfer part or all of the Account to purchase service credit under a defined benefit pension plan maintained by the State. A Participant who is also a participant in a tax-qualified defined benefit governmental plan (as defined in Section 414(d)), that provides for the acceptance of plan-to-plan transfers with respect to the Participant, may elect to transfer a portion of the balance of the Participant's Pre-Tax Elective Contribution Account either for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan or for a repayment to which Section 415 of the Code does not apply by reason of Section 415(k)(3) of the Code. A transfer under this Section 7.6 may be made before the Participant has had a separation from Service.

7.7. In-Service Distributions. Notwithstanding any other provisions of Article VII, the Administrator may permit a Participant or Beneficiary to elect an in-service distribution pursuant to Section 7.8, of all or a portion of the Participant's or Beneficiary's Rollover Account, including an in-service rollover distribution to an "eligible retirement plan" (as defined in Section 402(c)(8)(B) of the Code).

7.8. **In-Plan Roth Rollover.**

- (a) An in-plan Roth rollover may be accomplished by an in-plan direct rollover or by a distribution of amounts to the Participant who then rolls over the funds into his or her Roth Contribution Account in the Plan within 60 days in accordance with Section 402A(c)(4) of the Code.
- (b) Any vested amount held in an Account for a Participant (other than an amount already held in a Roth Contribution Account) is eligible for direct rollover to the Participant's Roth Contribution Account under the Plan, even if the vested amount is not otherwise distributable (pursuant to Section 402A(c)(4) of the Code) under Article VII of the Plan, and the transfer shall be treated as a qualified rollover contribution (within the meaning of Section 408A(e) of the Code) to such Account. Unless a Participant directs otherwise, in-plan Roth rollovers will be invested in the same Plan investment options as the Pre-Tax Contributions were invested in before the in-plan Roth rollover occurred.
- (c) A Participant's election under this Section 7.8 shall be subject to the reasonable administrative procedures established by the Plan Administrator, Section 402A(c)(4) of the Code and the regulations thereunder, and subsequent guidance from the Internal Revenue Service.
- (d) Any election under this Section 7.8 shall be irrevocable.
- (e) The taxable portion of the Participant's Account transferred to a Roth Contribution Account under this Section 7.8 shall be included in the Participant's gross income in the tax year in which the transfer occurs.
- (f) The Plan shall provide written tax information regarding in-plan Roth rollovers under this Section 7.8, for amounts that are otherwise distributable under Article VII to the extent required by Section 402(f) of the Code.

7.9. **Minimum Distribution Requirements.** The minimum distribution requirements as set forth below are intended and shall be interpreted to comply with Section 401(a)(9) of the Code and the applicable regulations.

- (a) Notwithstanding anything to the contrary contained elsewhere in this Plan:
 - (1) A Participant's benefits under the Plan will:
 - (A) be distributed to him or her not later than the Required Distribution Date (as defined in subsection (A)(3) below), or
 - (B) be distributed commencing not later than the Required Distribution Date in accordance with applicable Regulations over a period not extending beyond the life expectancy of the Participant and his Beneficiary.

- (2) (A) If the Participant dies after distribution has commenced pursuant to subsection (A)(1)(b) but before his or her entire interest in the Plan has been distributed to him or her, then the remaining portion of that interest will be distributed at least as rapidly as under the method of distribution being used under subsection (A)(1)(b) at the date of his or her death.
- (B) If the Participant dies before distribution has commenced pursuant to subsection (A)(1)(b), then, except as provided in subsections (A)(2)(c) and (A)(2)(d), his or her entire interest in the Plan will be distributed by the end of the calendar year which contains the fifth (5th) anniversary of his or her death.
- (C) Notwithstanding the provisions of subsection (A)(2)(b), if the Participant dies before distribution has commenced pursuant to subsection (A)(2)(b) and if any portion of his or her interest in the Plan is payable (i) to or for the benefit of a Beneficiary, (ii) in accordance with the applicable Regulations over a period not extending beyond the life expectancy of the Beneficiary, and (iii) beginning not later than the end of the calendar year immediately following the calendar year of the Participant's death or such later date as permitted by applicable Regulations, then the portion referred to in this subsection (A)(2)(c) shall be treated as distributed on the date on which such distribution begins.
- (D) Notwithstanding the provisions of subsections (A)(2)(h) and (A)(2)(c), if the Beneficiary referred to in subsection (A)(2)(c) is the surviving spouse of the Participant, then
 - (i) the date on which the distributions are required to begin under subsection (A)(2)(c)(iii) of this section shall not be earlier than the date on which the Participant would have attained the age of 70 ½, and
 - (ii) if the surviving spouse dies before the distributions to that spouse begin, then this subsection (A)(2)(d) shall be applied as if the surviving spouse were the Participant.
- (3) For purposes of this section, the Required Distribution Date means April 1 of the calendar year following the later of:
 - (A) the calendar year in which the Participant attains age 70 ½; and
 - (B) the calendar year in which the Participant retires or otherwise has a Severance from Employment with the Employer and all related employers unless the Participant is a 5% owner (as defined in Section 416 of the Code) of the Employer with respect to the Plan

Year ending in the calendar year in which the Participant attains age 70 ½, in which case this clause (2) shall not apply.

- (4) For purposes of this subsection, the life expectancies of the Participant and his surviving spouse may be redetermined, but not more frequently than annually, in accordance with the Regulations. This subsection (A)(4) shall not apply in the case of a life annuity.
 - (5) A Participant may not elect a form of distribution under the Plan providing payments to a Beneficiary who is other than his surviving spouse unless the actuarial value of the payments expected to be paid to the Participant is more than 50% of the actuarial value of the total payments expected to be paid under such form of distribution.
- (b) Notwithstanding any other provisions of this Section 7.9 a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those 2009 distributions unless the Participant or Beneficiary elects to receive such distribution. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. However, those Participants and Beneficiaries who receive required minimum distributions through systematic withdrawal system will continue to receive 2009 RMDs unless he or she elects not to receive the 2009 RMDs.

Notwithstanding any other provisions of the Plan, and solely for purposes of applying the rollover provisions of the Plan, 2009 RMDs (amounts that would have been required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code and Extended 2009 RMDs (one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant's designated Beneficiary, or for a period of at least 10 years), will be treated as "Eligible Rollover Distributions."

- 7.10. **Incapacity.** In the event that the Administrator determines, on the basis of a medical report or other evidence satisfactory to the Administrator, that the Participant or Beneficiary is incapable of handling his affairs by reason of minority, illness, infirmity or other incapacity, the Administrator may direct the Trustee to disburse payments to a person or institution designated by a court or other legal authority receive such payments. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

ARTICLE VIII

TRUST FUND

- 8.1. **Investment of Funds.** All contributions under the Plan shall be paid to the Trustee of the Plan and deposited in the Trust. Such contributions, all investments made therewith and proceeds thereof, and all earnings and profits thereon, less the authorized disbursements therefrom, shall constitute the Trust, which Trust, and any agreement under which it is maintained, shall in all respects constitute a part of the Plan. The State of Delaware, acting through the Board, reserves the right to select, and from time to time to change, the Trustee. The Administrator reserves the right to amend the Trust, or to create separate or additional trusts and by express appointment designate additional trustees of such entities, or to create and administer master or group trusts that hold assets of this and other tax qualified plans, or other plans permitted to participate in group trusts under the Code.
- 8.2. **Prohibition Against Diversion of Funds.** It shall be impossible by operation of the Plan or Trust, by natural termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Trust, or any funds contributed thereto, to inure to the benefit of the State or otherwise be used for or diverted to purposes other than providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan. Recovery by the State of an amount contributed to the Plan in error shall not be treated as a diversion of funds.

ARTICLE IX

ADMINISTRATION

- 9.1. **Administrative Authority.** Except as otherwise specifically provided herein, the Board or the Board's Designee shall have the sole responsibility for and the sole control of the operation and administration of the Plan, and shall have the power and authority to take all action and to make all decisions and interpretations which may be necessary or appropriate in order to administer and operate the Plan, including, without limiting the generality of the foregoing, the power, duty and responsibility to:
- (a) Resolve and determine all disputes or questions arising under the Plan, including the power to determine the rights of Employees, Participants and Beneficiaries, and their respective benefits, and to remedy any ambiguities, inconsistencies or omissions.
 - (b) Adopt such rules of procedure as in its opinion may be necessary for the proper and efficient administration of the Plan and are consistent with the Plan.
 - (c) Implement the Plan in accordance with such rules.
 - (d) Decide upon the eligibility of any Employee as a Participant, and the crediting and distribution of a Participant's interest in the Trust, which are to be made only upon the basis of instructions from the Participant pursuant to the terms of the Plan.

9.2. **Administration.** The Plan shall be operated and administered on behalf of the Board by the Office of the State Treasurer ("State Treasurer"). In the absence of a specific designation to the contrary by the Board, and subject to the power to delegate pursuant to this Section, the State Treasurer shall be the Administrator for purposes of this Plan. The Administrator shall be governed by the following:

- (a) The Administrator shall have full authority to act for the Board or the Board's Designee before all persons in any matter directly pertaining to the Plan, including the exercise of any power or discretion otherwise granted to the Board or the Board's Designee pursuant to the terms of the Plan, other than the power to amend or terminate the Plan, to determine State contributions, to exercise authority to direct the investment of the Trust, to affect the employer-employee relationship between the State and any Employee, and to retain and/or discharge any separately appointed Trustees, all of which powers are reserved to the Board or the Board's Designee unless expressly granted to the Administrator under this Plan.
- (b) The Administrator may appoint any persons or firms, or otherwise act to secure specialized advice or assistance, as he or she deems necessary or desirable in connection with the administration and operation of the Plan; the Administrator shall be entitled to rely conclusively upon, and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such firms or persons. The Administrator shall have the power and authority to delegate from time to time by written instrument all or any part of his or her duties, powers or responsibilities. Any action of such person in the exercise of such delegated duties, powers or responsibilities shall have the same force and effect for all purposes hereunder as if such action had been taken by the Administrator. Further, the Administrator may authorize one or more persons to execute any certificate or document on behalf of the Administrator, in which event any person notified by the Administrator of such authorization shall be entitled to accept and conclusively rely upon any such certificate or document executed by such person as representing action by the Administrator until such third person shall have been notified of the revocation of such authority. The Administrator shall not be liable for any act or omission of any person to whom the Administrator's duties, powers or responsibilities have been delegated, nor shall any person to whom any duties, powers or responsibilities have been delegated have any liabilities with respect to any duties, powers or responsibilities not delegated to him.
- (c) All representatives of the Administrator, its staff, or other persons to whom they delegate responsibility, shall use ordinary care and diligence in the performance of their duties pertaining to the Plan, but, except to the extent required by law, no such individual shall incur any liability: (i) by virtue of any contract, agreement, bond or other instrument made or executed by him or on his behalf as in his official capacity with respect to the Plan, (ii) for any act or failure to act, or any mistake or judgment made, in his official capacity with respect to the Plan, unless resulting from gross negligence or willful misconduct, or (iii) for the neglect,

omission or wrongdoing of any other person involved with the Plan. Such persons shall be entitled to the indemnification provisions of Delaware law for the effects and consequences of their acts, omissions and conduct in their official capacity with respect to the Plan, except to the extent that such effects and consequences shall result from their own willful misconduct or gross negligence. If any matter arises as to which an individual is entitled to indemnity hereunder, the indemnitee shall give the Administrator or the State, as the case may be, prompt written notice thereof. The Administrator, at its own expense, shall then take charge of the disposition of the asserted liability, including compromise or the conduct of litigation. The indemnitee may, at his or her own expense, retain his or her own counsel and share in the conduct of any such litigation, but the failure to do so shall not adversely affect his or her right to indemnity.

- (d) The Plan may purchase, as an expense of the Plan, liability insurance for the Plan and/or for the Administrator to cover liability or losses occurring by reason of an act or omission of the Administrator or any fiduciary. Any fiduciary may purchase, from and for his or her own account, insurance to protect against liability in the event of a breach of fiduciary duty.
- (e) Nothing in the Plan shall be construed so as to prevent any person from (i) receiving any benefit to which he or she may be entitled as a Participant or Beneficiary, or: (ii) receiving any reasonable Compensation for services rendered, or for the reimbursement of expenses properly incurred in the performance of his duties under the Plan (except that no person so serving who receives Compensation as an Employee shall receive Compensation from the Plan, except for reimbursement of expenses properly incurred).

9.3. **Uniformity of Discretionary Acts.** Whenever in the administration or operation of the Plan discretionary actions by the Employer, the Board or the Administrator are required or permitted, such action shall be consistently and uniformly applied to all persons similarly situated.

9.4. **Payment of Administration Expenses.** All reasonable expenses incurred in the administration and operation of the Plan as shown on Schedule B of the Trust Agreement, as amended from time to time, shall be a charge against and paid from the appropriate Participants' Accounts, except to the extent such amounts are paid by the Board or the Board's Designee in a timely manner. Any other reasonable expenses of Plan administration, as determined and directed by the Board or the Board's Designee, shall be a charge against and paid from the appropriate Participants' Accounts.

No more frequently than once per calendar quarter, the Board or the Board's Designee may direct the Trustee to allocate amounts in any revenue credit account to eligible Participant Accounts, provided that the balance in the revenue credit account, if divided among eligible Participants, would exceed \$1 per Participant on average. The Board or the Board's Designee shall submit a service request which shall include the dollar amount elected from the revenue credit account for allocation, provided that if such amount exceeds the assets held in the revenue credit account on the date on which the allocation

is to be performed (the "Crediting Date"), such amount shall be deemed to be the total balance of the revenue credit account on the Crediting Date. The dollar amount elected from the revenue credit account for an allocation shall be divided among eligible Participant Accounts based on a method directed on Schedule B-2 of the Trust Agreement by the Board or the Board's Designee as of the Crediting Date.

- 9.5. **Statements of Account.** Statements of each Participant's account shall be furnished to each Participant at least annually, within 90 days after the end of each calendar year, and at such more frequent intervals as determined by the Administrator.

ARTICLE X

AMENDMENT AND TERMINATION

- 10.1. **Right to Amend or Terminate.** The Board or the Board's Designee shall have the right to amend or terminate the Plan, at any time, and with respect to any provisions thereof, and all parties thereto or claiming any interest thereunder shall be bound thereby. Notwithstanding the foregoing, no amendment can be made that results in the forfeiture of a vested benefit or modifies or limits the requirement that Plan assets be held for the exclusive benefit of Participants and their Beneficiaries and defraying the reasonable expenses of the Plan.
- 10.2. **Amendment to Conform to Federal Law.** Notwithstanding anything to the contrary in Section 10.1, the Administrator shall have the right to amend the Plan and Trust at any time, retroactively if required, if found necessary in order to conform to or take advantage of liberalizations in the provisions and requirements of the Internal Revenue Code, or any similar act or any amendments thereto or regulations promulgated thereunder; or to facilitate the administration of the Plan; provided, no such amendment shall be considered prejudicial to any interest of a Participant or Beneficiary hereunder.

ARTICLE XI

MILITARY SERVICE PROVISIONS

- 11.1. **Protection of Persons Who Serve in a Uniformed Service.** A Participant whose employment is interrupted by "qualified military service" as defined in Section 414(u) of the Code or who is on a leave of absence for such qualified military service, shall continue participation hereunder upon reemployment from such "qualified military service."
- 11.2. **USERRA.** Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") [as codified at Chapter 43, Title 38, of the United States Code]; Section 414(u) of the Code; the Heroes Earnings and Assistance Relief Tax Act of 2008 ("HEART"), and Section 401(a)(37) of the Code, as amended from time to time.

For purposes of this section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

A Participant, whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service who timely resumes employment with the Employer in accordance with USERRA, may elect to make-up contributions to the Deferred Compensation Plan in accordance with Section 414(u) of the Code, reduced by contributions to the Deferred Compensation Plan, if any, actually made for the Participant during the period of such interruption or leave. Except to the extent otherwise provided under Section 414(u) of the Code, this right applies for five (5) years following such resumption of employment (or, if shorter, for a period equal to three (3) times the period of the interruption or leave). Such contributions by the Participant may only be made during such period and while the Participant is employed by the Employer.

Effective January 1, 2009, a Participant receiving a differential wage payment within the meaning of Section 414(u)(12)(D) of the Code from the Employer shall be treated as a Participant and the differential wage payment shall be treated as Compensation and Includible Compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Effective January 1, 2007, to the extent provided under Section 401(a)(37) of the Code, in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

ARTICLE XII

MISCELLANEOUS

- 12.1. **Procedure When Distributee Cannot Be Located.** If a distribution check is returned, the Administrator shall make all reasonable attempts to determine the identity and address of a Distributee entitled to benefits under the Plan.

(a) The Administrator will attempt to locate a lost Participant and may use one or more of the following methods: (1) provide a distribution notice to the lost Participant at his/her last known address by certified or registered mail; (2) check with other employee benefit plans of the Employer that may have updated information regarding the Participant's whereabouts; (3) identify and contact the Participant's designated Beneficiary; (4) use free internet search tools; (5) use a commercial locator service, credit reporting agencies, other Internet tools or other search method.

(b) If the Administrator is still unable to locate the Distributee using one or more of the methods described in paragraph (a) above, or if there has been no claim made for such benefits within 6 months, the Funding Vehicle shall continue to hold the benefits due such person. Following this 6-month period, if no such claim has been made, the Administrator may forfeit any amounts being held on the Distributee's behalf, but the Plan shall place the forfeited amounts in a separate Account under the Plan specifically designated for this purpose. If the Distributee is located subsequent to such forfeiture, the Administrator will restore the forfeited Account to the same dollar amount forfeited, unadjusted for net income, gains or losses occurring subsequent to the forfeiture.

- 12.2. **Limitations on Liability of Employer.** Neither the establishment of the Plan or Trust nor any modification thereof, nor the creation of any fund, or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the State (or any person connected therewith), the Trustees or any insurance or investment company, except as provided by law or by any Plan provision. Neither the State, the Board, the Board's Designee nor the Administrator in any way guarantees the Trust from loss or depreciation, nor guarantee the payment of any money, which may be or become due to any person from the Trust. Any person having a right or claim under the Plan shall look solely to the Trust assets, and in no event shall the State, the Board, the Board's Designee or the Administrator (or any person connected therewith) be liable to any person on account of any claim arising by reason of the provisions of the Plan or of any instrument or instruments implementing its provisions, or for the failure of any Participant, Beneficiary or other person to be entitled to any particular tax consequences with respect to the Plan, the Trust or any contribution thereto or distribution therefrom. Neither the State, the Board, the Board's Designee nor the Administrator shall be liable to any person for failure on its part to make contributions, nor shall any action lie to compel such contributions. Neither the State, the Board, the Board's Designee nor the Administrator (or any person connected therewith) shall have any liability to any person by reason of the failure of the Plan to satisfy the requirements of Section 457(b) of the Code, regardless of whether or not such failure is due to any act or omission (willful, negligent or otherwise) of the Board, the Board's Designee or Administrator (or any person connected therewith).
- 12.3. **Construction.** The Plan is intended to comply with all requirements of an eligible deferred compensation plan under Section 457(b) of the Code and, if any provision of the Plan is subject to more than one interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the Plan being in compliance with such requirements. In case any provision of the Plan shall be held to be illegal or void, such illegality or invalidity shall not affect the remaining provisions of the Plan, but shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein. For all purposes of the Plan, where the context admits, words in the masculine gender shall include the feminine and neuter genders, the singular shall include the plural, and the plural shall include the singular. Headings of Article and Sections are inserted only for convenience of reference and are not to be considered in the construction of the Plan. Except to the extent preempted by federal law, the laws of Delaware shall govern, control and determine all questions arising with respect to the Plan and the interpretation and validity of its respective provisions. If the indefinite continuance of the Plan would be in violation of the law, then the Plan shall continue for the maximum period permitted by law and shall then terminate, whereupon distribution of the Trust assets shall be made to Participants and/or their Beneficiaries. Participation under the Plan will not give any Participant the right to be retained in the service of the State nor any right or claim to any benefit under the Plan unless such right or claim has specifically accrued hereunder.
- 12.4. **Anti-Alienation.** Except as provided in Section 12.5 below, no portion of any account or benefit, or interest of a Participant or Beneficiary in the Trust Fund, may be sold, transferred, assigned, pledged, charged or used as collateral; and no such account or

interest shall be subject to attachment or seizure by a creditor, including the State of Delaware acting as a creditor; provided, however the Plan may recognize the Internal Revenue Service's authority to levy a Participant's account for federal taxes.

- 12.5. **Domestic Relations Orders.** Notwithstanding Section 12.4 above, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child or other dependent of a Participant is made pursuant to the domestic relations law of any state ("Domestic Relations Order") and such Domestic Relations Order is submitted to the Plan on or after January 1, 2006, then the amount of the Participant's Account shall be paid in the manner and to the person or persons so directed in the Domestic Relations Order, so long as such Domestic Relations Order complies with all requirements of applicable law and provisions of the Plan. Notwithstanding the foregoing, the Administrator is entitled to make payment pursuant to a valid Domestic Relations Order which directs payment prior to the time the participant is otherwise entitled to a distribution under the terms of the Plan. The Administrator shall establish reasonable procedures for determining, in its discretion, the status and validity of any such decree or order and for effectuating distribution pursuant to the Domestic Relations Order. Unless otherwise stated in the Domestic Relations Order, an ex-spouse who becomes an "alternate payee" shall no longer be treated as the Participant's Beneficiary under the Plan, unless the Participant designates the ex-spouse as a Beneficiary, and such designation is signed after the date on which the Domestic Relations Order became effective.
- 12.6. **Elections, Disclosures by Telephone and Electronic Means Permitted.** Any direction, notice or other communication provided to the Employer, the Administrator, the Trustee, or the Participant which is required to be in writing under the provisions of the Plan may be provided by electronic means or by telephone if permitted by the Administrator and by applicable law or regulations.

IN WITNESS WHEREOF, the undersigned has executed this amended and restated Plan on behalf of the Plans Management Board this 6th day of June 2017.

STATE OF DELAWARE


Chair of the Plans Management Board