

**North Carolina Public School Teachers' and  
Professional Educators' Investment Plan 403(b) Volume Submitter Plan**

Base Plan Document

**[Note: This document has been amended since the IRS issued its approval as a volume submitter 403(b) plan document on March 31, 2017.]**

**North Carolina Public School Teachers' and Professional Educators' Investment Plan 403(b)**  
**Volume Submitter Plan**

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## **ARTICLE I INTRODUCTION**

### **Section 1.1 Purpose and Nature of the Plan**

The purpose of this Plan is to provide retirement income benefits to Eligible Employees of the Employer through mutual fund options and/or annuity contracts made available under a Code section 403(b) plan. The Plan is a governmental plan described in ERISA section 3(32) and Code section 414(d). In no event shall the provisions of ERISA apply to this Plan. The Plan consists of the provisions set forth in this Plan document and its related Adoption Agreement. The Plan is funded by contributions as provided in the Adoption Agreement.

### **Section 1.2 Adoption of the Plan**

The Plan is effective as of the Effective Date set forth in the Adoption Agreement.

### **Section 1.3 Definitions and Interpretation**

The capitalized words and phrases used throughout the Plan have the meanings set forth in Appendix A. The Plan is to be interpreted in accordance with the principles set forth in Article XII.

## **ARTICLE II ELIGIBILITY AND PARTICIPATION**

### **Section 2.1 Commencement of Participation**

- (a) **General Rule.** Each Eligible Employee will be eligible to commence participation in the Plan as soon as administratively practicable after becoming an Eligible Employee.
- (b) **Actions Required to Commence Participation.** To commence or recommence participation in the Plan, an Eligible Employee must comply with procedures prescribed by the Plan Administrator, including entering into a Contribution Agreement in accordance with Article III or making a rollover contribution pursuant to Section 3.1(c).
- (c) **Active Participant.** An Eligible Employee with an Account is referred to as an Active Participant.

### **Section 2.2 Cessation of Active Participation**

A Participant ceases to be an Active Participant effective as of the end of the payroll period in which the Participant has a Severance from Employment with the Employer.

### **Section 2.3 Termination of Participation**

An individual shall cease to be a Participant once he or she is no longer entitled to any benefits under the Plan.

### **Section 2.4 Automatic Enrollment**

- (a) **General Rule.** If automatic enrollment is authorized by the North Carolina General Assembly and elected in the Adoption Agreement and except as provided in Section 2.4(c) below, if an Eligible Employee has not completed the actions to commence participation in the Plan under Section 2.1(b), such Eligible Employee is deemed to have elected to become an Active Participant and filed a Contribution Agreement. The Participant will be deemed to have elected to defer a set percentage of his Benefitable Compensation to the Plan, in the percentage established by the North Carolina General Assembly and as set forth in procedures of the Program Administrator. An Eligible Employee will have a reasonable period of time, as established by the Primary Administrator, after receipt of any notice required by the Code, Treasury Regulations, and other applicable guidance, to make an affirmative election regarding Elective Deferral Contributions and/or Roth Elective Deferral Contributions before the deemed election to make such contributions shall become effective.

- (b) **Default Investment.** When an Investment Fund has not been affirmatively selected by the Participant, contributions made under the deemed election of Section 2.4(a) shall be invested in a default Investment Fund determined by the Program Administrator.
- (c) **Employee Election.** This Section 2.4 shall not apply, or shall cease to apply, to the extent an Eligible Employee files a Contribution Agreement or elects to have no Benefitable Compensation contributed to the Plan.

## **ARTICLE III PLAN CONTRIBUTIONS AND FUNDING**

### **Section 3.1 Types of Contributions**

The Plan accepts the following types of contributions:

- (a) **Employee Deferral Contributions.** Elective Deferral Contributions, Roth Elective Deferral Contributions, Catch-Up Contributions, Roth Catch-Up Contributions, Qualified Organization Catch-Up Contributions, and Qualified Organization Roth Catch-Up Contributions by Active Participants made pursuant to a Contribution Agreement. These types of contributions are only allowed if selected in the Adoption Agreement.
- (b) **Employer Contributions.** Matching Contributions made by the Employer pursuant to Section 3.3(a) and Nonelective Contributions made by the Employer pursuant to Section 3.3(b). These types of contributions are only allowed if selected in the Adoption Agreement.
- (c) **Rollover Contributions to the Plan.** An Eligible Employee who is entitled to receive an Eligible Rollover Distribution from another eligible plan may request to have all or a portion of the Eligible Rollover Distribution paid to the Plan. This type of contribution is only allowed if selected in the Adoption Agreement. Further, Roth rollover contributions from Roth contribution accounts under an applicable retirement plan described in Code section 402A(e)(1) may be accepted only if the Plan permits Roth Elective Deferral Contributions pursuant to an election in the Adoption Agreement.
- (d) **Transfers.** The Plan does not accept amounts transferred from other plans.

### **Section 3.2 Contributions by Active Participants**

Subject to the requirements of Article IV, an Eligible Employee is eligible to file a Contribution Agreement with the Plan Administrator, in accordance with procedures adopted by the Plan Administrator, and have the following contributions made to the Plan on his or her behalf:

- (a) **Elective Deferral Contributions.** An Active Participant may elect to reduce his or her Benefitable Compensation to make pre-tax Elective Deferral Contributions to the Plan in accordance with Code section 403(b) and the Treasury Regulations thereunder if provided for in the Adoption Agreement.
- (b) **Roth Elective Deferral Contributions.** In lieu of all or a portion of the pre-tax Elective Deferral Contributions the Participant is otherwise eligible to make under



the Plan, an Active Participant may elect to make after-tax Roth Elective Deferral Contributions of his or her Benefitable Compensation in accordance with Code section 403(b) and Code section 402A and the Treasury Regulations thereunder if provided for in the Adoption Agreement and permitted by the applicable Funding Vehicle. Roth Elective Deferral Contributions will be included in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made such deferral election.

- (c) **Catch-Up Contributions.** An Employee who attains age 50 before the close of a calendar year may elect to make Catch-Up Contributions and/or Roth Catch-Up Contributions of his or her Benefitable Compensation to the Plan in accordance with Code section 414(v) if provided for in the Adoption Agreement.
- (d) **Qualified Organization Catch-Up Contributions.** If the Employer is a Qualified Organization and if provided for in Item 2.4 of the Adoption Agreement, a Qualified Employee may elect to make Qualified Organization Catch-Up Contributions and/or Qualified Organization Roth Catch-Up Contributions of his or her Benefitable Compensation to the Plan.
  - (1) **Limitation.** Qualified Organization Catch-Up Contributions under Section 3.2(d) shall not exceed the least of:
    - (A) \$3,000;
    - (B) The excess of:
      - (I) \$15,000, over
      - (II) The total Qualified Organization Catch-Up Contributions made for the Qualified Employee by the Qualified Organization for prior years; or
    - (C) The excess of:
      - (I) \$5,000 multiplied by the number of Years of Service of the Employee with the Qualified Organization, over
      - (II) The total Elective Deferrals made for the Employee by the Qualified Organization for prior years.
  - (2) **Qualified Employee.** For purposes of this Section 3.2(d), a Qualified Employee means an Employee who has completed at least 15 Years of Service taking into account only employment with the Employer.

- (3) **Coordination with Age 50 Catch-Up.** Amounts that would be in excess of the Code section 402(g) limitation but for the provisions of Section 3.2(c) or Section 3.2(d) of the Plan shall be allocated first to the Qualified Organization Catch-Up Contributions under this Section 3.2(d) and next as Catch-Up Contributions under Section 3.2(c). This subsection will only apply if both types of catch-up contributions are selected in the Adoption Agreement.
- (e) **Limitation on Contributions by Active Participant.** Notwithstanding anything else in this Section, in no event may the amount of contributions made to the Plan pursuant to Section 3.2 for a Plan Year be more than the Participant's includible compensation for the Plan Year.

### **Section 3.3 Contributions by the Employer**

- (a) **Matching Contributions.** If the Adoption Agreement provides for Employer Matching Contributions, the Employer shall contribute to the Plan a Matching Contribution as provided in the Adoption Agreement.
- (b) **Nonelective Contributions.** If the Adoption Agreement provides for Employer Nonelective Contributions, the Employer shall contribute to the Plan a Nonelective Contribution as provided in the Adoption Agreement.

### **Section 3.4 Contribution Agreement**

- (a) **Effective Date of a Contribution Agreement.** An Eligible Employee's initial, modified, or other subsequent Contribution Agreement shall take effect as soon as administratively practicable. An Eligible Employee shall have at least 60 days from his or her becoming an Eligible Employee to complete his or her initial Contribution Agreement.
- (b) **Modification of a Contribution Agreement.** An Active Participant may modify his or her Contribution Agreement at any time and any number of times during the Plan Year by filing a new Contribution Agreement with the Plan Administrator. A new Contribution Agreement will take effect as soon as administratively practicable. To the extent provided in the Adoption Agreement, an adjustment due to the automatic increase provision shall be deemed to be a modification of an existing Contribution Agreement.
- (c) **Termination of a Contribution Agreement – Participant Election.** An Active Participant may elect at any time to terminate his or her Contribution Agreement. This election will take effect as soon as administratively practicable.
- (d) **Termination of a Contribution Agreement – Severance from Employment.** An Active Participant's Contribution Agreement automatically terminates as of

the end of the payroll period in which the Active Participant's Severance from Employment occurs; provided, however, that such Contribution Agreement shall apply to any post-Severance from Employment pay that is considered Benefitable Compensation that is eligible for deferral pursuant to Code section 403(b) and the Treasury Regulations thereunder.

- (e) **Suspension of Contribution Agreement – Hardship Distributions.** An Active Participant's Contribution Agreement shall be suspended in the event of a hardship withdrawal as set forth in Section 6.2(g) and restarted pursuant to the rules set forth in Section 6.2(h).
- (f) **Legally Binding and Irrevocable.** A Contribution Agreement is legally binding and irrevocable with respect to amounts currently available while the Contribution Agreement is in effect.

### **Section 3.5    Crediting and Transmittal of Contributions**

- (a) **Crediting of Accounts.** All contributions made pursuant to this Article III are applied to the Account of the applicable Participant and are allocated among the various Investment Funds as elected from time to time by the Participant in accordance with Article IV. All amounts described in Section 3.2 that a Participant pays to or has withheld by an Employer for contribution to the Plan shall become plan assets within a period that is not longer than is reasonable for the proper administration of the plan, in compliance with Treasury Regulation section 1.403(b)-8(b), but in no event later than the 15<sup>th</sup> business day of the month following the month in which the amounts were received by the Employer.
- (b) **Transmittal of Contributions.** The Employer will contribute the amount designated by the Participant on the Contribution Agreement to the Funding Agent on behalf of the Participant. The amount will be transmitted to the Funding Agent within a period that is not longer than what is reasonable for the proper administration of the plan, in compliance with Treasury Regulation section 1.403(b)-8(b).

### **Section 3.6    Limitations on Contributions**

- (a) **Elective Deferral and Roth Elective Deferral Contribution Limits.** An Active Participant's Elective Deferral Contributions and Roth Elective Deferral Contributions made pursuant to a Contribution Agreement are subject to the limitations of Code section 403(b) and, when combined for all plans of the Employer, may not, with respect to a Plan Year, exceed the Contribution Limit for the Plan Year.

- (b) **Catch-Up Contribution and Roth Catch-Up Contribution Limits.** An Active Participant's Catch-Up Contributions and Roth Catch-Up Contributions made pursuant to a Contribution Agreement are subject to the limitations of Code section 414(v) and, when combined for all plans of the Employer, may not, with respect to a Plan Year, exceed the Catch-Up Contribution Limit for the Plan Year.

Notwithstanding any provisions of the Plan to the contrary, Catch-Up Contributions are not taken into account for purposes of the limitations of Code sections 402(g) and 415(c). The Plan is not treated as failing to satisfy the requirements of Code sections 403(b) and other provisions of the Code made applicable pursuant to Code section 414(v) by reason of the Participants making Catch-Up Contributions.

- (c) **Code Section 415 Limit.** The sum of the contributions on behalf of a Participant made pursuant to this Article III in any Plan Year may not exceed the limits under Code section 415(c), as adjusted by Code section 415(d), which are incorporated herein by reference and described in Appendix B.

### **Section 3.7 Correction of Contributions**

- (a) **Contributions Due to a Mistake of Fact.** In the event the Employer makes a contribution to the Plan by a "mistake of fact" within the meaning of Code section 403(b), the Employer may withdraw this contribution from the Plan at any time within one year after the payment of the contribution.
- (b) **Correction of Excess Contributions.** If a Participant's Salary Reduction Contributions for any calendar year exceed the limitations described in Section 3.6(a) and/or (b), or a Participant's Salary Reduction Contributions for any calendar year exceed the limitations described in Sections 3.6(a) and/or 3.6(b) when combined with other amounts deferred by the Participant under another Code section 403(b) plan of the Employer or a Related Employer (and any other plan that permits elective deferrals subject to Code section 402(g) for which the Participant provides information to the Plan Administrator), then the Salary Reduction Contributions, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant in manner consistent with Code section 403(b) and the Treasury Regulations thereunder.
- (c) **Corrections.** Under IRS procedures, the Employer may make a contribution, or distribute an excess or erroneous contribution, to the extent permitted under the Employee Plans Compliance Resolution System or any other applicable Internal Revenue Service guidance. Unless required by the applicable Internal Revenue Service guidance, the Employer may make plan corrections without providing notice to Participants.

### **Section 3.8 Military Service Rules**

- (a) **Compliance with USERRA.** Notwithstanding any provision of this Plan to the contrary, contributions, allocations and benefits under this Plan shall be made in accordance with Code section 414(u), relating to veterans' reemployment rights under the Uniformed Services Employment and Reemployment Act of 1994.
- (b) **Code Section 401(a)(37).** Notwithstanding any provision of this Plan to the contrary, the Beneficiary of a Participant on a leave of absence to perform military service with reemployment rights described in Code section 414(u) where the Participant cannot return to employment on account of his or her death, shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under the Plan had the Participant died as an Active Participant to the extent required by Code section 401(a)(37).
- (c) **Deemed Severance from Employment Distribution and Suspension of Deferrals.** Notwithstanding any provision of this Plan to the contrary, and if provided for in the Adoption Agreement, a Participant performing service in the uniformed services described in Code section 3401(h)(2)(A) shall (1) be eligible to receive a distribution while in-service under Section 6.1(a)(2) pursuant to a deemed Severance from Employment under Code section 414(u)(12)(B)(i) and (2) shall be subject to the elective deferral suspension rules described in Code section 414(u)(12)(B)(ii).

## **ARTICLE IV PLAN INVESTMENTS AND ACCOUNTING**

### **Section 4.1    Selection of Investment Fund**

A Participant must select the Investment Funds in which contributions made on his or her behalf are to be invested in accordance with this Article IV and procedures adopted by the Plan Administrator.

### **Section 4.2    Investment of Contributions**

- (a)    **Allocation to Investment Funds.** A Participant shall direct that contributions made on his or her behalf be invested in one or more Investment Funds. A Participant may allocate, in whole percentages only, contributions made on his or her behalf among Investment Funds.
- (b)    **Contribution Allocation and Transfers.**
  - (1)    **Change in Contribution Allocations.** A Participant may change the manner in which contributions made on his or her behalf are to be invested at any time. Any such change shall take effect as soon as administratively practicable.
  - (2)    **Transfers.** In accordance with procedures established by the Plan Administrator, a Participant may transfer amounts in his or her Account among the Investment Funds. Any such change shall take effect as soon as administratively practicable.
- (c)    **Self-Directed Plan.** The Plan shall be a participant-directed plan. The Plan Administrator, Program Administrator and any other person who may be a fiduciary with respect to the Plan for any reason shall not be responsible for any losses resulting from a Participant's or Beneficiary's investment decisions, including a deemed investment decision resulting because of the investment of all or a portion of an Account in the default Investment Fund described in Section 2.4(b).

## **ARTICLE V VESTING AND FORFEITURES**

### **Section 5.1 Fully Vested Employee Contribution Accounts**

The amount of each Participant's Account attributable to contributions under Section 3.2 of the Plan, and the applicable earnings thereon, shall be 100% vested at all times.

### **Section 5.2 Vesting of Employer Contributions**

#### **(a) Types of Contributions.**

- (1) Matching Contributions.** Each Participant's Employer Matching Account is vested based on the schedule provided in the Adoption Agreement.
- (2) Nonelective Contributions.** Each Participant's Employer Nonelective Account is vested based on the schedule provided in the Adoption Agreement.

- (b) Separate Bookkeeping Accounts.** Employer contributions subject to different vesting schedules will be credited to separate bookkeeping accounts. Any portion of such account in which the Participant is not vested shall be accounted for separately and treated as a contract to which Code section 403(c) (or another applicable provision of the Internal Revenue Code) applies.

### **Section 5.3 Vesting on Plan Termination**

If the Plan terminates, each Participant's unforfeited Account shall be 100% vested at such time.

### **Section 5.4 Forfeitures**

As selected in the Adoption Agreement, all forfeitures shall be applied either to reduce the contributions thereafter required of the Employer or to pay any administrative expenses of the Plan, or for both purposes. No such forfeiture shall be used or applied to increase the benefit then or thereafter payable to any Participant over the amount provided by the express terms of this Plan.

## ARTICLE VI DISTRIBUTION OF BENEFITS

### Section 6.1    Distribution Events

- (a)    **Elective Deferrals and Roth Elective Deferrals Accounts.** Upon a Participant's Severance from Employment, or as provided in Article VIII and Section 12.16, or, to the extent provided for in the Adoption Agreement, upon attaining age 59½, incurring a Disability, receiving a qualified reservist distribution described in Code section 72(t)(G), or having a deemed Severance from Employment while in military service, subject to the requirements of this Section 6.1(a), the Participant may elect to have the value of his or her Elective Deferrals Account and Roth Elective Deferrals Account distributed to him or her in one of the forms described in Section 6.3, below. Benefit payments will commence as soon as administratively practicable following receipt of a Participant's properly completed application to commence payment of benefits.
  - (1)    **Qualified Reservist Distribution.** If provided for in the Adoption Agreement and permitted by a Funding Agent, a qualified reservist distribution as described in Code section 401(k)(2)(B)(i)(V) shall be distributed as permitted under Code section 72(t)(2)(G) and applicable guidance thereunder.
  - (2)    **Deemed Severance from Employment While in Military Service.** For purposes of this Section, if provided for in the Adoption Agreement, a Participant shall be treated as having a Severance from Employment during any period the Participant is performing service in the uniformed services described in Code section 3401(h)(2)(A). A Participant who elects to receive a distribution pursuant to this Section may not make an Elective Deferral Contribution or Roth Elective Deferral Contribution during the 6-month period beginning on the date of the distribution.
- (b)    **Employer Contributions.** Except as provided in Article VIII and Section 12.16, a Participant is entitled to receive a distribution from his or her Account attributable to Employer contributions in accordance with the following provisions:
  - (1)    Custodial Account upon:
    - (A)    **Severance.** When the Participant has a Severance from Employment;
    - (B)    **Death.** Upon the Participant's death;



- (C) **Age 59.5.** If provided for in the Adoption Agreement, when the Participant attains age 59.5; and
  - (D) **Disability.** If provided for in the Adoption Agreement, upon disability.
- (2) Annuity Contract upon:
  - (A) **Severance.** When the Participant has a Severance from Employment;
  - (B) **Death.** Upon the Participant's death;
  - (C) **Disability.** If provided for in the Adoption Agreement, upon disability;
  - (D) **Years Requirement.** If provided for in the Adoption Agreement, after a fixed number of Years of Service; and
  - (E) **Age Requirement.** If provided for in the Adoption Agreement, upon attainment of a specified age.
- (c) **Special Rule for Rollover Accounts and Roth Rollover Accounts.** If provided for in the Adoption Agreement, a Participant may withdraw his or her Rollover Account and/or Roth Rollover Account at any time in the manner established by the Plan Administrator.
- (d) **Transfers.** A Participant may transfer a portion of his or her Account to a tax-qualified defined benefit governmental plan (as defined in Code section 414(d)) in accordance with Section 6.8.
- (e) **Impact of Death.** If a Participant dies before his or her Account is fully distributed, his or her Beneficiary is entitled to a distribution of his or her Account in accordance with Article VII.
- (f) **Transfers Generally.** If provided for in the Adoption Agreement, the Plan Administrator may permit the transfer of assets to a 401(a) plan to purchase service credit, subject to the restrictions in Section 6.1(g), for a Participant or Beneficiary if:
  - (1) The Plan provides for direct transfers of assets to purchase service credit pursuant to the Adoption Agreement;
  - (2) The Participant is an Employee or former Employee of the Employer;
  - (3) The Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the

accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer; and

- (4) The transferred amounts are subject to statutory restrictions on distributions that are not less stringent than those imposed under the transferor Plan.
- (g) **Transfers to a Code Section 401(a) Plan to Purchase Service Credit.** If provided for in the Adoption Agreement, the Plan Administrator may permit the transfer of assets to a Code section 401(a) plan to purchase service credit for a Participant or Beneficiary if:
  - (1) The Plan provides for direct transfers of assets to purchase service credit pursuant to the Adoption Agreement.
  - (2) The Participant is also a Participant in a tax-qualified defined benefit governmental plan (as defined in Code section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant. Such transfer may be made before the Participant has had a Severance from Employment.
  - (3) The transfer is either for the purchase of permissive service credit (as defined in Code section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code section 415 does not apply by reason of Code section 415(k)(3).

## **Section 6.2 Distribution On Account of Hardship**

- (a) **General Rule.** Unless otherwise provided for the Adoption Agreement, and subject to the provisions of this Section 6.2, a Participant, upon written application, may request a hardship withdrawal from his or her Elective Deferrals Account if:
  - (1) **Immediate and Pressing Financial Need.** The Participant has an immediate and heavy financial need as described in Section 6.2(d); and
  - (2) **Necessary to Satisfy Financial Need.** The withdrawal is necessary to satisfy the immediate and heavy financial need pursuant to Treasury Regulation section 1.401(k)-1(d)(3)(iv)(E).

A hardship distribution made pursuant to this Section 6.2 shall be paid in a lump sum.

- (b) **Inclusion of Taxes and Penalties.** An “immediate and pressing financial need” includes all taxes and penalties attributable to a distribution.

- (c) **Approval.** If provided for in the Adoption Agreement, the Plan Administrator's approval is required for each hardship withdrawal request. Otherwise, the Funding Agent shall process each hardship withdrawal request.
- (d) **Immediate and Pressing Financial Need.** Under Section 6.2(a)(1), in accordance with Treasury Regulation section 1.401(k)-1(d)(3)(iii)(B), a withdrawal is treated as on account of an immediate and heavy financial need of the Participant if the withdrawal is on account of:
  - (1) **Medical Care.** Expenses for medical care described in Code section 213(d) previously incurred by the Participant, the Participant's Spouse, any dependents of the Participant (as defined in Code section 152), or a primary Beneficiary, or amounts necessary for these persons to obtain medical care described in Code section 213(d);
  - (2) **Principal Residence.** Purchase (excluding mortgage payments) of a principal residence of the Participant;
  - (3) **Educational Fees.** Tuition payment and related educational fees for the next twelve months of post-secondary education for the Participant, a dependent (as defined in Code section 152, without regard to Code sections 152(b)(1), (b)(2) and (d)(1)(B)) in his or her immediate family, or a primary Beneficiary;
  - (4) **Eviction.** Need to prevent the eviction of the Participant from his or her principal residence or foreclosure on the Participant's principal residence;
  - (5) **Funeral Expenses.** Payments for burial or funeral expenses for the Participant's deceased parents, Spouse, children, dependents (as defined in Code section 152, without regard to Code section 152(d)(1)(B)), or primary Beneficiary; and
  - (6) **Casualty.** Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).
- (e) **Necessary to Satisfy Financial Need.** In order to satisfy the requirement described in Section 6.2(a)(2), the Plan Administrator shall, unless it has actual knowledge to the contrary, rely on a Participant's certification that the need cannot be reasonably relieved by:
  - (1) **Insurance.** Reimbursement or compensation by insurance or otherwise;
  - (2) **Liquidation of Assets.** Liquidation of the Participant's assets;

- (3) **Cessation of Contributions.** Cessation of Salary Reduction Contributions;
  - (4) **Distributions and Loans.** Distributions or nontaxable loans from this Plan or any other plan of the Employer or any other employer; and
  - (5) **Commercial Loans.** Loans from commercial sources at reasonable commercial terms.
- (f) **Source of Hardship Withdrawal.** The Investment Funds that serve as the source of a hardship withdrawal shall be based on the hierarchy established by the Plan Administrator. Unless otherwise provided for in the Adoption Agreement, only contributions described in Section 3.2, with no adjustment for earnings, may be distributed in a hardship withdrawal. If provided for in the Adoption Agreement, Matching Contributions, Nonelective Contributions, rollover contributions, and Roth rollover contributions and earnings on such contributions may be distributed in a hardship withdrawal. Any contributions otherwise available to the Participant for a hardship withdrawal shall be reduced by the amount of any distributions of such contributions previously made to the Participant.
- (g) **Suspension and Limitation of Salary Reduction Contributions.** A Participant's Salary Reduction Contributions under this Plan, and his or her contributions under all other plans except Code section 125 plans and any other plans exempt from this requirement pursuant to applicable Code requirements that are maintained by the Employer must be suspended for six months upon approval of the hardship withdrawal request.
- (h) **Contribution Agreement.** After the suspension period described in Section 6.2(g) has ended, the Plan Administrator shall notify the Participant that a new Contribution Agreement must be filed to resume contributions and, if applicable, to restart an automatic increase election effective as soon as administratively practicable after the last day of the suspension period, provided the Participant is an Eligible Employee at the time.

### **Section 6.3 Method of Distribution**

A Participant may elect to have the value of his or her Account distributed in accordance with the options provided for in the Adoption Agreement. If a Participant fails to make a timely election of a payment option, the default method of distribution to a Participant under this Plan shall be as provided for in the Adoption Agreement. In no event shall the Program Administrator, Plan Administrator, or Employer be liable for any gains or losses due to a delay in payment of a Participant's Account.

## **Section 6.4 Automatic Benefit Payments**

Notwithstanding any provision of the Plan to the contrary, distribution must be made in accordance with the provisions of this Section 6.4, if applicable.

- (a) **Required Commencement Under Code Section 401(a)(9).** The Plan shall comply with the minimum distribution requirements of Code section 401(a)(9) and the Treasury Regulations thereunder in accordance with the terms governing each Funding Vehicle, unless and to the extent otherwise permitted by law and in regulations or other rules of general applicability published by the Department of the Treasury or the Internal Revenue Service. For purposes of applying the distribution rules of Code section 401(a)(9), each Funding Vehicle is treated as an individual retirement account and distributions shall be made in accordance with the provisions of Treasury Regulation section 1.408-8, except as provided in Treasury Regulation section 1.403(b)-6(e).
- (b) **Mandatory Distribution of De Minimis Accounts.**
  - (1) **General Rule.** To the extent provided in the Adoption Agreement, if a Participant has a Severance from Employment and the value of a Participant's Account does not exceed \$5,000 (determined including or excluding a Participant's Rollover Account as provided in the Adoption Agreement), the Plan shall distribute the Participant's entire Account in a lump sum as soon as administratively practicable following the date of the Participant's Severance from Employment.
  - (2) **Mandatory Rollover.** Notwithstanding the above, in the event of a mandatory distribution of greater than \$1,000 under Section 6.4(b)(1), if a Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan (as defined in Section 6.5(a)(2)) in a Direct Rollover (as defined in Section 6.5(a)(3)), or to receive the distribution directly in a lump sum accordance with this Article VI, then the Plan will pay the distribution in a Direct Rollover to an individual retirement plan designated by the Plan Administrator in accordance with the requirements of Code section 401(a)(31)(B).

## **Section 6.5 Rollover to Another Plan or IRA**

- (a) **Rollover Distributions.** A Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution that is equal to at least \$500 paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. For purposes of this Section, the following definitions apply:
  - (1) **"Eligible Rollover Distribution"** means a distribution of all or any portion of the balance to the credit of the Distributee, except that an

Eligible Rollover Distribution does not include: (A) 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 Beneficiary, or for a specified period of 10 years or more; (B) any distribution to the extent distribution is required under Code section 401(a)(9); and (C) a hardship distribution.

- (2) **“Eligible Retirement Plan”** means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b) (other than an endowment contract), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), and an eligible plan 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 political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or a qualified trust described in Code section 401(a) that accepts the Distributee's Eligible Rollover Distribution. An Eligible Retirement Plan also includes a Roth individual retirement account or annuity described in Code section 408A, subject to the limitations set forth in such Code provision; provided, however, that the Plan Administrator is not responsible for assuring that a Distributee is eligible to make such a rollover. This definition of eligible retirement plan also applies in the case of a distribution to a surviving Spouse. With respect to the rollover of Roth funds, the term Eligible Retirement Plan means a Code section 401(a) or 403(b) plan with a Roth elective deferral account as described in Code section 402A to the extent that such a rollover is permitted under Code section 402(c).
- (3) **“Direct Rollover”** means a payment by the Plan directly to the Eligible Retirement Plan specified by the Distributee.
- (4) **“Distributee”** means a Participant, the Participant's Spouse or surviving Spouse, and the Participant's Spouse or former Spouse who is the Alternate Payee.
- (b) **Non-Spouse Rollovers.** A non-spouse Beneficiary may elect to make a direct rollover to an inherited individual retirement account or annuity described in Code section 408(a) or Code section 408(b), or a Roth individual retirement account or annuity described in Code section 408A that is established on behalf of the Beneficiary. Such rollover shall be made in a manner consistent with Code section 402(c)(11) and any other applicable guidance.

## **Section 6.6    Timing, Notice, and Election Rules**

To request a distribution of his or her benefits, a Participant must make application therefor in accordance with the procedures established by the Plan Administrator. A Participant's election of benefit is subject to the following rules:

- (a) **Notice to Payees.** To the extent required by applicable law, the Plan Administrator will furnish each Participant with a general notice of distribution no less than 30 and no more than 180 days before the date of the commencement of the Participant's benefits; provided, however, that a Participant may commence his or her benefits prior to such date by waiving such 30 day period via an affirmative distribution election. The notice will be in writing, will be given to the Participant in person or by mail, and will set forth an explanation of such information as may be required under the Code, applicable Treasury Regulations, and any other applicable law, including, but not limited to, as applicable, the requirements of Code section 402(f).
- (b) **Timing for Change of Payment Option or Payment Election.** A Participant may change his or her election of a form of payment any number of times before the date his or her benefits are to commence or such later date as may be required by the Code or applicable Treasury Regulations by filing the appropriate form with the Plan Administrator. In addition, a Participant may revoke an affirmative distribution election until the date his or her benefits commence.

#### **Section 6.7 Consent of Spouse**

- (a) **Consent Requirements.** Whenever the terms of this Plan, as made applicable through an election in the Adoption Agreement, require that the consent of a Participant's Spouse be obtained, the consent will be valid only if it:
  - (1) **Written Form.** Is in writing;
  - (2) **Designation of Beneficiary.** Designates a Beneficiary which may not be changed without spousal consent;
  - (3) **Spousal Acknowledgement.** Contains an acknowledgment by such Spouse of the effect of such consent; and
  - (4) **Witness by Notary Public.** Is witnessed by a notary public.
- (b) **Unavailability of Spouse.** Notwithstanding the foregoing, the consent of a Participant's Spouse is not required in the event that the Participant establishes to the satisfaction of the Plan Administrator that he or she has no Spouse, that such Spouse cannot be located, or under such other circumstances as may be permitted under applicable Treasury Regulations.

- (c) **Spousal Consent Irrevocable.** Any consent of the Participant's Spouse obtained in accordance with the provisions of this Section 6.7 will be irrevocable.
- (d) **Legal Separation or Abandonment.** Unless a Domestic Relations Order requires otherwise, a Spouse's consent is not required (and, is deemed given) if the Participant is legally separated or the Participant has been abandoned (within the meaning of local law) and the Participant has a court order to such effect.
- (e) **Applicability.** The provisions of this Section 6.7 will only apply to the extent they are provided for in the Adoption Agreement.

#### **Section 6.8 Transfers to Purchase Service Credit**

- (a) **General Rule.** If elected in the Adoption Agreement, purchases of service credit shall be permitted under the Plan as provided in this section.
- (b) **Eligibility.** If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account transferred to the defined benefit governmental plan. A transfer may be made before the Participant has had a Severance from Employment.
- (c) **Transfer Requirements.** A transfer may be made under this Section 6.8 only if the transfer is either for the purchase of permissive service credit (as defined in Code section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code section 415 does not apply by reason of Code section 415(k)(3).

#### **Section 6.9 Transfers to Provide Additional Defined Benefits**

Notwithstanding any provision of the Plan to the contrary, once becoming eligible to receive a distribution under the Plan each Participant may voluntarily elect to transfer all or a portion of his Account to the Teachers' and State Employees' Retirement System of North Carolina ("TSERS") to receive an additional benefit as provided under the TSERS' terms. Any transfer shall be subject to any rules or other limitations as provided under TSERS.



## **ARTICLE VII DISTRIBUTIONS AFTER DEATH**

### **Section 7.1 Distributions to a Beneficiary**

- (a) **Distributions Commencing Before Death.** If the distribution of a Participant's Account under the Plan has begun in accordance with the provisions of Article VI and the Participant dies before his or her entire Account has been distributed to him or her, the remaining portion of such benefits will be distributed to his or her Beneficiary in accordance with the form of benefit elected prior to the Participant's death, unless the Adoption Agreement allows the Beneficiary to elect to receive such amounts in an optional form that distributes the remaining interest at least as rapidly as the method of distribution elected by the Participant prior to the Participant's death.
- (b) **Distributions Commencing After Death.** If a Participant dies before he or she has begun to receive distribution of his or her benefit under the Plan or no distribution election is currently in effect with respect to the Participant under Article VI, his or her benefit will be distributed to his or her Beneficiary in one of the methods of distribution set forth in Section 6.3 as soon as administratively practicable following the Participant's death.
- (c) **Application of Minimum Distribution Rules.** Notwithstanding any provision of the Plan to the contrary, payments to a Beneficiary under this Section 7.1 shall be made in compliance with the requirements of Code section 401(a)(9), including the minimum distribution incidental benefit rule of Code section 401(a)(9)(G), and any applicable Treasury Regulations thereunder which shall be applied based on a reasonable and good faith interpretation of the requirements of Code section 401(a)(9).
- (d) **Application of Other Distribution Rules.** The following rules applicable to Participants under Article VI also apply to a Beneficiary:
  - (1) **Automatic Benefit Payment Rules.** The automatic benefit payment rules in Section 6.4(a) and Section 6.4(b)(1)); and
  - (2) **Rollover Rules.** The rollover rules in Section 6.5 to the extent applicable under the Code and applicable Treasury Regulations; and
  - (3) **Notice Rules.** The notice rules in Section 6.6 to the extent applicable under the Code and applicable Treasury Regulations.

### **Section 7.2 Designation of Beneficiary**

- (a) **Designation Process.** A Participant has the right to designate a Beneficiary to receive any benefits provided by the Plan under Article VI or Article VII after the death of the Participant. This designation of a Beneficiary will not be effective for any purpose unless and until it has been filed on an appropriate form by the Participant with the Plan Administrator. This designation will take effect prospectively only, and without prejudice to any payer or payee on account of any payments made before receipt of the appropriate form by the Plan Administrator.
- (b) **Legal Requirements.** Notwithstanding Section 7.2(a), the following provisions will apply:
  - (1) **Spousal Rights.** A Participant's default Beneficiary will be his or her estate.
  - (2) **Changing a Designation.** A Participant may change his or her Beneficiary any number of times.
  - (3) **Disclaimer.** A Beneficiary may disclaim Plan benefits by filing a disclaimer with the Plan Administrator before the earlier of (a) the date a check for Plan benefits is sent to such Beneficiary, or (b) nine months after the Beneficiary becomes entitled to a benefit under the Plan. A disclaimer is valid only if it qualifies under Code section 2518 and is valid under applicable state law. If a Beneficiary timely files a disclaimer with the Plan, the benefits will pass as if the Beneficiary had predeceased the Participant.
  - (4) **Default Beneficiary.** If a Participant dies without having a valid Beneficiary designation in effect, the Participant's Account will be distributed to the deceased Participant's default Beneficiary.
  - (5) **Death of Beneficiary After Participant Death.** If the Beneficiary dies after the death of the Participant but prior to distribution of the Participant's Account, the Participant's Account will be distributed to the Participant's contingent Beneficiary, or, if there is no contingent Beneficiary, to the Participant's default Beneficiary.

### **Section 7.3    Consent of Spouse**

- (a) **Consent Requirements.** Whenever the terms of this Plan, as made applicable through an election in the Adoption Agreement, require that the consent of a Participant's Spouse be obtained, the consent will be valid only if it:
  - (1) **Written Form.** Is in writing;

- (2) **Designation of Beneficiary.** Designates a Beneficiary which may not be changed without spousal consent;
- (3) **Spousal Acknowledgement.** Contains an acknowledgment by such Spouse of the effect of such consent; and
- (4) **Witness by Notary Public.** Is witnessed by a notary public.
- (b) **Unavailability of Spouse.** Notwithstanding the foregoing, the consent of a Participant's Spouse is not required in the event that the Participant establishes to the satisfaction of the Plan Administrator that he or she has no Spouse, that such Spouse cannot be located, or under such other circumstances as may be permitted under applicable Treasury Regulations.
- (c) **Spousal Consent Irrevocable.** Any consent of the Participant's Spouse obtained in accordance with the provisions of this Section 7.3 will be irrevocable.
- (d) **Legal Separation or Abandonment.** Unless a Domestic Relations Order requires otherwise, a Spouse's consent is not required (and, is deemed given) if the Participant is legally separated or the Participant has been abandoned (within the meaning of local law) and the Participant has a court order to such effect.

## **ARTICLE VIII DOMESTIC RELATIONS ORDERS**

### **Section 8.1 Domestic Relations Order**

- (a) **General Rule.** 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, 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.
- (b) **Procedures.** The Plan Administrator, pursuant to established procedures, shall determine whether such an order satisfies the requirements for a Domestic Relations Order.
- (c) **Timing of Payments to Alternate Payees.** Any amount which becomes payable to an Alternate Payee under a Domestic Relations Order may be paid at any time after qualification of the Domestic Relations Order even though the Participant may not be entitled to payment under the Plan at that time. The payment to an Alternate Payee must be in a form available to Participants under the Plan.

## ARTICLE IX LOANS

### Section 9.1    **Loan Program**

- (a)    **General Rule.** To the extent provided in the Adoption Agreement, a Participant may request a loan from his or her Account subject to the provisions of the Loan Administration Policy.
- (b)    **Maximum Amount.** No loan to any Participant can be made to the extent that such loan when added to the outstanding balance of all other loans to the Participant would exceed the lesser of (a) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (b) one-half the present value of the nonforfeitable accrued benefit of the Participant or, if greater, the total accrued benefit up to \$10,000. For the purpose of the above limitation, all loans from all plans of the Employer and Related Employers are aggregated.
- (c)    **Term of Loan.** Any loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan. If such loan is used to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant, the amortization period shall not extend beyond the period specified in the Loan Administration Policy.
- (d)    **Assignment or Pledge.** An assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan under this Section 9.1.
- (e)    **Repayment.** The terms governing the applicable Investment Fund and/or Funding Agent's policies shall determine the method of repayment of loans. Loans will be repayable by payroll withholding if elected in the Adoption Agreement and to the extent permitted under the terms of the applicable Investment Fund and/or Funding Agent's policies.

## **ARTICLE X PLAN ADMINISTRATION**

### **Section 10.1 Plan Administrator**

This Plan shall be administered by the Plan Administrator as specified in the Adoption Agreement.

### **Section 10.2 Duties and Powers of the Program Administrator**

- (a) **Powers.** The Program Administrator shall have the following specific duties and powers:
  - (1) To maintain the written volume submitter plan document for the North Carolina Public School Teachers' and Professional Educators' Investment Plan 403(b) Volume Submitter Plan. In no event shall the Program Administrator be responsible for the day-to-day administration of a specific Plan;
  - (2) To select, modify, and/or replace the Funding Agent(s) for the North Carolina Public School Teachers' and Professional Educators' Investment Plan;
  - (3) To select, modify, and/or replace the Funding Vehicle(s) for the North Carolina Public School Teachers' and Professional Educators' Investment Plan;
  - (4) To select, modify, and/or replace the Investment Funds for the North Carolina Public School Teachers' and Professional Educators' Investment Plan to be offered to Participants as part of the selected Funding Vehicle(s) consistent with the requirements of Code section 403(b) and the Treasury Regulations thereunder;
  - (5) To appoint, monitor and remove one or more investment manager(s), to manage any portion of the North Carolina Public School Teachers' and Professional Educators' Investment Plan's assets or an insurance company single-client or pooled separate account, including the exercise of any voting rights of any securities managed by the investment manager to the extent that such structures are consistent with Code section 403(b) and the Treasury Regulations thereunder;
  - (6) To establish, modify, and revise the North Carolina Public School Teachers' and Professional Educators' Investment Plan's overall

investment policy, including asset allocation, investment policy statement or investment guidelines, and any other items related thereto;

- (7) To direct Funding Agent(s) with respect to the investment and management of the Plan's assets, including any voting rights for any securities held by the custodian; and
  - (8) To direct the Funding Agent(s) to pay investment-related expenses properly chargeable to the Plan.
- (b) **Delegation.** The Program Administrator may delegate, to the extent provided by law, any or all of its responsibilities under the Plan. In such case, such other person shall have the duties and powers as the Program Administrator as set forth in this Plan document, including the complete discretion to interpret and construe the provisions of the Plan (but only to the extent such authority is granted to the Program Administrator pursuant to the provisions of this Section 10.2) and shall be afforded the same deference and arbitrary and capricious level of review afforded to the Plan Administrator.
- (c) **Rights Not Granted to Employers or Plan Administrator.** In no event may the duties and powers provided to the Program Administrator be delegated to or otherwise assumed by the Employer or the Plan Administrator.
- (d) **Restriction on Ability to Amend Section 10.2.** In addition, notwithstanding any provision of the Plan to the contrary, including specifically Section 11.1, this Section 10.2 may not be amended without the written consent of the Program Administrator.

### **Section 10.3 Duties and Powers of the Plan Administrator**

- (a) **General Rule.** The Plan Administrator shall have the general responsibility for the administration of the Plan and for carrying out its provisions. In addition to the duties and powers described elsewhere hereunder, the Plan Administrator shall have the discretion and authority to control and manage the operation and administration of the Plan.
- (b) **Administrative Duties and Powers.** The Plan Administrator shall have all other duties and powers necessary or desirable to administer the Plan, including, but not limited to, the following:
- (1) To communicate the terms of the Plan to Participants and Beneficiaries;
  - (2) To prescribe procedures and related forms (which may be electronic in nature) to be followed by Participants and Beneficiaries, including forms and procedures for making elections and contributions under the Plan;

- (3) To receive from Participants and Beneficiaries such information as shall be necessary for the proper administration of the Plan;
- (4) To keep records related to the Plan, including any other information required by the Code;
- (5) To appoint, discharge and periodically monitor the performance of third party administrators, insurers, service providers, other agents, consultants, accountants and attorneys in the administration of the Plan;
- (6) To determine whether any domestic relations order received by the Plan is a Domestic Relations Order;
- (7) To prepare and file any reports or returns with respect to the Plan required by the Code;
- (8) To correct errors and make equitable adjustments for mistakes made in the administration of the Plan;
- (9) To issue rules and regulations necessary for the proper conduct and administration of the Plan and to change, alter, or amend such rules and regulations;
- (10) To determine all questions arising in the administration of the Plan, to the extent the determination is not the responsibility of a third party administrator, insurer or some other entity;
- (11) To propose and accept settlements of claims of Participants and Beneficiaries involving the Plan;
- (12) To determine whether an Employee is eligible to participate in the Plan;
- (13) To determine whether contributions comply with applicable limitations;
- (14) To determine whether hardship withdrawals and loans comply with applicable requirements and limitations;
- (15) To determine whether the Plan's requirements and the requirements of Code section 403(b) are properly applied; and
- (16) Such other duties or powers provided in the Plan or necessary to administer the Plan.



- (c) **Additional Powers.** The Plan Administrator shall have the powers necessary or desirable to carry out these responsibilities, including, but not limited to, the following:
- (1) To prescribe procedures and related forms (which may be electronic in nature) to be followed by Participants and Beneficiaries filing claims for benefits under the Plan;
  - (2) To receive from Participants and Beneficiaries such information as shall be necessary for the proper determination of benefits payable under the Plan;
  - (3) To keep records related to claims for benefits filed and paid under the Plan;
  - (4) To determine and enforce any limits on benefit elections hereunder;
  - (5) To correct errors and make equitable adjustments for mistakes made in the payment or nonpayment of benefits under the Plan, specifically, and without limitation, to recover erroneous overpayments made by the Plan to a Participant or Beneficiary, in whatever manner the Committee deems appropriate, including suspensions or recoupment of, or offsets against, future payments, including benefit payments or wages, due that Participant, dependent or Beneficiary;
  - (6) To determine questions relating to coverage and participation under the Plan and the rights of Participants or Beneficiaries to the extent the determination is not the responsibility of a third party administrator, insurer or some other entity;
  - (7) To propose and accept settlements and offsets of claims, overpayments and other disputes involving claims for benefits under the Plan;
  - (8) To compute the amount and kind of benefits payable to Participants and Beneficiaries, to the extent such determination is not the responsibility of a third party administrator, insurer, or some other entity; and
  - (9) To direct any third party to pay benefits and any Plan expenses properly chargeable to the Plan that are related to claims for benefits.

#### **Section 10.4 Delegation of Plan Administrator Authority**

The Plan Administrator shall be deemed to have delegated its responsibilities for determining benefits, eligibility for benefits, and/or other plan operations to a third party administrator, insurer or other fiduciary where such person has been appointed by the Plan

Administrator or its delegate to make such determinations. In such case, such other person shall have the duties and powers as the Plan Administrator as set forth in this Plan document, including the complete discretion to interpret and construe the provisions of the Plan and shall be afforded the same deference and arbitrary and capricious level of review afforded to the Plan Administrator.

### **Section 10.5 Interpretive Authority and Conclusiveness**

The Plan Administrator shall have complete discretion to interpret and construe the provisions of the Plan, make findings of fact, correct errors, and supply omissions. All decisions and interpretations of the Plan Administrator made pursuant to the Plan shall be final, conclusive and binding on all persons and may not be overturned unless found by a court to be arbitrary and capricious. For purposes of clarity, the foregoing shall in no way be construed or interpreted to grant to the Plan Administrator any of the authority vested in the Program Administrator; provided, however, that with respect to areas within its authority pursuant to this Plan or other applicable law, the Program Administrator shall have the same discretionary authority and conclusive, final, and binding authority that would apply to actions of the Plan Administrator.

### **Section 10.6 Expenses**

All fees and expenses incurred in connection with the operation and administration of the Plan, including, but not limited to, legal, accounting, actuarial, investment, management, and administrative fees and expenses may be paid out of the assets of the Plan to the extent that it is legally permissible for these fees and expenses to be so paid. The Employer may, but is not required, to pay such fees and expenses directly. The Employer may also advance amounts properly payable by the Plan and then obtain reimbursement from the Plan for these advances.

### **Section 10.7 Claims Procedures**

- (a) **Initial Claim.** Claims for benefits under the Plan made by a Participant, Beneficiary, or any other person or entity who may be eligible to receive benefits under the Plan (collectively, a “claimant”) must be submitted in writing to the Plan Administrator at such address as may be specified from time to time. In addition, the Plan Administrator, in its sole discretion, may treat any writing or other communication (sent or forwarded to the Plan Administrator) related to a claimant’s benefits as a claim for benefits under these procedures, even if the writing or communication is not labeled as a claim for benefits.

If a claim is denied in whole or in part, the Plan Administrator shall notify the claimant of its decision by written or electronic notice, in a manner calculated to be understood by the claimant. A claim is considered approved only if its approval is communicated in writing to a claimant.

- (b) **Review of Denied Claims.** The Plan Administrator shall establish procedures for a claimant or his or her duly authorized representative to obtain a full and fair review of a denied claim.
- (c) **Exhaustion and Statute of Limitations.** A claimant may not commence a civil action in court for any benefit claim until he or she has fully exhausted the claims procedures established by the Plan Administrator. A claimant who has fully exhausted these claims procedures may file a civil action in the State Court of Wake County, North Carolina. If a civil action is not filed within this one-year period, the claimant's benefit claim will be deemed waived and abandoned.
- (d) **All Other Claims.** Any other claims that arise under, or in connection with, the Plan must also be filed with the Plan Administrator and will be considered in accordance with the procedures described in this Section 10.7.

### **Section 10.8 Indemnification**

The Plan Administrator, the Program Administrator, any employees of the Program Administrator, and any other person who is an Employee of the Employer (or a former Employee of the Employer) shall be indemnified and held harmless by the Employer against and with respect to all damages, losses, obligations, liabilities, liens, deficiencies, costs and expenses, including without limitation, reasonable attorney's fees and other costs incident to any suit, action, investigation, claim or proceedings to which he or she may be a party by reason of his or her performance of any functions and duties under the Plan, except in relation to matters as to which he or she shall be held liable for an act of gross negligence or willful misconduct in the performance of his or her duties. The foregoing right to indemnification shall be in addition to such other rights as the Plan Administrator, Program Administrator or other person may enjoy as a matter of law or by reason of insurance coverage of any kind. Rights granted hereunder shall be in addition to and not in lieu of any rights to indemnification to which the Plan Administrator, Program Administrator or other person may be entitled pursuant to the governing documents, including any applicable Record of Action, of the Employer. Any rights accruing to the Plan Administrator or Program Administrator under this Section 10.8 shall apply to any individual who serves as the Plan Administrator or Program Administrator on an individual basis or on a collective basis.

### **Section 10.9 Discharge of Obligation; Receipt and Release**

All payments from the Plan constitute a complete discharge of all obligations of the Plan, Program Administrator, Plan Administrator, and the Employer to the extent of the portion of the Account paid.

## **ARTICLE XI AMENDMENT OR TERMINATION OF PLAN**

### **Section 11.1 Plan Amendment**

- (a) **Amendment by the Employer.** The Employer may amend or modify the Plan in whole or in part, prospectively or retroactively, at any time, for any reason, including via amendments that cause the Plan to be an individually designed plan.
- (b) **Amendment by Program Administrator.** The Program Administrator may amend or modify the Plan in whole or in part, prospectively or retroactively, at any time, for any reason. Such amendments may be adopted at the individual Plan level or to the underlying Adoption Agreement and Base Plan Document that comprise the North Carolina Public School Teachers' and Professional Educators' Investment Plan 403(b) Volume Submitter Plan.

### **Section 11.2 Plan Termination**

- (a) **Termination by the Employer.** The Employer may terminate the Plan at any time, for any reason.
- (b) **Effect of Termination.** No termination or discontinuance of contributions may adversely affect the rights of a Participant to amounts credited to his or her Account prior to the termination or discontinuance of contributions to the extent such rights are protected by the Code. Upon such termination, the Employer shall have no further obligation to make allocations or otherwise contribute to the Plan. All Accounts will be fully vested. Plan assets, if any, shall be distributed at the direction of the Plan Administrator as soon as administratively practicable and consistent with the terms of the underlying Funding Vehicles provided that the Employer, and any related employer, as determined based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, does not make contributions to an alternative Code section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by Treasury Regulations.
- (c) **Compliance with Code Section 403(b) Requirements.** Notwithstanding any provision of the Plan to the contrary, any termination of the Plan pursuant to this Section must comply with Code section 403(b) and Treasury Regulation section 1.403(b)-10(a).

### **Section 11.3 Plan Merger or Consolidation**

The Employer reserves the right at any time and from time to time to merge or consolidate the Plan with another plan, to transfer assets or liabilities of the Plan to another plan,

or to accept a transfer of assets or liabilities from another plan to this Plan. No merger, consolidation, or transfer may be undertaken unless each Participant will be entitled to receive a benefit immediately after the merger, consolidation, or transfer which is no less than the benefit he would receive immediately prior to the merger, consolidation, or transfer if the Plan were terminated at that time.

## **ARTICLE XII MISCELLANEOUS**

### **Section 12.1 403(b) Plan**

This Plan is intended to be a tax-deferred annuity plan within the meaning of Code section 403(b), and, notwithstanding any provision to the contrary, shall be interpreted so as to be consistent with such section and all related Treasury Regulations.

### **Section 12.2 Word Usage**

In order to shorten and to improve the readability of the Plan document, phrases such as “Employee or Employees,” are used sparingly. Except where otherwise indicated by the context, any gender may be construed to include all genders, and the singular or plural may be construed to include the plural or singular, respectively.

### **Section 12.3 Headings**

The headings of articles, sections or other subdivisions hereof are included solely for convenience of reference, and if there is any conflict between such headings and the text of the Plan, the text shall control.

### **Section 12.4 Entire Agreement**

This Base Plan Document, the Adoption Agreement, any other associated documents, and any properly adopted amendment to the Plan shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No person shall have any interest in or right to any part of the assets or income of the Plan and any Plan assets held in a custodial account, except to the extent expressly provided in this Plan and a custodial account holding Plan assets. No oral statement regarding the Plan may be relied upon by the Participant. This Plan, and any properly adopted amendments, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assigns and on all designated Beneficiaries of the Participant.

### **Section 12.5 Employee Rights Not Expanded**

Participation in this Plan shall not be deemed to be an employment or agency contract between the Employer and any such Participant. Nor shall anything contained herein be deemed to give any Participant the right to be retained in the employ or agency of the Employer or to interfere with the right of the Employer to discharge any Participant at any time, nor shall it be deemed to give the Employer the right to require any Participant to remain in its employ or agency, nor shall it interfere with such Participant’s right to terminate his or her employment or agency at any time or, except as provided in the Plan, the right to any payment or benefit from the Plan, Plan Administrator or the Employer.

## **Section 12.6 Electronic Administration**

In its rules and procedures for the administration of the Plan (including, without limitation, procedures covering any directions, elections, or other action by Participants, and the delivery of statements and other disclosure materials to such individuals, regardless of whether the Plan states that such information be provided or actions take place in a written form), the Plan Administrator may provide for the use of electronic communications and other media as permitted by applicable Treasury Regulations.

## **Section 12.7 Severability**

If a provision of the Plan is held illegal or invalid, the illegality or invalidity does not affect the remaining parts of the Plan and the Plan must be construed and enforced as if the illegal or invalid provision had not been included in the Plan.

## **Section 12.8 Other Interpretive Principles**

When a reference is made in the Plan to Articles, Sections, or Appendices, such reference is to an Article or Section of or Appendix to this Plan unless otherwise indicated. The table of contents and headings contained in the Plan are for reference purposes only and shall not affect the meaning or interpretation of the Plan. Whenever the words “include,” “includes” or “including” are used in this Plan, they are deemed to be followed by the words “without limitation.”

## **Section 12.9 Required Information**

- (a) **Duty to Provide.** A Participant must furnish the Plan Administrator with such information or proof as requested.
- (b) **Plan Administrator Reliance.** The Plan Administrator may rely on any information furnished by a Participant and this information is conclusively binding upon the Participant furnishing the evidence, but is not binding upon Plan Administrator.
- (c) **False Statements.** If a person claiming benefits under the Plan makes a false statement that is material to the person’s claim for benefits, the Plan Administrator may adjust the benefits payable to the person or require that the payments be returned to the Plan, or take any other action as deemed reasonable.
- (d) **Failure of Participants to Comply With Request.** Failure on the part of a Participant to comply with a request by the Plan Administrator for information or proof within a reasonable period of time is sufficient grounds for delay in the payment of any benefits that may be due under the Plan until information or proof is received.

## **Section 12.10 Notice**

- (a) **Communications From Participants Or Beneficiaries.** Any notice, election, application, instruction, designation or other form of communication required to be given or submitted by any Employee or Participant will be in the form and delivery method as is prescribed from time to time by the Plan Administrator and is deemed to be duly given only upon actual receipt thereof.
- (b) **Communications From The Plan Administrator.** Any notice, statement, report and other communication from the Plan Administrator to any Employee or Participant required or permitted by the Plan will be deemed to have been duly given when delivered by hand to such person, mailed to such person at the address last appearing on the records of the Plan Administrator, or delivered electronically to such person.
- (c) **Mailing Address.** Each person entitled to receive a payment under the Plan must file with the Plan Administrator his or her complete mailing address and each change therein. A check or communication mailed to any person at the address on file with the Plan Administrator is deemed to have been received by such person for all purposes of the Plan, and no Employee or agent of the Plan Administrator is obligated to search for or ascertain the location of any such person except as required by applicable law. If the Plan Administrator is in doubt as to whether payments are being received by the person entitled thereto, it may, by registered mail addressed to such person at the address last known to the Plan Administrator, notify such person that all future payments will be withheld until such person submits to the Plan Administrator the proper mailing address and such other information as the Plan Administrator may reasonably request.

## **Section 12.11 No Alienation**

Except to the extent provided in Article VIII and Section 12.16, or as otherwise required by the Code, no benefit payable or, in accordance with Treasury Regulation section 1.403(b)-3(a)(5), investment arrangement contract under the Plan may be subject in any manner to anticipation, sale, transfer, assignment, pledge, encumbrance, security interest or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or grant a security interest in the same is void and of no effect; nor may any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

## **Section 12.12 Payments to Incompetents and Minors**

- (a) **Incompetency.** If the Plan Administrator is served with an order of a court of competent jurisdiction that declares that a person entitled to benefits under the terms of the Plan is unable for any reason (including, but not limited to, illness,



infirmity, or mental incapacity) to attend to his or her affairs, the Plan Administrator shall comply with such order. The Plan Administrator shall have no duty to investigate whether or not a person is competent.

- (b) **Guardianship.** If proof of legal guardianship satisfactory to the Plan Administrator is provided, payments owing to a person may be made to the person's legal guardian.
- (c) **Discharge of Liability.** Any payment to an individual described in this Section 12.12 shall be a complete discharge of all liability under the Plan with respect to such payment.

### **Section 12.13 Exclusive Benefit**

Prior to the satisfaction of all liabilities under the Plan in the event of termination of the Plan, no part of the corpus or income of the Plan shall be used for or diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries except as expressly provided in this Plan.

### **Section 12.14 Missing Participants and Beneficiaries**

If the Plan Administrator, after making a reasonably diligent effort in compliance with applicable Code guidance, cannot locate a Participant or Beneficiary, including by giving written notice addressed to the Participant or Beneficiary's last known address as shown in the records of the Employer, the amount payable to the Participant or Beneficiary is forfeited. If the Participant or Beneficiary subsequently applies for benefits, the amount so forfeited will be reinstated and paid to the Participant or Beneficiary. The Employer will make such contributions to the Plan as are necessary to reinstate the benefit.

### **Section 12.15 Conflict Between the Terms of the Funding Vehicles and the Plan Document**

In the event of a conflict between the terms of the Funding Vehicles provided by the Funding Agent and the terms of the plan document formed by the Adoption Agreement and the Base Plan Document, the terms established by the Adoption Agreement and the Base Plan Document shall control.

### **Section 12.16 IRS Levy**

The Plan Administrator may pay from a Participant's or Beneficiary's Account the amount that the Plan Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

## APPENDIX A – DEFINITIONS

Whenever used in the Plan and Adoption Agreement, the following terms, when capitalized, have the respective meanings set forth below unless otherwise expressly provided herein.

**“Account”** means the total of the sub-accounts maintained by the Funding Agent recording the interest of a Participant in the Plan. The Account is intended to satisfy Code section 403(b)(7) to hold assets of the Plan. The sub-accounts maintained under the Plan shall be the following:

- (a) **“Elective Deferrals Account”** means the account to which a Participant’s Elective Deferral Contributions, Catch-Up Contributions, and earnings and losses on such contributions are credited, to the extent such contributions are provided for in the Adoption Agreement.
- (b) **“Roth Elective Deferrals Account”** means the account to which a Participant’s Roth Elective Deferral Contributions, Roth Catch-Up Contributions, and earnings and losses on such contributions are credited, to the extent such contributions are provided for in the Adoption Agreement.
- (c) **“Rollover Account”** means the account to which a Participant’s rollover contributions made pursuant to Section 3.1(c) and earnings and losses on such contributions are credited, to the extent such contributions are provided for in the Adoption Agreement.
- (d) **“Roth Rollover Account”** means the account to which a Participant’s Roth rollover contributions made pursuant to Section 3.1(c) and earnings and losses on such contributions are credited, to the extent such contributions are provided for in the Adoption Agreement.
- (e) **“Employer Matching Account”** means the account to which the Employer Matching Contributions made pursuant to Section 3.3(a) and earnings and losses on such contributions are credited, to the extent such contributions are provided for in the Adoption Agreement.
- (f) **“Employer Nonelective Account”** means the account to which the Employer Nonelective Contributions made pursuant to Section 3.3(b) and earnings and losses on such contributions are credited, to the extent such contributions are provided for in the Adoption Agreement.

Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each of the Participant’s sub-accounts.

**“Active Participant”** means an Employee who satisfies the requirements to be an Active Participant under Article II.

**“Adoption Agreement”** means the accompanying document which sets forth certain Plan specifications and together with this Base Plan Document forms the Plan.

**“Alternate Payee”** means any person described in Code section 414(p)(8) and so designated under a Domestic Relations Order.

**“Base Plan Document”** means this document which sets forth certain Plan specifications and together with the Adoption Agreement forms the Plan.

**“Beneficiary”** means the person or persons designated by the Participant pursuant to the requirements set forth in Section 7.2. A Beneficiary designation shall only take effect once it is processed and put into effect by the Plan Administrator. In the absence of a written designation of a Beneficiary, the Beneficiary shall be the Participant’s estate. A Beneficiary shall have no rights hereunder during the Participant’s lifetime except as otherwise provided by law. If a Spouse is designated as a Beneficiary, a divorce decree with respect to such Spouse will not automatically revoke the designation of such former spouse as a Beneficiary.

**“Benefitable Compensation”** is defined as set forth in Section 2.3 of the Adoption Agreement. Benefitable Compensation for each Plan Year shall not exceed \$265,000 (as adjusted under Code section 415(d)) or such higher maximum as may apply under Code section 401(a)(17) and applicable Treasury Regulations thereunder.

**“Catch-Up Contribution Limit”** means the annual limit on Catch-Up Contributions and Roth Catch-Up Contributions under Code section 414(v)(2). The maximum dollar amount of the Catch-up Contributions and Roth Catch-Up Contributions for a year is \$6,000, and is adjusted for cost-of-living to the extent provided under the Internal Revenue Code for periods after 2015.

**“Catch-Up Contributions”** means pre-tax contributions by a Participant as described in Section 3.2(c).

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Computation Period”** means, except as provided pursuant to an election in the Adoption Agreement with respect to the calculation of vesting service, the initial 12 consecutive month period commencing on the date an Eligible Employee first completes an Hour of Service. Computation periods subsequent to the initial computation period will commence as of the first day of the Plan Year, beginning with the Plan Year that includes the first anniversary of the date the Eligible Employee first completes an Hour of Service.

**“Contribution Agreement”** means an agreement between the Employer and an Employee under the terms of which the Employer agrees to make certain contributions on the Employee’s behalf to fund a Funding Vehicle maintained by the Funding Agent.

**“Contribution Limit”** means the limit under Code section 402(g)(1)(B).

**“Disability”** means a disability within the meaning of Code section 72(m)(7).

**“Domestic Relations Order”** means a domestic relations order that meets the requirements of Code section 414(p) as applicable to the Plan that is approved pursuant to Article VIII.

**“Elective Deferral Contributions”** means pre-tax contributions by an Active Participant as described in Section 3.2(a).

**“Eligible Employee”** means an Employee eligible to participate in the Plan as specified in the Adoption Agreement.

**“Employee”** means a common law employee of a State performing services for a Public School of the State, including an individual who is appointed or elected, where the compensation is paid by the State. Further, a person occupying an elective or appointive public office is not an Employee performing services for a Public School unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State.

**“Employer”** means the plan sponsor named in the Adoption Agreement. No other employer will be included in this definition of Employer and employees of any such other employer are not eligible to participate in this Plan.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“Funding Agent”** means the vendor(s) identified in the Adoption Agreement and retained by the Program Administrator to provide the Funding Agent’s services in this Plan document. Funding Agent also includes the affiliates and vendors of the entity in the previous sentence.

**“Funding Vehicles”** means the terms of the annuity contract(s) as defined in Code sections 403(b)(1) and 401(g) and custodial account(s) provided by the Funding Agent which are incorporated herein by reference.

**“Hour of Service”** means the unit of time credited to an Eligible Employee for purposes of determining whether he or she has completed a Year of Vesting Service. Hours of Service will be credited for employment with other Related Employers. Except as provided in the Adoption Agreement, an Eligible Employee will be credited with Hours of Service as follows:

- (a) Each hour for which an Eligible Employee is paid, or entitled to payment, for the performance of duties for the Employer, which will be credited to the Eligible Employee for the computation period in which the duties are performed;

- (b) Each hour for which an Eligible Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence, except that no more than 501 Hours of Service will be credited under this subsection (2) for any single continuous period (regardless of whether such period occurs in a single computation period);
- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer, except that the same Hours of Service will not be credited both under subsection (1) or subsection (2), as the case may be, and under this subsection (3), and these Hours of Service will be credited to the Eligible Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

**“Investment Funds”** means the investment fund(s) available for the investment of a Participant’s Account that are held inside a Funding Vehicle.

**“Loan Administration Policy”** means the policy establishing the requirements and operational provisions of the Plan’s loan program.

**“Matching Contributions”** means matching contributions made by the Employer pursuant to Section 3.3(a).

**“Nonelective Contributions”** means nonelective contributions made by the Employer pursuant to Section 3.3(b).

**“North Carolina Public School Teachers' and Professional Educators' Investment Plan”** means the program established pursuant to N.C. Gen. Stat. §§115C-341.2 and 115D-25.4, for 403(b) plans sponsored by K-12 school districts and community colleges in the State of North Carolina under which the Department of State Treasurer and the Board of Trustees for the North Carolina Supplemental Retirement Plans, as Program Administrator, selects and contracts with Funding Agent(s) to provide recordkeeping and other services to the Code section 403(b) plans participating in the program.

**“Participant”** means an Eligible Employee or a former Eligible Employee who is entitled to any benefits under the Plan.

**“Plan”** means the plan identified in the Adoption Agreement.

**“Plan Administrator”** means the Plan Administrator, as specified in the Adoption Agreement. If no Plan Administrator is specified or the Plan Administrator ceases to exist for any reason, the Employer shall be the Plan Administrator. In no event shall the Program

Administrator be the Plan Administrator and any such designation in the Adoption Agreement shall be null and void.

**“Plan Year”** means the calendar year, unless otherwise provided in the Adoption Agreement.

**“Program Administrator”** means the Department of State Treasurer and the Board of Trustees for the North Carolina Supplemental Retirement Plans.

**“Public School”** means a State-sponsored educational organization described in Code section 170(b)(1)(A)(ii).

**“Qualified Organization”** means an educational organization described in Code section 170(b)(1)(A)(ii) and Treasury Regulation section 1.403(b)-4(c)(3)(ii).

**“Qualified Organization Catch-Up Contributions”** means pre-tax contributions by a Participant as described in Section 3.2(d).

**“Qualified Organization Roth Catch-Up Contributions”** means after-tax contributions by a Participant as described in Section 3.2(d).

**“Related Employer”** means the Employer and any other entity which is under common control with the Employer under Code section 414(b) or Code section 414(c). For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard.

**“Required Beginning Date”** means April 1 of the calendar year following the later of (a) the calendar year in which the Participant attains age 70½ or (b) the calendar year in which the Participant retires.

**“Rollover Contributions”** means rollover contributions made pursuant to Section 3.1(c).

**“Roth Catch-Up Contributions”** means after-tax contributions by a Participant as described in Section 3.2(c).

**“Roth Elective Deferral Contributions”** means a contribution made by an Employer on behalf of an Active Participant as described in Section 3.2(b) that is irrevocably designated as a Roth Elective Deferral Contribution and is includible in the Participant’s income at the time the Participant could have received that amount in cash. Roth Elective Deferral Contributions and applicable earnings are fully vested at all times and, unless stated otherwise, are treated as Elective Deferral Contributions. Such contributions, and earnings thereon, shall be accounted for separately.

**“Salary Reduction Contributions”** means, unless otherwise expressly provided herein, Elective Deferral Contributions, Catch-Up Contributions, Roth Elective Deferral Contributions, and Roth Catch-Up Contributions.

**“Severance from Employment”** means that an Employee ceases to be employed by the Employer maintaining the Plan or a Related Employer that is eligible to maintain a Code section 403(b) plan, even if the Employee remains employed with another entity that is a Related Employer where either (a) such Related Employer is not an eligible employer or (b) the Employee is employed in a capacity that is not employment with an eligible employer.

**“Spouse”** means an individual who is legally married to a Participant as determined under applicable law. A former spouse is treated as the Spouse, and a current spouse is not treated as the Spouse, to the extent provided under a Domestic Relations Order in a manner consistent with the Code.

**“State”** means North Carolina, a political subdivision of North Carolina, or any agency or instrumentality of North Carolina.

**“Treasury Regulation”** means temporary and final regulations published by the Department of the Treasury under the Code.

**“Year of Vesting Service”** means a Computation Period during which an Eligible Employee is credited with at least 1,000 Hours of Service or such lesser amount as specified in the Adoption Agreement.

**“Year of Service”** means, for purposes of determining “includible compensation” (as defined in Section B.2(b)) or Qualified Organization Catch-Up Contributions, each full year during which an individual is a full-time Employee of the Employer, plus fractional credit for each portion of a year during which the individual is either a full-time Employee of the Employer for a portion of a year or a part-time Employee of the Employer. The Employee must be credited with a full Year of Service for each year during which the Employee is a full-time Employee and a fraction of a year for each portion of a work period during which the Employee is a full-time or part-time Employee of the Employer. An Employee’s number of Years of Service equals the aggregate of the annual work periods during which the Employee is employed by the Employer. The work period is the Employer’s annual work period.

## APPENDIX B – LIMITATIONS ON ANNUAL ADDITIONS

### B.1 General Rules

- (a) **Limitation.** The annual additions to a Participant's Account under the Plan for any limitation year shall not exceed the lesser of (i) \$53,000, as adjusted for increases in the cost-of-living under Code section 415(d) for periods after 2015 (the “dollar limitation”), or (ii) 100% of the Participant's includible compensation for the limitation year (the “compensation limitation”).
- (b) **Medical Benefits after Separation from Service.** The percentage of compensation limit referred to in subsection (a), above, shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code section 401(h) or Code section 419A(f)(2)) that is otherwise treated as an annual addition.

### B.2 Definitions

- (a) **Annual Additions.** The term “annual additions” means the following amounts credited to a Participant under the Plan or any other plan aggregated with the Plan under Section B.3:
  - (1) Employer contributions, including Elective Deferral Contributions and Roth Elective Deferral Contributions (but excluding Catch-up Contributions and Roth Catch-Up Contributions and excess contributions that have been distributed pursuant to Section 3.7);
  - (2) Forfeitures allocated to the Participant’s Account;
  - (3) Solely for purposes of the dollar limit referred to above, amounts allocated to an individual medical account, as defined in Code section 415(l)(2), which is part of a pension or annuity plan, and amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code section 419A(d)(3), under a welfare benefit fund, as defined in Code section 419(e); and
  - (4) Allocations under a simplified employee pension. Amounts described in (1), (2), and (4) are annual additions for purposes of both the dollar limitation and the compensation limitation under Section B.1(a). Amounts described in (3) are annual additions solely for purposes of the dollar limitation under Section B.1(a).
- (b) **Definition of Includible Compensation.** The term “includible compensation” means an Employee’s compensation received from the Employer that is includible



in the Participant's gross income for Federal income tax purposes (computed without regard to Code section 911, relating to United States citizens or residents living abroad), including differential wage payments under Code section 3401(h) for the most recent period that is a Year of Service.

- (1) **Elective Deferrals.** The term "includible compensation" shall also include any Salary Reduction Contributions or other amount that is contributed or deferred by the Employer at the election of the Employee and that is not includible in the gross income of the Employee by reason of Code section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).
- (2) **Eligible Employer.** The term "includible compensation" does not include any compensation received during a period when the Employer was not an eligible employer within the meaning of Treasury Regulation section 1.403(b)-2(b)(8).
- (3) **Post-Severance Compensation.** For limitation years beginning on or after July 1, 2007, or such earlier date as the employer specifies in the Adoption Agreement, includible compensation for a limitation year shall also include compensation paid by the later of 2 ½ months after an Employee's Severance from Employment with the Employer maintaining the Plan or the end of the limitation year that includes the date of the Employee's Severance from Employment with the Employer maintaining the Plan, if:
  - (A) the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a Severance from Employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer; or
  - (B) if elected in the Adoption Agreement, the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued, or the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered includible compensation if paid after Severance from Employment, even if they are paid by the later of 2 ½ months after the date of Severance from Employment or the end of the limitation year that includes the date of Severance from Employment.

- (4) **Community Property.** The amount of includible compensation is determined without regard to any community property laws.
- (5) **Code Section 401(a)(17) Limits.** The amount of includible compensation of each Participant taken into account in determining contributions shall not exceed \$265,000, as adjusted for cost-of-living increases in accordance with Code section 401(a)(17)(B) for periods after 2015.
- (6) **Disability.** For purposes of applying the limitations on annual additions to Nonelective Employer Contributions pursuant to Code section 415, “includible compensation” for a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)) is the compensation such Participant would have received for the limitation year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled.
- (c) **Definition of Limitation Year.** The term “limitation year” means the calendar year. However, if the Participant is in control of an Employer pursuant to Section B.3(b), the “limitation year” shall be the limitation year in the defined contribution plan controlled by the Participant.
- (d) **Modified Definition of Employer.** Solely for purposes of this Appendix B, “employer” means the employer that has adopted the Plan and any employer required to be aggregated with that employer under Code section 414(b) and (c) (taking into account Code section 415(h)), (m), or (o), and Treasury Regulation section 1.414(c)-5. For this purpose, the Employer shall determine which entities are required to be aggregated under a reasonable, good faith standard taking into account the special rules applicable under Notice 89-23.

### **B.3 Aggregation and Coordination**

- (a) **Aggregation of Code Section 403(b) Plans of the Employer.** If annual additions are credited to a Participant under any Code section 403(b) plans of the Employer in addition to this Plan for a limitation year, the sum of the Participant’s annual additions for the limitation year under this Plan and such other Code section 403(b) plans may not exceed the limits set forth in Section B.1(a).
- (b) **Aggregation Where Participant is in Control of Any Employer**
  - (1) **General.** If a Participant is in control of any employer for a limitation year, the sum of the Participant’s annual additions for the limitation year under this Plan, any other Code section 403(b) plans of the employer, any defined contribution plans maintained by controlled employers, and any Code section 403(b) plans of any other employers may not exceed the limit set forth in Section B.1(a). For purposes of this paragraph, a Participant is in control of an employer based upon the rules of Code

sections 414(b), 414(c), and 415(h), as determined by the Employer under a reasonable, good faith standard, and a “defined contribution plan” means a defined contribution plan that is qualified under Code section 401(a) or 403(a), a Code section 403(b) plan, or a simplified employee pension within the meaning of Code section 408(k).

- (2) **Annual Notice.** Effective beginning with the year following the adoption of the Plan, the Plan Administrator will provide written or electronic notice to Participants that explains the limitation in Section B.3(b)(1) in a manner calculated to be understood by the average Participant and informs Participants of their responsibility to provide information to the Plan Administrator that is necessary to satisfy Section B.3(b)(1). The notice will advise Participants that the application of the limitations in Section B.3(b)(1) will take into account information supplied by the Participant and that failure to provide necessary and correct information to the Plan Administrator could result in adverse tax consequences to the Participant, including the inability to exclude contributions to the Plan under Code section 403(b). The notice will be provided annually, beginning no later than the year in which the Employee becomes a Participant.
- (c) **Coordination of Limitation on Annual Additions Where Employer Has Another Section 403(b) Prototype Plan or Participant is in Control of Employer.** The annual additions which may be credited to a Participant under this Plan for any limitation year will not exceed the limit set forth in Section B.1(a), reduced by the annual additions credited to the Participant under any other Section 403(b) Prototype Plans of the Employer in addition to this Plan and, if the Participant is in control of an employer, any defined contribution plans maintained by controlled employers and section 403(b) plans of any other employers. Annual additions under any other defined contribution plan required to be aggregated with the Plan for purposes of applying Code section 415(c) will be reduced prior to the reduction of any annual additions under this Plan.
- (d) **Coordination of Limitation on Annual Additions Where Employer Has Another Code section 403(b) Plan that is Not a Prototype Plan.** If annual additions are credited to the Participant for the limitation year under another Code section 403(b) plan of the Employer which is not a Section 403(b) Prototype Plan, the annual additions which may be credited to the Participant under this Plan for the limitation year will be limited in accordance with Section B.3(a) and (b) as though the other plan were a Section 403(b) Prototype Plan.
- (e) **Correction of Excess Annual Additions.** A Participant’s excess annual additions for a taxable year are includible in the Participant’s gross income for that taxable year. A Participant’s excess annual additions attributable to this Plan will be credited in the year of the excess to a separate account under the Plan for such excess annual additions which will be maintained by the Funding Agent until the excess annual additions are distributed. This separate account will be treated

as a separate contract to which section 403(c) (or another applicable provision of the Code) applies. Amounts in the separate account may be distributed at any time, notwithstanding any other provisions of the Plan.