

**THE PUBLIC EMPLOYEES  
RETIREMENT SYSTEM OF OHIO  
DEFINED CONTRIBUTION PLAN**

**Effective Jan. 1, 2003**

**(Includes amendments adopted through January 1, 2022)**

## **THE PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO DEFINED CONTRIBUTION PLAN**

**Whereas**, the Public Employees Retirement Board is authorized by sections 145.80 and 145.81 of the Ohio Revised Code to establish within the Public Employees Retirement System one or more plans consisting of benefit options that provide for an individual account for each participating Member and under which benefits are based solely on the amounts that have accumulated in the account;

**Whereas**, this Plan is established as a governmental plan under section 414(d) of the Internal Revenue Code of 1986 ("Code"), as amended, and as a pension plan for the exclusive benefit of Members and their Beneficiaries which meets the requirements of Section 401(a) of the Code and its implementing regulations;

**Whereas**, assets of the Plan must be held in trust, with the Public Employees Retirement Board acting as trustee;

**Whereas**, the Plan is established in addition to any retirement, pension, deferred compensation, or other benefit plan administered by the Board, the State, or a political subdivision; and

**Whereas**, the Board has the powers and shall perform the duties regarding the Plan as provided in sections 145.80 and 145.81 of the Ohio Revised Code, as applicable, and as provided in Title 1, Chapter 145. of the Ohio Revised Code, as applicable;

**Now, therefore**, effective January 1, 2003, the Public Employees Retirement Board hereby establishes the Public Employees Retirement System of Ohio Defined Contribution Plan, a defined contribution plan under Code Section 401(a). The Plan consists of the provisions set forth in this document, the following sections of Chapter 145. of the Ohio Revised Code, and any rules adopted pursuant to section 145.80 of the Ohio Revised Code: 145.80 through 145.98; 145.01 to 45.20, 145.22, 145.221 [145.22.1], 145.23, 145.25, 145.26, 145.27, 145.296 [145.29.6], 145.38, 145.384 [145.38.4], 145.391 [145.39.1], 145.431 [145.43.1], 145.47, 145.48, 145.483 [145.48.3], 145.51, 145.52, 145.53, 145.54, 145.55, 145.56, 145.563 [145.56.3], 145.57, 145.571 [145.57.1], 145.572 [145.57.2], 145.69, and 145.70.

**(Preamble amended: 1/7/13, 3/23/15)**

### **ARTICLE I - DEFINITIONS**

**1.01 "Accounts"** means the accounts maintained by the Administrator for each Participant in the Plan. Each Participant shall have a Participant Contribution Account, Employer Contribution Account, Rollover Account, and Miscellaneous Contribution Account, all of which shall be held in the Defined Contribution Fund.

**1.02 "Accumulated Contributions"** has the same meaning as set forth in section 145.01 of the Ohio Revised Code.

**1.03 "Active Participant"** means a Participant who is currently making contributions to this Plan under section 145.85 of the Ohio Revised Code.

**1.04 "Actuary"** has the same meaning as set forth in section 145.01 of the Ohio Revised Code.

**1.05 "Administrator"** means the Public Employees Retirement Board or Public Employees Retirement System, as appropriate.

**1.06 "Applicable Form"** means the appropriate form as designated and furnished by the Administrator to make an election or provide a notice as required by the Plan, including a form in electronic medium.

**1.07 "Beneficiary" or "Beneficiaries"** means the person or persons designated by a Participant pursuant to an Applicable Form to receive any benefit payable upon the Participant's death or, in the absence of such a designation, the person, persons, or estate who, pursuant to the terms of this Plan, qualifies for or is receiving a right or benefit under this Plan.

**1.08 "Board"** means the Public Employees Retirement Board, as established by section 145.04 of the Ohio Revised Code.

**1.09 "Code"** means the Internal Revenue Code of 1986, as amended, applicable to governmental plans and, where appropriate, the Internal Revenue Code of 1954.

**1.10 "Combined Plan"** means the Public Employees Retirement System of Ohio Combined Defined Benefit/Defined Contribution Plan established pursuant to sections 145.80 to 145.98 of the Ohio Revised Code.

**1.11 "Contributor"** has the same meaning as set forth in section 145.01 of the Ohio Revised Code.

**1.12 "Defined Benefit Plan"** means the Public Employees Retirement System of Ohio Defined Benefit Plan established and described in sections 145.201 through 145.79 of the Ohio Revised Code.

**1.13 "Defined Contribution Fund"** means the defined contribution fund established under section 145.23 of the Ohio Revised Code.

**1.14 "Earnable Salary"** has the same meaning as set forth in section 145.01 of the Ohio Revised Code and section 145-1-26 of the Ohio Administrative Code, but does not include any remuneration in excess of the limits established by Code Section 401(a)(17).

**1.15 "Effective Date"** means January 1, 2003.

**1.16 "Employee"** means a public employee, as defined in section 145.01 of the Ohio Revised Code.

**1.17 "Employees' Savings Fund"** means the employees' savings fund established under section 145.23 of the Ohio Revised Code.

**1.18 "Employer" or "Public Employer"** has the same meaning as set forth in section 145.01 of the Ohio Revised Code.

**1.19 "Employer Contribution Account"** means the account maintained by the Administrator for each Participant in the Defined Contribution Fund to which shall be credited contributions made pursuant to Section 3.02.

**1.20 "PERS Public Safety Officer"** has the same meaning as set forth in section 145.01 of the Ohio Revised Code.

*(Section 1.20 amended: 10/4/09)*

**1.21 "Inactive Participant"** means a Participant who is not currently making contributions to this Plan under section 145.85 of the Ohio Revised Code.

**1.22 "Investment Option"** means an investment option selected and monitored by the Board which forms part of the Trust Fund.

**1.23 "PERS Law Enforcement Officer"** has the same meaning as set forth in section 145.01 of the Ohio Revised Code.

**1.24 "Member"** has the same meaning as set forth in section 145.01 of the Ohio Revised Code.

**1.25 "Miscellaneous Contribution Account"** means the account maintained by the Administrator for each Participant in the Defined Contribution Fund to which shall be credited any voluntary after-tax contributions made under Section 3.04.

**1.26 "Participant"** means a Member who is participating or has participated in this Plan and who still has an Account balance in this Plan.

**1.27 "Participant Contribution Account"** means the account maintained by the Administrator for each Participant in the Defined Contribution Fund to which shall be credited the contributions made under Section 3.03.

**1.28 "Plan"** means the Public Employees Retirement System of Ohio Defined Contribution Plan established pursuant to sections 145.80 to 145.98 of the Ohio Revised Code and as described in this Plan document.

**1.29 "Plan Year"** means a calendar year.

**1.30 "Public Service Terminates"** has the same meaning as set forth in section 145.01 of the Ohio Revised Code.

**1.31 "Rollover Account"** means the account maintained by the Administrator for each Participant in the Defined Contribution Fund to which shall be credited any rollovers to the Plan pursuant to Article V.

**1.32 "Service Manager"** means the individual or entity appointed by the Administrator to perform third party service and administrative functions.

**1.33 "State"** means the State of Ohio.

**1.34 "System"** means the Public Employees Retirement System of Ohio.

**1.35 As used in Section 2.03, "Total Service Credit"** means the sum of the Participant's Years of Participation in the Plan and, if applicable, the Participant's Total Service Credit in the Combined Plan and the Defined Benefit Plan.

*(Section 1.35 amended: 1/1/09)*

**1.36 "Trust Fund"** means all assets of the Plan.

**1.37 "Vested Accounts"** means the sum of the Participant Contribution Account, Miscellaneous Contribution Account, Rollover Account, and the vested amount in the Employer Contribution Account.

**1.38 "Year of Participation"** means a period of twelve calendar months during which the Participant has made contributions pursuant to Section 3.03 and the Participant's Employer has made contributions pursuant to Section 3.02.

Words used herein in the masculine or feminine gender shall be construed to include the feminine or masculine gender where appropriate and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

## **ARTICLE II - PARTICIPATION**

### **2.01 Eligibility—Employment on or After Effective Date.**

(a) Except as provided in subsection (c), an individual who becomes employed in a position subject to Chapter 145. of the Ohio Revised Code on or after the Effective Date may elect to become a Participant in this Plan not later than one hundred eighty (180) days after the date on which the individual's employment begins. An election shall be made on an Applicable Form filed with the System or, if designated by the Administrator, the Service Manager. An election shall be effective as of the date employment begins and, except as provided in Section 2.03 and section 145.814 of the Ohio Revised Code, is irrevocable on receipt.

*(Section 2.01(a) amended: 1/7/13)*

(b) If a form evidencing an election under this Section is not received on or before the end of the one hundred eighty (180) day period, the individual is deemed to have elected to participate in the Defined Benefit Plan. An individual may only be an Active Participant of one of the following plans at any one time: the Defined Benefit Plan, the Combined Plan, or this Plan.

(c) An individual is ineligible to make an election to participate in this Plan under this Section if one of the following applies:

- (1) The individual is a PERS retitant or other system retitant, as those terms are defined in section 145.38 of the Ohio Revised Code, or is retired under section 145.383 of the Ohio Revised Code;
- (2) The individual is participating in an alternative retirement plan under Chapter 3305. of the Ohio Revised Code and is employed in a position described in section 3305.05(E) of the Ohio Revised Code;
- (3) The individual has contributions standing to the individual's credit in the Employees' Savings Fund or Defined Contribution Fund;
- (4) The individual is employed in a position covered under Chapter 145. of the Ohio Revised Code to which section 145.193 of the Ohio Revised Code applies;

(5) The individual is a PERS Law Enforcement Officer or PERS Public Safety Officer.

*(Section 2.01(c) amended: 10/4/09, 1/7/13)*

(d) Employee and employer contributions for each payroll period after the effective date of an election under this Section shall be credited in accordance with Section 3.02 and 3.03 of this Plan.

(e) An elective official of the State of Ohio or of any political subdivision thereof who, on or after the Effective Date, elects to become a Member of the System as described in section 145.20 of the Ohio Revised Code, may elect to participate in this Plan under this Section not later than one hundred eighty (180) days after the elective official applies for membership. The election shall be effective as of the date the elective official applies for membership and, except as provided in Section 2.03 and section 145.814 of the Ohio Revised Code, is irrevocable on receipt by the System or, if designated by the Administrator, the Service Manager.

**2.02 Eligibility—Member or Contributor.**

(a) Except as provided in subsection (c), a Member or Contributor of the System who, as of the last day of the month immediately preceding the Effective Date of this Plan, has less than five (5) years of total service credit, as defined in section 145.01 of the Revised Code, may elect to become a Participant in this Plan not later than one hundred eighty (180) days after the Effective Date. An election shall be made in writing on an Applicable Form provided by and filed with the System or, if designated by the Administrator, the Service Manager. If a form evidencing an election under this Section is not received on or before the end of the one hundred eighty (180) day election period, a Member or Contributor is deemed to have elected to continue participation in the Defined Benefit Plan. On the request of a Member or Contributor who makes of an election to participate in this Plan, the System shall:

- (1) Credit to the Participant Contribution Account the Accumulated Contributions standing to the credit of the Member or Contributor in the Employees' Savings Fund and any other amounts standing to the credit of the Member or Contributor in a fund under section 145.23 of the Ohio Revised Code, other than deposits made by the Member or Contributor under the version of division (C) of section 145.23 of the Ohio Revised Code that was in effect immediately prior to April 6, 2007;
- (2) Credit to the Miscellaneous Contribution Account, or Rollover Account, as appropriate, any deposits made by the Member or Contributor under the version of division (C) of section 145.23 of the Ohio Revised Code that was in effect immediately prior to April 6, 2007;
- (3) Cancel all service credit and eligibility for any payment, benefit, or right under the Defined Benefit Plan with respect to the amounts described in (a)(1) of this Section.

A request to transfer the amounts described in this section shall be made at the time the member files an election under this Section. For each Participant who elects to transfer the amounts described in (a)(1) of this Section, the Participant shall receive Years of Participation in an amount which corresponds to the amounts transferred under (a)(1) of this Section for purposes of both of the following: (1) vesting under Article VII of this Plan and (2) vesting as provided in the Public Employees Retirement System of Ohio Retiree Medical Account.

*(Section 2.02(a) amended: 8/26/03, 1/1/09, 7/1/16)*

(b) An election under this Section shall take effect on the Effective Date and, except as provided in Section 2.03 and section 145.814 of the Ohio Revised Code, is irrevocable upon receipt.

(c) A Member or Contributor is ineligible to make an election under this Section if one of the following applies:

- (1) The individual is a PERS retiree who is a Member under section 145.38(C) of the Ohio Revised Code;
- (2) The individual is a PERS Law Enforcement Officer or PERS Public Safety Officer.

*(Section 2.02(c) amended: 10/4/09)*

(d) Employee and employer contributions for each payroll period after the effective date of an election under this Section shall be credited in accordance with Section 3.02 and 3.03 of this Plan.

A Member or Contributor of the Defined Benefit Plan who elects under this Section to participate in the Plan and transfer the amounts described in Section 2.01(a) shall be ineligible for any benefit or payment under the Defined Benefit Plan and shall be forever barred from claiming or purchasing service within the Defined Benefit Plan or any other Ohio state retirement system, as defined in section 145.30 of the Revised Code, for service covered by the election, unless otherwise permitted as a result of a change of election under Section 2.03.

*(Section 2.02(e) amended: 8/26/03)*

### **2.03 Changes to Election.**

(a) In addition to the elections under Sections 2.01 and 2.02, an Active Participant in this Plan may elect to become a participant in the Defined Benefit Plan as follows:

- (1) For elections effective on or before July 1, 2015, during the following periods of participation: once prior to attaining five (5) years of Total Service Credit; once after attaining five (5) and prior to attaining ten (10) years of Total Service Credit; and once after attaining ten (10) years of Total Service Credit, subject to this Section and rules adopted by the Board. An election which is not used within the specified period may not be made in a subsequent time period.
- (2) Regardless of the number of elections exercised under a prior version of this section, for elections effective on and after August 1, 2015, one election at any time prior to retirement under any of the plans defined in Rule 145-1-81 of the Administrative Code or refund from the Participant's current plan.

*(Section 2.03(a) amended: 1/1/09, 3/23/15, 1/1/22)*

(b) A Participant who elects to cease active participation in this Plan and to become a participant in the Defined Benefit Plan shall only be entitled to the rights and benefits to which the Participant was entitled under this Plan as of the date the Participant ceases active participation in this Plan and begins participation in the Defined Benefit Plan; provided, however, the Participant may continue to direct the investment of funds in the Participant's Vested Accounts, and all investment gains, losses, and fees shall continue to be credited or charged to the Participant's Vested Accounts in accordance with this Plan. The Participant's rights and benefits as of the date the Participant ceases active participation shall continue to be governed by the terms of this Plan.

(c) An election to participate in the Defined Benefit Plan shall be made in writing on an Applicable Form and filed with the System. The election shall take effect on the first day of the month following the date the election is filed and is irrevocable on receipt by the System.

(d) Except as provided in this subsection, an election under this Section shall apply only to contributions made by or on behalf of the Participant after the effective date of the election. A Participant who makes an election under this Section may elect to transfer the Participant's Vested Accounts from this Plan to purchase service credit in the Defined Benefit Plan. Such transfer shall be made in accordance with Article VI and is subject to the applicable provisions of Chapter 145. of the Ohio Revised Code, the terms of the Defined Benefit Plan, and any applicable rules adopted by the Board.

*(Section 2.03(b), (c), and (d) amended: 1/1/22)*

**2.04 Limit on Elections.**

(a) Except as provided in Section 2.04(b) or section 3305.05(E) of the Ohio Revised Code, an election under Sections 2.01, 2.02, or 2.03 shall apply to all positions subject to Chapter 145. of the Ohio Revised Code for which the individual is currently contributing under sections 145.47 or 145.85 of the Ohio Revised Code.

(b) A Participant who is or becomes a PERS Law Enforcement Officer or PERS Public Safety Officer shall cease making contributions to this Plan. The Participant shall contribute only to the Defined Benefit Plan during the period of employment as a PERS Law Enforcement Officer or PERS Public Safety Officer for service in that position and any other position subject to Chapter 145. of the Ohio Revised Code. A Participant described in this Section with contributions on deposit in this Plan may elect to have those contributions deposited and credited in the Defined Benefit Plan in accordance with rules adopted by the Board.

*(Section 2.04(b) amended: 10/4/09, 7/7/13)*

(c) A Member who terminates all employment covered by Chapter 145. of the Ohio Revised Code, is issued a refund of the Member's contributions under sections 145.47 or 145.85 of the Ohio Revised Code, and later becomes employed in a position subject to Chapter 145. of the Ohio Revised Code shall be entitled to make a new election under Section 2.01, subject to the requirements of this Article and the Ohio Revised Code.

*(Section 2.04(c) amended: 7/7/13)*

**2.05 Termination of Plan Participation.** A Participant shall cease to be a Participant in this Plan on the distribution of the Participant's Vested Accounts in the Plan.

**2.06 Election Procedure.** All elections to participate are governed by sections 145.19, 145.191, 145.192, 145.193, 145.194, and 145.814 of the Ohio Revised Code and rules adopted by the Board.

*(Section 2.06 amended: 1/7/13)*

**ARTICLE III - CONTRIBUTIONS**

**3.01 Contributions.** Contributions shall be made to the Plan in accordance with this Article and subject to the limitations under Article IV.

**3.02 Employer Contributions.** The Employer contribution to the Plan shall be a percentage of Earnable Salary as determined by the Board under sections 145.48 and 145.86 of the Ohio Revised

Code, less all of the following: (i) any amount required under section 145.87 of the Ohio Revised Code to mitigate any negative financial impact on the System of Members participation in this Plan, as determined by the Actuary, (ii) any amount established pursuant to section 145.88 of the Ohio Revised Code to fund a program established under section 145.83 of the Ohio Revised Code, and (iii) any administrative fee established under Section 21.03. Contributions under this Section shall be deposited in the Employer Contribution Account. For each Employee granted disability leave under a program sponsored by an Employer, the Employer shall make contributions pursuant to section 145.296 of the Ohio Revised Code.

*(Section 3.02 amended: 1/7/13)*

**3.03 Mandatory Employee Contributions.**

(a) The mandatory Employee contributions under the Plan shall be a percentage of Earnable Salary as determined by the Board under sections 145.47 and 145.85 of the Ohio Revised Code, less any administrative fee established under Section 21.03. Contributions under this Section shall be deposited into the Participant Contribution Account.

(b) Any Employer who picks up Employee contributions to the Defined Benefit Plan under Code Section 414(h)(2) shall pick up and pay the mandatory Employee contributions under this Section.

**3.04 Voluntary Employee Contributions.** Active Participants may also make additional after-tax contributions to the Miscellaneous Contribution Account, subject to the limitations in Article IV. Deposits shall be credited to the current tax year, except that a deposit may be credited to the prior tax year if the deposit was received by the System or postmarked on or before December 31 of the prior tax year.

*(Section 3.04 amended: 1/1/12)*

**3.05 Payment of Contributions.** The contributions and reports for each payroll period shall be transmitted to the System within such time as required by Chapter 145. of Ohio Revised Code and any rules adopted thereunder. The Board shall establish policies and procedures for the remittance and collection of contributions.

**3.06 Elected or Appointed Officials. *(Section 3.06 amended: 1/7/13, repealed 1/1/17)***

**3.07 Delinquent Contributions.** Upon a finding that an Employer failed to deduct contributions pursuant to section 145.85 of the Ohio Revised Code during a period of employment for which such contributions were required, a statement of delinquent contributions shall be prepared showing the amount the Contributor and Employer would have contributed had regular payroll deductions been taken. Simple interest from the end of each calendar year at a rate equal to the assumed actuarial rate of interest at the time the statement is prepared shall be included. If delinquent contribution statements are paid later than thirty (30) days after the end of the calendar month in which they become an obligation of the Employer, any balance remaining shall be collected with penalties and interest pursuant to section 145.51 of the Ohio Revised Code, and subject to Article IV, as applicable.

*(Section 3.07 amended: 4/6/07, 1/7/13)*

**ARTICLE IV - LIMITATIONS ON CONTRIBUTIONS**

**4.01 Applicability of Article.** Notwithstanding any provision of the Plan to the contrary, contributions to the Plan and annual additions to a Participant's Accounts shall be limited as provided in Code Section 415 and this Article.

**4.02 Limitation under Code Section 415.** Notwithstanding anything in the Plan to the contrary, the following limitations shall apply:

(a) To the extent required under Code Section 415(c), in no event shall the "annual addition," as defined in this Section for a Participant for any Plan Year, exceed the lesser of:

- (1) Forty Thousand Dollars (\$40,000), as adjusted, or
- (2) One hundred percent (100%) of the "compensation," as defined in this Section, of such Participant received during the Plan Year.

(b) For purposes of this Section and subject to Code Section 415(h), all defined contribution plans of each Employer are to be treated as a single defined contribution plan.

(c) If the annual addition for a Participant under the Plan, determined without regard to the limitation of paragraph (a), would have been greater than the annual addition for such Participant as limited by paragraph (a), then the excess shall be corrected in accordance with the Internal Revenue Service correction procedures under Revenue Procedure 2008-50, or any successor thereto.

*(Section 4.02(c) amended: 1/7/13)*

(d) For purposes of this Section, "annual addition" means the annual addition as defined in Code Section 415(c) and as modified in Code Sections 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines the annual addition as the sum of the following amounts credited to a Participant's Accounts for the limitation year under this Plan and any other qualified defined contribution plan maintained by an Employer:

- (1) Employer contributions; and
- (2) Employee contributions.

(e) For purposes of this Section, the following types of contributions are not Employer contributions and are not "annual additions":

- (1) The restoration of an Employee's accrual benefit, or any other restoration, by the Employer in accordance with Code Section 411(a)(3)(D) or Code Section 411(a)(7)(C) will not be considered an annual addition for the limitation year in which the restoration occurs.
- (2) The transfer of funds from one qualified plan to another will not be considered an annual addition for the limitation year in which the transfer occurs.

(f) For purposes of this Section, the following types of contributions are not treated as Employee contributions and are not "annual additions":

- (1) Rollover contributions.
- (2) Repayments of amounts described in Code Section 411(a)(7)(B).
- (3) The direct transfer of employee contributions from one qualified plan to another.

(g) Specifically, for purposes of this Section, transfers pursuant to Article VI are not treated as Employer or Employee contributions and are not "annual additions."

(h) For purposes of this Section, "compensation" means compensation as defined in Code Section 415(c)(3). In general, Code Section 415(c)(3) defines compensation as all of a Participant's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3); any amount contributed or deferred by the Employer at election of the Employee and which is not includable in the gross income of the Employee by reason of Code Section 125, 132(f), or 457; and effective January 1, 2009, differential wage payments as defined in Code Section 3401(h)(2). "Compensation" for purposes of this Section shall not include any picked-up Employee contributions to this Plan.

In addition, compensation shall include the following amounts:

- (1) Regular Compensation for Services. Compensation shall include regular compensation for services that, absent a severance from service, would have been paid to the Participant if the Participant continued in employment with the Employer, in accordance with regulation section 1.415(c)-2(e)(3)(ii), to the extent required under regulation section 1.415(c)-2(e)(3)(i).
- (2) Payments to Reservists. Compensation shall include payments to a Participant who does not currently perform services for an Employer by reason of qualified military service made in accordance with the Employer's current policy with regard to such qualified military service, to the extent these payments do not exceed the amount the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service, in accordance with regulation section 1.415(c)-2(e)(4).
- (3) Back Pay. Compensation shall include payments of back pay within the meaning of regulation section 1.415(c)-2(g)(8).

"Compensation" shall not include the following amounts:

- (1) Foreign Compensation. Compensation shall not include amounts paid as compensation to a nonresident alien, as defined in Code Section 7701(b)(1)(B), who is not a Participant, to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States, in accordance with regulation section 1.415(c)-2(g)(5)(ii).
- (2) Scheduled Deferred Compensation Payments. Compensation shall not include payments to a Participant in accordance with a nonqualified unfunded deferred compensation plan, even if such amount would have been paid at the same time if employment had continued, in accordance with regulation section 1.415(c)-2(e)(3)(iii)(B).
- (3) Disability Payments. Compensation shall not include amounts received on account of the Participant's permanent and total disability (as defined in Code Section 22(e)(3) and described in regulation section 1.415(c)-2(g)(4)).

(4) Cross-Over Year Payments. Compensation shall not include amounts earned during the limitation year but not paid during that limitation year solely because of the timing of pay periods and pay dates if these amounts are paid during the first few weeks of the next limitation year as permitted under regulation section 1.415(c)-2(e)(2).

*(Section 4.02(h) amended: 1/1/12, 1/7/13)*

**4.03 Limitation under Code Section 401(a)(17)**. Notwithstanding anything contained in this Article or Article III, the annual compensation of each Participant taken into account in determining allocations for any Plan Year shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Annual compensation means compensation during the Plan Year or such other consecutive twelve-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

## **ARTICLE V - ELIGIBLE ROLLOVER DISTRIBUTIONS TO THIS PLAN**

**5.01 Eligible Rollover Distributions to this Plan**. Subject to any limitations in this Article, a Participant may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to this Plan in a Direct Rollover. Rollovers from other permissible sources will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance the Board or its designee deems appropriate. An Eligible Rollover Distribution shall be credited to the Participant's Rollover Account. Any non-taxable portion of an Eligible Rollover Distribution shall be separately accounted for by the Plan and shall only be accepted in a direct trustee-to-trustee transfer to the Participant's Rollover Account.

**5.02 Definitions**. The following definitions shall apply to this Section:

(a) An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Participant from an Eligible Retirement Plan.

An Eligible Rollover Distribution does not include: (i) 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 Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) any distribution which is made upon hardship of the employee; or (iv) the portion of any distribution that is not includable in gross income, unless the distribution is being rolled over to either (1) a traditional individual retirement account or individual retirement annuity under Code Section 408(a) or 408(b) or (2) a qualified trust which is part of a plan which is a defined contribution plan under Code Sections 401(a) or 403(a) that will separately account for the distribution, including the taxable and non-taxable portions of the distribution, in a direct trustee-to-trustee transfer.

(b) An "Eligible Retirement Plan" is any program defined in Code Sections 401(a)(31) and 402(c)(8)(B), from which the Participant has a right to an Eligible Rollover Distribution, as follows:

- (1) An individual retirement account under Code Section 408(a);
- (2) An individual retirement annuity under Code Section 408(b) (other than an endowment contract);

- (3) A qualified trust;
- (4) An annuity plan under Code Section 403(a);
- (5) An eligible deferred compensation plan under Code Section 457(b) which is maintained by an eligible employer under Code Section 457(e)(1)(A); and
- (6) An annuity contract under Code Section 403(b).

(c) A "Direct Rollover" is a payment to this Plan from an Eligible Retirement Plan specified by the Participant.

## **ARTICLE VI - TRANSFERS**

**6.01 Transfer from this Plan to the Defined Benefit Plan.** A Participant in this Plan who has elected to become a Participant in the Defined Benefit Plan under that Section may transfer funds from this Plan to the Defined Benefit Plan at any time prior to retirement under any of the plans defined in Rule 145-1-81 of the Administrative Code or refund from the Participant's current plan in order to purchase service credit in the Defined Benefit Plan for the Participant's Years of Participation in this Plan. The Actuary shall determine the total amount of additional liability for each Year of Participation which is eligible for purchase. For elections described in Section 2.03(a)(1), the transfer shall be made not later than one hundred eighty (180) days after the effective date of the election to transfer under Section 2.03. In addition to the eligibility requirements specified in sections 145.35, 145.36, 145.361, 145.45, or 145.451 of the Ohio Revised Code, a Participant who transfers funds to the Defined Benefit Plan under this Section is not eligible for benefits under those sections until one (1) year following the date the Participant begins participation in the Defined Benefit Plan.

A Participant may transfer funds from the following Accounts to purchase service credit in the Defined Benefit Plan as calculated under this Section: Participant's Contribution Account, vested portion of Employer Contribution Account, Rollover Account, or Miscellaneous Contribution Account. All transfers under this Section shall be made in accordance with section 145.814 of the Revised Code and are subject to the applicable provisions of the Defined Benefit Plan and any rules adopted by the Board. If a Participant who elected a transfer of Accumulated Contributions under Section 2.02(a)(1) also transfers funds from this Plan to the Defined Benefit Plan under this Section, all or a portion of the Participant Contribution Account shall be used to restore the cancelled service credit described in Section 2.02(a)(3) in accordance with rules adopted by the Board.

*(Section 6.01 amended: 8/26/03, 1/1/09, 1/7/13, 3/23/15)*

**6.02 Transfer from this Plan to the Combined Plan.**

*(Section 6.02 amended: 1/1/09, 1/7/13, 3/23/15; repealed 1/1/22)*

## **ARTICLE VII - VESTING**

**7.01 Vesting Standards for Participant Contribution Account, Miscellaneous Contribution Account, and Rollover Account.** A Participant shall be at all times one hundred percent (100%) vested in the Participant's Contribution Account, Miscellaneous Contribution Account, and Rollover Account.

**7.02 Vesting Standards for Employer Contribution Account.** A Participant shall be vested in the Employer Contribution Account according to the Participant's Years of Participation in this Plan as follows:

One Year of Participation	20%
Two Years of Participation	40%
Three Years of Participation	60%
Four Years of Participation	80%
Five Years of Participation	100%

Upon issuance of a distribution under Article VIII of the Plan, Retirement, or an election to purchase service credit in a new plan after an election to cease participation in this Plan under Section 2.03, any non-vested amounts in the Participant's Employer Contribution Account shall be forfeited and transferred to a separate account in the Defined Contribution Fund. For purposes of this Section, Participant's Years of Participation shall be determined as of the date the Participant ceases active participation in this Plan.

*(Section 7.02 amended: 1/1/09)*

**7.03 Vesting of Participant Upon Death.** Upon the death of a Participant, the Participant shall be vested in the Employer Contribution Account as provided in Section 7.02 as of the date of death.

**7.04 Forfeitures.** Any amounts forfeited shall be transferred to a separate account in the Defined Contribution Fund. These forfeitures shall not be used to increase any Participant's benefit.

## **ARTICLE VIII - TERMINATION OF SERVICE**

A Participant whose Public Service Terminates at any age for any reason other than Retirement under Article IX and who is no longer employed by the last public employer from which contributions were remitted under this plan shall be paid, on application of the Participant, the amounts described in this Article. At the Participant's election, the Participant may be paid the amount described in Section 8.01, provided that the Participant meets the conditions specified in Section 8.01. In lieu of a payment under this Article, the Participant may leave the amounts on deposit with the System and, on attaining eligibility for a benefit under Article IX, may elect to receive benefits under Article IX.

*(Article VIII amended: 1/1/17)*

**8.01 Accounts.** A Participant who elects a distribution under this Section is entitled to a lump-sum distribution of the Participant's Vested Accounts. A Participant who is issued a distribution under this Section shall forfeit all rights to benefits under Article IX. A Participant may be paid the amounts described in Section 8.01, provided that all of the following apply:

(a) Two months have elapsed since the Participant's Public Service Terminates, other than public service exempted under Chapter 145. of the Ohio Revised Code;

(b) The Participant has not returned to public service during that two-month period, other than public service exempted under Chapter 145. of the Ohio Revised Code.

(c) If the Participant is married and eligible for benefits under Article IX at the time of application for a refund, the Participant shall submit with the application a written statement by the Participant's spouse attesting that the spouse consents to the payment under this Article. Consent shall be valid only if it is signed by the spouse and witnessed by a notary public. The Board may waive the requirement of consent if the spouse is incapacitated or cannot be located, or for any other reason specified by the Board. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

*(Section 8.01 amended: 7/7/13, 9/1/17)*

**8.02 Death.** In the event of a Participant's death prior to commencement of benefits under Article IX, a Beneficiary designated under Article XI, on application, is entitled to a lump-sum distribution of the Participant's Vested Accounts.

## **ARTICLE IX - RETIREMENT BENEFITS**

**9.01 Eligibility.** A Participant who has attained age fifty-five (55), who has left on deposit the amounts described in Article VIII, and whose Public Service Terminates may, on application of the Participant, be paid the sum of the Participant's Vested Accounts under a payment option described in Section 9.02, subject to Article X. Retirement under this Article shall be effective on the date a Participant is issued a distribution under Section 9.02. The effective date of a payment option under Section 9.02 shall be the first of the month following the latest of: (1) the last day for which Earnable Salary was paid; (2) the attainment of minimum age eligibility under this Section; or (3) the date the System receives an application for a payment option under this Section.

*(Section 9.01 amended: 1/1/09, 1/7/13, and 7/7/13)*

### **9.02 Payment Options for Accounts.**

(a) Subject to Article X, section 145.92 of the Ohio Revised Code, and this Section a Participant may select one of the following payment options: (i) monthly annuity payments; or (ii) monthly annuity payments and a portion of the Vested Account paid as a lump sum. An unmarried Participant who fails to select a payment option under this Section shall be paid in accordance with Section 8.01. The amendment to this Section dated April 1, 2012, applies to all payment options effective on or after April 1, 2012. Unless the Participant is eligible to or required to elect another payment option as described in this Section, a married Participant shall receive a monthly joint and survivor annuity, which shall consist of the actuarial equivalent of the Participant's single life annuity based on the Participant's Vested Accounts in a lesser amount payable for life and one-half of such annuity continuing after death to the Participant's surviving spouse for the life of the spouse.

Notwithstanding any provision of this Section to the contrary, a Participant may not select a monthly annuity payment if the selection would result in a monthly annuity payment of less than fifty dollars. If a Participant's distribution required by Code Section 401(a)(9) and the regulations thereunder would result in a monthly annuity of less than fifty dollars, the Administrator shall calculate and issue the Participant's distribution as a lump sum payment.

*(Section 9.02(a) amended: 10/27/06, 4/1/08, 4/1/12, 3/22/19)*

(b) A married Participant may elect to receive the Participant's Vested Accounts under a payment option other than a monthly joint and survivor annuity if either of the following are the case: the Participant's spouse consents in writing to the Participant's election of a payment option other than a monthly joint and survivor annuity or the Board waives the requirement that the spouse consent; or a plan of payment providing for payment in a specified portion of a monthly annuity continuing after the Participant's death to a former spouse is required by a court order issued under section 3105.171 or

3105.65 of the Ohio Revised Code or the laws of another state regarding division of marital property prior to the Effective Date of the Participant's Retirement.

If a Participant is required to select a monthly annuity plan of payment providing for payment in a specified portion to a former spouse and the Board has received a copy of the order described in this Section, the Board shall accept the Participant's election of a plan of payment under this Section only if the Participant complies with both of the following: the Participant elects a monthly annuity plan of payment that is in accordance with the order described in this Section; and, if the Participant is married, the Participant elects a monthly annuity plan of payment and designates the Participant's current spouse as a Beneficiary under that plan of payment unless that spouse consents in writing to not being designated a Beneficiary under any payment option or the Board waives the requirement that the current spouse consent.

An application for a benefit under this Article shall include an explanation of all of the following:

- (1) That, if the Participant is married, unless the spouse consents to another payment option or there is a court order dividing marital property issued under section 3105.171 or 3105.65 of the Ohio Revised Code or the laws of another state regarding the division of marital property that provides for payment in a specified amount, the Participant's benefit under this Article will be paid as a monthly joint and survivor annuity, which consists of the actuarial equivalent of the Participant's single-life annuity based on the Participant's Vested Accounts in a lesser amount payable for life and one-half of the benefit continuing after death to the surviving spouse for the life of the spouse;
- (2) A description of the alternative payment options available with the consent of the spouse;
- (3) That the spouse may consent to another payment option and the procedure for giving consent;
- (4) That consent is irrevocable once notice of consent is filed with the Board.

Consent shall be valid only if it is signed, in writing, and witnessed by a notary public. The Board may waive the requirement of consent if the spouse is incapacitated or cannot be located or for any other reason specified by the Board. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

*(Section 9.02(b) amended: 10/27/06)*

(c) If the benefits under this Article, regardless of payment option, due and paid are in a total amount less than the amounts of the Participant's Vested Accounts, then the difference between the total amount of the benefits paid and those amounts shall be paid to the Beneficiary.

(d) The death of a spouse or any designated Beneficiary following commencement of benefits under this Section shall cancel the portion of the monthly annuity plan payment providing continuing lifetime benefits to the deceased spouse or deceased designated Beneficiary. The retired Participant shall receive the actuarial equivalent of the retired Participant's single life annuity, as determined by the Board, based on the number of remaining Beneficiaries, with no change in the amount payable to any remaining Beneficiary. The change shall be effective the month following the date of death.

*(Section 9.02(d) amended: 10/27/06, 1/7/13)*

(e) On divorce, annulment, or marriage dissolution, a retired Participant receiving benefits under this Article under a monthly annuity plan of payment that provides for continuation of all or part of the benefits after death for the lifetime of the retired Participant's surviving spouse may, with the written consent of the spouse or pursuant to an order of the court with jurisdiction over the termination of the marriage, elect to cancel the portion of the monthly annuity plan of payment providing continuing lifetime benefits to that spouse. The retired Participant shall receive the actuarial equivalent of the retired Participant's single life annuity, as determined by the Board, based on the number of remaining Beneficiaries, with no change in amount payable to any remaining Beneficiary. The election shall be made on an Applicable Form and shall be effective the month following its receipt by the Board.

*(Section 9.02(e) amended: 10/27/06)*

(f) Following a marriage or remarriage, both of the following apply:

- (1) A retired Participant who is receiving benefits in the form of a monthly single life annuity may elect a new monthly annuity plan of payment under this Article based on the actuarial equivalent of the retired Participant's single life annuity, as determined by the Board.
- (2) A retired Participant who is receiving a benefit under a monthly annuity plan of payment providing for payment to a former spouse pursuant to a court order described in Section 9.02(b) may elect a new plan of payment providing for payment to a former spouse based on the actuarial equivalent of the retired Participant's single life annuity as determined by the Board if the new plan of payment elected does not reduce the payment to the former spouse.

If the marriage or remarriage occurs on or after June 6, 2005, the election must be made not later than one year after the date of the marriage or remarriage.

The new plan of payment shall become effective on the date of receipt by the Board of an Applicable Form, but any change in the amount of the benefit shall commence on the first day of the month following the effective date of the plan of payment.

*(Section 9.02(f) amended: 10/27/06)*

(g) A retired Participant's receipt of the first distribution under this Article constitutes the Participant's final acceptance of the payment option and may be changed only as provided in this Plan.

## **ARTICLE X - MINIMUM DISTRIBUTION RULES**

**10.01 Minimum Distribution Rules for Participants**. Notwithstanding any provision of this Plan to the contrary, any distribution under the Plan shall be made in accordance with Code Section 401(a)(9) and the regulations established thereunder, as amended, and shall comply with the following rules:

(a) To the extent required by Code Section 401(a)(9) and the regulations promulgated thereunder, payment of the benefits of a Participant shall begin not later than the "required beginning date." For purposes of this Section, "required beginning date" means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches the minimum required distribution age, or (ii) the calendar year in which the Participant retires.

(b) No payment option may be selected by a Participant unless the amounts payable to the Participant are expected to be at least equal to the minimum distribution required under Code Section 401(a)(9).

(c) The amounts payable must satisfy the minimum distribution incidental benefit requirements of Code Section 401(a)(9)(G).

(d) Distributions in the event of a Participant's death are subject to the provisions of Section 10.02 and the minimum distribution rules of Code Section 401(a)(9) and the regulations thereunder.

**10.02 Minimum Distribution Rules for Beneficiaries**. In the event of a Participant's death, any remaining benefit shall be distributed according to the following, subject to compliance with Code Section 401(a)(9) and regulations thereunder.

(a) If the Participant had begun receiving periodic payments from the Plan that were not annuitized, the balance of the Vested Accounts shall be paid to the Beneficiary at least as rapidly as under the payment option selected by the Participant.

(b) If the Participant had begun receiving payments under an annuity contract, the Beneficiary shall be bound by all restrictions of that contract and the form of payment selected thereunder, and remaining payments, if any, shall be paid to the Beneficiary under the contract.

(c) If the Participant dies before distributions have commenced, a spouse Beneficiary may delay the commencement of benefits until December 31 of the year the Participant would have attained the minimum required distribution age and may elect to receive a lump sum payment as provided under Article VIII.

(d) If the Participant dies before distributions have commenced, a Beneficiary other than a surviving spouse may take a lump sum payment. In the case of a lump sum, payment must be made no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(e) Notwithstanding the foregoing, any payment to an estate shall be made in a lump sum.

**10.03 Discontinuance of 2009 Minimum Distributions**. Notwithstanding Sections 10.01 and 10.02 of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives of the Participant and Participant's designated Beneficiary, or for a period of least ten (10) years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in this section shall be given the opportunity to elect to receive the distributions described in this section.

***(Section 10.03 enacted: 1/3/11)***

## **ARTICLE XI - BENEFICIARIES**

**11.01 Definitions**. As used in this Article, "Child," "Parent," "Dependent," "Surviving Spouse," and "Survivor" have the same meanings as set forth in section 145.43 of the Ohio Revised Code.

**11.02 Designation.** A Participant may file with the Administrator an Applicable Form designating a Beneficiary to receive the benefits payable to the Participant under the Plan in the event of the Participant's death, subject to the provisions of this Article and Section 145.431 of the Ohio Revised Code. The designation applies to all retirement plans in which the Participant has contributions on deposit prior to retirement. A Participant may designate two or more persons as Beneficiaries to be paid the benefits payable under the Plan. Subject to rules adopted by the Board, a Participant who designates two or more persons as Beneficiaries under this Section shall specify the percentage of the lump sum that each Beneficiary is to be paid. If the Participant has not specified the percentages, the lump sum shall be divided equally among the Beneficiaries.

**(Section 11.02 amended: 4/6/07, 7/7/13)**

**11.03 Failure to Designate a Beneficiary.**

(a) If a Participant dies and is not survived by a Beneficiary designated under Section 11.02, Beneficiaries shall qualify in the following order of precedence, with all attendant rights and privileges:

- (1) Surviving Spouse;
- (2) Children, share and share alike;
- (3) Parents, share and share alike;
- (4) Estate.

If the Beneficiary is deceased or is not located within ninety (90) days, the Beneficiary ceases to qualify and the Beneficiary next in order of precedence shall qualify as a Beneficiary.

(b) If the validity of marriage cannot be established to the satisfaction of the Administrator for purposes of making a distribution, the Administrator may accept a decision rendered by a court having jurisdiction in the state in which the Participant was domiciled at the time of death that the relationship constituted a valid marriage at the time of death, or the "spouse" would have the same status as a widow or widower for purposes of sharing the distribution of the Participant's intestate personal property.

(c) In the event of the death of a Beneficiary, after the Beneficiary has become entitled to receive benefits, the remaining benefits shall be paid to the estate of the Beneficiary.

(d) If the death of a Participant or any individual who would be eligible to receive a benefit under this Plan is caused by one of the following Beneficiaries, no amount otherwise due under this Plan to the Beneficiary shall be paid to the Beneficiary in the absence of a court order to the contrary filed with the Administrator:

- (1) A Beneficiary who is convicted of, pleads guilty to, or is found not guilty by reason of insanity of a violation of or complicity in the violation of sections 2903.01, 2903.02, or 2903.03 of the Ohio Revised Code or an existing or former law of any other state, the United States, or a foreign nation that is substantially equivalent to sections 2903.01, 2903.02, or 2903.03 of the Ohio Revised Code.
- (2) A Beneficiary who is indicted for a violation of or complicity in the violation of the sections or laws described in subdivision (d)(1) and is adjudicated incompetent to stand trial;

(3) A Beneficiary who is a juvenile found to be a delinquent child by reason of committing an act that, if committed by an adult, would be a violation of or complicity in the violation of the sections or laws described in subdivision (d)(1).

## **ARTICLE XII - DISTRIBUTIONS THAT ARE NOT ALLOWED**

**12.01 No Plan Loans.** Loans to Participants shall not be permitted.

**12.02 No Hardship Distributions.** Hardship distributions shall not be permitted.

## **ARTICLE XIII - FAMILY LAW ORDERS**

Spousal support orders, division of property orders, and child support orders under sections 145.571 [145.57.1], 3105.171 [3105.17.1], 3105.65, 3105.80, and 3115.32 and Chapters 3119., 3121., 3123., and 3125. of the Ohio Revised Code shall be honored by the Plan, pursuant to the procedure established under the Ohio Revised Code. Any Service Manager shall be required to honor these spousal support orders, division of property orders, and child support orders as specified herein.

## **ARTICLE XIV - OTHER RESTITUTION ORDERS**

Restitution orders under section 145.57 of the Ohio Revised Code shall be honored by the Plan, pursuant to the procedure established under the Ohio Revised Code. Any Service Manager shall be required to honor these restitution orders as specified herein.

## **ARTICLE XV - ELIGIBLE ROLLOVER DISTRIBUTIONS FROM THIS PLAN**

**15.01 Eligible Rollover Distributions from this Plan.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

Effective January 1, 2010, 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 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 the Code Section 402(c)(11) and any other applicable guidance.

*(Section 15.01 amended: 1/1/12)*

### **15.02 Definitions.**

(a) An "Eligible Rollover Distribution" is any distribution from this Plan under Articles VIII or IX of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); or (iii) the portion of any distribution that is not includable in gross income, provided that any portion of any distribution that is not includable in gross income may be an Eligible Rollover Distribution for purposes of a rollover to either (1) a traditional individual retirement account or individual retirement annuity under Code Sections 408(a) or 408(b) or (2) a qualified trust

which is part of a plan which is a defined contribution plan under Code Sections 401(a) or 403(a) that will separately account for the distribution, including the taxable and non-taxable portions of the distribution, in a direct trustee-to-trustee transfer.

(b) An "Eligible Retirement Plan" is any program defined in Code Sections 401(a)(31) and 402(c)(8)(B), that accepts the Distributee's Eligible Rollover Distribution, as follows:

- (1) An individual retirement account under Code Section 408(a);
- (2) An individual retirement annuity under Code Section 408(b) (other than an endowment contract);
- (3) A qualified trust;
- (4) An annuity plan under Code Section 403(a);
- (5) An eligible deferred compensation plan under Code Section 457(b) which is maintained by an eligible employer under Code Section 457(e)(1)(A) (so long as the plan agrees to separately account for amounts rolled into the plan); and
- (6) An annuity contract under Code Section 403(b).
- (7) Effective January 1, 2008, a Roth individual retirement account or annuity described in Code Section 408A, subject to the limitations set forth in such Internal Revenue Code provision; provided, however, that the Plan is not responsible for assuring that a Distributee is eligible to make such a rollover.

*(Section 15.02(b) amended: 1/1/12)*

(c) A "Distributee" includes an Employee or former Employee, as well as the Employee's or former Employee's surviving spouse.

(d) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

## **ARTICLE XVI - EMPLOYER OBLIGATIONS**

Each Employer is required to remit contributions and reports on a timely basis pursuant to Article III. Beyond that, an Employer has no obligation to each Participant. An Employer shall not be liable for losses arising from expense charges of any kind or from depreciation or shrinkage in the value of investments made under this Plan.

## **ARTICLE XVII - ACCOUNTS AND REPORTS**

**17.01 Accounts.** The Administrator or a duly appointed delegate shall maintain for each Participant an Employer Contribution Account, Participant Contribution Account, Rollover Account, and Miscellaneous Contribution Account. To the Employer Contribution Account shall be credited the contributions under Section 3.02 for each pay period, and to the Participant Contribution Account shall be credited the contributions under Section 3.03 for each pay period. To the Rollover Account shall be credited any rollovers to the Plan pursuant to Article V. To the Miscellaneous Contribution Account shall be credited contributions described in Section 3.04. The balance of such Accounts shall be adjusted daily to reflect any distribution to the Participant and all interest, dividends, account charges, and changes of

market value resulting from the investment of the Participant's Accounts. All Plan records, including individual account information, that are maintained by the Board or its delegate shall be the exclusive property of the Board.

**17.02 Statements of Accounts to the Participants.** A written report of the status of each Participant's Accounts shall be furnished by the Service Manager within thirty (30) days after the end of each Plan quarter. All reports to Participants shall be based on the fair market value of investments credited to their Accounts as of the reporting dates. Participant reports shall be deemed to have been accepted by the Participant as correct unless written notice to the contrary is received by the Service Manager within sixty (60) days (or such longer period as determined by the Administrator) after the mailing or distribution of a report to the Participant.

**17.03 Statements of Accounts to the Administrator.** A written report of the Plan assets shall be furnished by the Service Manager to the Administrator within twenty (20) days after the end of each month. The Administrator may request additional reports from the Service Manager, in the Administrator's sole discretion.

**17.04 Year End Reports.** A written report shall be prepared as of December 31 of each year and submitted to the Administrator by the Service Manager within thirty (30) days (and maintained on file by the Administrator) showing the assets held under the Plan, a schedule of all receipts and disbursements, and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as the Administrator deems appropriate. The Service Manager shall also provide such information to the Administrator as the Administrator deems necessary or appropriate for preparation of its annual report.

**17.05 Annual Statement to Participant.** On written request of a Participant, the Administrator shall furnish a statement of the amount to the credit of the Participant's Accounts. The Administrator is not required to answer more than one such request of a person in any in any one year. The Administrator may issue annual statements of Accounts to Participants. The Service Manager shall provide such information to the Administrator as the Administrator deems necessary or appropriate for preparation of the annual statements.

**17.06 Confidentiality.**

(a) As used in this Section, "personal history record" means information maintained by the Administrator on an individual who is a Participant, former Participant, Member, former Member, Contributor, former Contributor, retirant, or Beneficiary that includes the address, telephone number, social security number, record of contributions, correspondence with the Administrator, or other information the Administrator determines to be confidential.

(b) The records of the Administrator shall be open to public inspection and may be made available in printed or electronic format, except for the following, which shall be excluded, except with the written authorization of the individual concerned:

- (1) The individual's statement of previous service and other information as provided for in section 145.16 of the Ohio Revised Code;
- (2) The amount of a benefit paid to the individual;
- (3) The individual's personal history record.

(c) Notwithstanding the exceptions to public inspection in Section 17.06(b), the Administrator may furnish the following information:

- (1) If a Participant, former Participant, Member, former Member, Contributor, former Contributor, or retirant is subject to an order issued under section 2907.15 of the Ohio Revised Code or is convicted of or pleads guilty to a violation of section 2921.41 of the Ohio Revised Code, on written request of a prosecutor, as defined in section 2935.01 of the Ohio Revised Code, the Administrator shall furnish to the prosecutor the information requested from the individual's personal history record.
- (2) Pursuant to a court or administrative order issued pursuant to Chapter 3119., 3121., 3123., or 3125. of the Ohio Revised Code, the Administrator shall furnish to a court or child support enforcement agency the information required under that section.
- (3) At the written request of any person, the Administrator shall provide to the person a list of the names and addresses of Participants, former Participants, Members, former Members, Contributors, former Contributors, retirants, or Beneficiaries. The costs of compiling, copying, and mailing the list shall be paid by such person.
- (4) Within fourteen (14) days after receiving from the Director of Job and Family Services a list of the names and social security numbers of recipients of public assistance pursuant to section 5101.181 of the Ohio Revised Code, the Administrator shall inform the Auditor of State of the name, current or most recent employer address, and social security number of each Member whose name and social security number are the same as that of a person whose name or social security number was submitted by the Director. The Administrator shall, except for purposes of furnishing the Auditor of State with information required by this Section, preserve the confidentiality of recipients of public assistance in compliance with section 5101.181(A) of the Ohio Revised Code.
- (5) The Administrator shall comply with orders issued under section 3105.87 of the Ohio Revised Code.

On the written request of an alternate payee, as defined in section 3105.80 of the Ohio Revised Code, the Administrator shall furnish to the alternate payee information on the amount and status of any amounts payable to the alternate payee under an order issued under section 3105.171 or 3105.65 of the Ohio Revised Code.

- (6) At the request of any person, the Board shall make available to the person copies of all documents, including resumes, in the Board's possession regarding filling a vacancy of an employee member or retirant member of the Board. The person who made the request shall pay the cost of compiling, copying, and mailing the documents. The information described in this Section 17.06(c)(6) is a public record.
- (7) The System may provide information requested by the United States social security administration, United States centers for medicare and medicaid,

Ohio public employees deferred compensation program, Ohio police and fire pension fund, school employees retirement system, state teachers retirement system, state highway patrol retirement system, or Cincinnati retirement system.

*(Section 17.06(c) amended: 1/7/13, 3/23/15)*

(d) A statement that contains information obtained from the Administrator's records that is signed by the executive director or an officer of the System and to which the System's official seal is affixed, or copies of the Administrator's records to which the signature and seal are attached, shall be received as true copies of the Administrator's records in any court or before any officer of this State.

(e) For purposes of this section, the Board may maintain records in printed or electronic format.

*(New Section 17.06(e) enacted: 1/7/13)*

(f) Any Service Manager shall be bound by the provisions of this Section. Any Service Manager must obtain approval from the Administrator prior to the release of any information under Section 17.06(c)(1)-(5) and (7)-(8).

*(New Section 17.06(f) enacted: 1/7/13 from former Section 17.06(e))*

## **ARTICLE XVIII - VALUATION OF ACCOUNTS**

**18.01 Valuation.** The custodian of each Investment Option shall value the assets in the Defined Contribution Fund in their custody each business day based on acceptable industry practices. All daily transactions shall be based on that day's closing market values. The custodian shall transmit to the Service Manager the daily values described in this Section, and the Service Manager shall adjust the value of the Participant's Accounts in accordance with the daily values received from the custodian.

**18.02 Deposits.** In all cases, deposits of contributions shall be treated as actually made only as of the date the contributions and corresponding reports are accepted as in good order by the Administrator.

## **ARTICLE XIX - TRUST**

**19.01 Trust Status.** All assets held in connection with the Plan, including all contributions to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall /be held in trust for the exclusive benefit of Participants and their Beneficiaries under the Plan. Such assets shall constitute the Trust Fund. No part of the assets and income of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries and for defraying reasonable expenses of the Plan.

**19.02 Trust Fund.** All amounts of compensation contributed pursuant to the Plan, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the Plan, shall be transferred to the Board to be held, managed, invested, and distributed as part of the Trust Fund in accordance with the provisions of the Plan. All contributions to the Plan must be transferred by the Employers to the Trust Fund. All benefits under the Plan shall be distributed solely from the Trust Fund pursuant to the Plan.

**19.03 Board as Trustee.** The Board is the trustee of the Trust Fund.

## **ARTICLE XX - INVESTMENT OF ACCOUNTS**

**20.01 Investment Options for Accounts.** The Board or their duly appointed designee shall evaluate annually the available Investment Options for Participants (or Beneficiaries) in accordance with the Statement of Objective and Policies for this Plan and the Combined Plan. Following such evaluation, the Board shall determine available Investment Options in their sole discretion. The Participants (or Beneficiaries) may direct the investment of their Accounts among the Investment Options selected by the Board. The Service Manager shall follow the directions of the Participants (or Beneficiaries) with respect to the investment of the Accounts. The Board or Service Manager may also bring a suit or take such other action as it deems appropriate in the case of questions involving investment directions.

**20.02 Remittance of Contributions and Reports.** All contributions and reports under the Plan for each payroll period shall be paid within such time as required by Chapter 145. of Ohio Revised Code and any rules adopted thereunder. The Board shall establish policies and procedures for the remittance, collection, and deposit of contributions.

**20.03 Investment of Contributions.** All contribution data shall be transferred to the Service Manager by the Administrator within two (2) Business Days after the Administrator determines that the contributions and corresponding reports have been received in good order from the Employer. The Service Manager shall then allocate all contributions to the selected Investment Options within two (2) Business Days after receipt of the contribution in good order from the Administrator.

**20.04 Investment Default.** If a Participant does not have a valid investment election on file, the Participant's Accounts shall be invested in the Investment Option selected by the Board as the default option. In such event, the Participant shall be deemed to have directed that Investment Option for the Participant's Accounts.

## **ARTICLE XXI - ADMINISTRATION OF PLAN**

**21.01 Compliance with Code Section 401(a).** At all times, the Plan shall be administered in accordance with and construed to be consistent with Code Section 401(a) and its accompanying regulations. The Plan is a money purchase plan, whereby contributions are determined pursuant to Article III of the Plan.

**21.02 USERRA Compliance.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u), and as required by the Uniformed Services Employment and Reemployment Rights Act (“USERRA”).

**21.03 Board Duties and Powers.** The Board shall have the authority to control and manage the operation and administration of the Plan and shall be a named fiduciary of the Plan.

(a) The Board shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable, or convenient to enable the Board to carry out its duties under the Plan. By way of illustration and not limitation, the Board is empowered and authorized:

- (1) To establish rules, regulations, and procedures with respect to administration of the Plan, not inconsistent with the Plan and the Code, and to amend or rescind such rules, regulations, or procedures;
- (2) To establish an administrative fee, which shall be used to pay reasonable expenses of the Plan and may be withheld from contributions under Section 3.02 or 3.03;
- (3) To establish an administrative fee, which shall be used to pay reasonable expenses of the Plan and may be deducted from the Accounts;
- (4) To determine, consistently with the Plan, applicable law, rules, or regulations, all questions of law or fact that may arise as to the eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan, including without limitation, Participants, former Participants, Beneficiaries, Employees, and former Employees;
- (5) Pursuant to Articles VIII and IX of the Plan, to make payments from the Trust Fund to Participants, their Beneficiaries, and other persons as the Board may determine;
- (6) To contract with one or more Service Managers to perform education, recordkeeping, and administrative services under this Plan;
- (7) To accept service of legal process;
- (8) If a written election or consent is not specifically required by the Code, the Board may prescribe a verbal, electronic, or telephonic instruction in lieu of or in addition to a written form;
- (9) Subject to and consistent with the Code, to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission, or reconcile any inconsistency in the Plan with respect to same;
- (10) To perform any other duties or exercise any other powers granted under Chapter 145. of the Ohio Revised Code.

*(Section 21.03(a) amended: 1/7/13, 3/23/15)*

(b) Any action by the Board which is not found to be an abuse of discretion shall be final, conclusive, and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient and the Board shall be the sole and final judge of such expediency.

**21.04 Advice.** The Board may employ or contract with one (1) or more persons to render advice or consultation to it with regard to its responsibilities under the Plan.

**21.05 Delegation by Board.** In addition to the powers stated in Section 21.03, the Board may from time to time delegate to an individual, committee, or organization certain of its fiduciary responsibilities under the Plan. Any such individual, committee, or organization shall remain a fiduciary until such delegation is revoked by the Board, which revocation may be without cause and without

advance notice. Such individual, committee, or organization shall have such power and authority with respect to such delegated fiduciary responsibilities as the Board has under the Plan.

**21.06 Fiduciary Insurance.** The Board may require any of the fiduciaries described in Section 21.05 to purchase fiduciary liability insurance to cover liability or losses occurring by reason of the act or omission of such fiduciary.

**21.07 Payment of Benefits.** If in doubt as to the correctness of its action in making a payment of a benefit, the Administrator or Service Manager may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment. In addition, the Administrator or Service Manager may file, in any state court of competent jurisdiction, a suit, in such form as it considers appropriate, for legal determination of the benefits to be paid or the persons to receive them. The Administrator or Service Manager shall comply with the final order of the court in any such suit and the Participants, Beneficiaries, Administrator and Service Manager shall be bound thereby insofar as such order affects the benefits payable under this Plan or the method or manner of payment.

**21.08 Payment of Expenses.** All expenses and costs associated with the administration and investments of the Plan shall be assessed against Plan assets, as determined by the Board. Investments costs shall be assessed explicitly against each specific Investment Option in a manner determined by the Board and approved by appropriate federal regulating entities, if necessary.

**21.09 Limitation on Recovery.** Participants and Beneficiaries may not seek recovery against the Administrator, or any employee, contractor, or agent of the Employer or Administrator for any loss sustained by any Participant or Beneficiary due to the nonperformance of their duties, negligence, or any other misconduct of the above named persons. The Board or System shall not be liable for losses arising from expense charges of any kind or from depreciation or shrinkage in the value of investments made under this Plan. This paragraph shall not, however, excuse fraud or a wrongful taking by any person.

#### **21.10 Military Service**

Effective January 1, 2007, notwithstanding any provision of this Plan to the contrary, the Survivor 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 this Plan had the Participant died as an actively contributing Participant to the extent required by Code Section 401(a)(37). This provision does not create any right to a survivor benefit that is not otherwise permitted by this Plan.

*(Section 21.10 enacted: 1/1/12)*

### **ARTICLE XXII - AMENDMENT OF THE PLAN**

#### **22.01 Amendment.**

(a) Subject to the provisions of any applicable law, a majority of the Board may at any time amend or modify this Plan without the consent of the Employers or Participants (or any Beneficiaries thereof). Any modification, alteration, or amendment of the Plan, made in accordance with this Section, may be made retroactively if deemed necessary or appropriate by the Board. A certified copy of the resolution of the Board making such amendment shall be delivered to the System, and the Plan shall be amended in the manner and effective as of the date set forth in such resolution. The Board and all Employers, Employees, Participants, Beneficiaries, and all others having any interest under the Plan shall be bound thereby.

(b) If the Plan is amended or modified, the Administrator shall nonetheless be responsible for the supervision and the payment of benefits resulting from amounts contributed prior to the amendment or modifications in accordance with this Article.

**22.02 Amendment for Qualification of Plan.** It is the intent of the Board that the Plan shall be and remain qualified for tax purposes under the Code. The System shall promptly submit the Plan to the Internal Revenue Service for approval under the Code and all expenses incident thereto shall be borne by the System. The Board may make any modifications, alterations, or amendments to the Plan necessary to obtain and retain approval of the Secretary of the Treasury or the Secretary's delegate as may be necessary to establish and maintain the status of the Plan as qualified under the provisions of the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration, or amendment of the Plan, made in accordance with this Section, may be made retroactively, if necessary or appropriate. A certified copy of the resolution of the Board making such amendment shall be delivered to the System, and the Plan shall be amended in the manner and effective as of the date set forth in such resolution. The Board and all Employers, Employees, Participants, Beneficiaries, and all others having any interest under the Plan shall be bound thereby.

### **ARTICLE XXIII - TERMINATION**

This Plan may be terminated by the General Assembly of the State, subject to any statutory requirements. In such a case, the Board shall be responsible for directing distribution of all assets of the Trust Fund to Participants, Beneficiaries, or to a successor plan. In the case of termination of the entire Plan or the complete discontinuance of Employer Contributions, all Participants as of the termination date shall be vested in the Employer Contribution Account regardless of their years of participation.

### **ARTICLE XXIV - NONASSIGNABILITY**

The right of an individual to a distribution, an annuity, or a retirement allowance, any optional benefit, any other right accrued or accruing to any individual, under this Plan, and all moneys, investments, and income from moneys or investments are exempt from any state tax, except the tax imposed by section 5747.02 of the Ohio Revised Code and are exempt from any county, municipal, or other local tax, except taxes imposed pursuant to section 5748.02 or 5748.08 of the Ohio Revised Code and, except as provided in sections 145.57, 3105.171 [3105.17.1], 3105.65, and 3115.32 and Chapters 3119., 3121., 3123., and 3125. of the Ohio Revised Code, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable except as specifically provided in Chapter 145. of the Ohio Revised Code and sections 3105.171 [3105.17.1], 3105.65, and 3115.32 and Chapters 3119., 3121., 3123., and 3125. of the Ohio Revised Code.

### **ARTICLE XXV - MISCELLANEOUS**

**25.01 Taxes.** The Employers and the Administrator do not guarantee that any particular federal or state income, payroll, or other tax consequence will occur because of participation in this Plan.

**25.02 Entire Agreement.** This Plan, including any properly adopted amendment hereof, shall constitute the total agreement between the Employer and any Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by any Participant.

**25.03 Conflicts.** In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that (i) causes the Plan to constitute a qualified plan under the provisions of Code Sections 401 and 414(d) and

the Trust to be exempt from tax under Code Sections 115 and 501, (ii) causes the Plan to comply with all applicable requirements of the Code and (iii) causes the Plan to comply with all applicable Ohio statutes and rules, shall prevail over any different interpretation.

**25.04 Limitation on Rights.** Neither the establishment or maintenance of the Plan, any amendment thereof, nor any act or omission under the Plan (or resulting from the operation of the Plan) shall be construed:

- (a) As conferring upon any Participant, Beneficiary, or any other person a right or claim against the Trust, any Employer, the Administrator, or the Service Manager, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;
- (b) As creating any responsibility or liability of the Employer for the validity or effect of the Plan;
- (c) As a contract between the Employer and any Participant or other person;
- (d) As being consideration for, or an inducement or condition of, employment of any Participant or other individual, or as affecting or restricting in any manner or to any extent whatsoever, the rights or obligations of the Employer or any Participant or other individual to continue or terminate the employment relationship at any time; or
- (e) As giving any Participant the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or other person at any time.

**25.05 Erroneous Payments.** If a person who is a Participant, former Participant, Beneficiary, Member, former Member, Contributor, former Contributor, retirant, or alternate payee, as defined in this Plan or section 3105.80 of the Ohio Revised Code, is paid any benefit or payment by the Administrator or Service Manager to which the person is not entitled, the benefit shall be repaid to the Administrator or Service Manager by the person. If the person fails to make the repayment, the Administrator or Service Manager shall withhold the amount due from any benefit due the person or the person's Beneficiary or may collect the amount in any other manner provided by law.

**25.06 Release.** Any payment to any Participant or Beneficiary shall, to the extent thereof, be in full satisfaction of the claim of such Participant or Beneficiary and the Board may condition payment thereof on the delivery by the Participant or Beneficiary of a duly executed receipt and release in such form as may be determined by the Board.

**25.07 Liability.** The Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document, or electronic transmission believed by the Administrator to be genuine or to be executed or sent by an authorized person.

**25.08 Governing Laws.** The laws of the State of Ohio shall apply in determining the construction and validity of this Plan, with venue in the Franklin County Court with competent subject matter jurisdiction.

**25.09 Necessary Parties to Disputes.** Necessary parties to any accounting, litigation, or other proceedings relating to the Plan shall include only the Board. The settlement or judgment in any such case in which the Board is duly served shall be binding upon all affected Participants in the Plan, their Beneficiaries, estates and upon all persons claiming by, through, or under them.

**25.10 Severability.** If any provision of the Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

**25.11 Supersession.** The terms of the Plan shall supersede any previous agreement between entities or individuals pertaining to the Plan.

**25.12 Counterparts.** This Plan may be executed in one (1) or more counterparts, each of which shall constitute an original.

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