

## **An Act to Adopt and Implement the Adjustable Pension Plan**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA 17600 is enacted to read:**

### **5 §17600 Adjustable Pension Plan**

There is established a new pension plan as a governmental qualified retirement plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code and such other provisions of the Internal Revenue Code and United States Treasury regulations and other guidance as is applicable for state employees and teachers to be administered by the Maine Public Employees Retirement System and shall be referred to as the “Adjustable Pension Plan.” The plan shall apply to all state employees and teachers, as defined in Title 5 section 17001, hired on or after July 1, 2015. On July 1, 2015 and thereafter, no state employees or teachers shall be eligible to participate in the current State and Teacher Retirement Program. All state employees and teachers hired on or after July 1, 2015 shall be covered by the United States Social Security Act and participate in Social Security.

The provisions of the Adjustable Pension Plan are contained within the Maine Public Employees Retirement System, Adjustable Pension Plan, Plan Document. The sections of Title 5, Chapter 421 are hereby incorporated into the provisions of the Adjustable Pension Plan, except and only to the extent that any statute or part thereof is clearly inapplicable or in direct conflict with the written provisions of the plan and shall apply fully and completely to the new plan unless expressly modified by one or more provisions of the plan.

The Board of Trustees of the Maine Public Employees Retirement System is directed to enforce the provisions of the plan, to take all necessary steps to sustain the viability of the plan, to periodically review the provisions of the plan and to make any and all modifications to the plan and its statutory provisions that are required to ensure the plan is a qualified plan under federal law.

### **SUMMARY**

This bill proposes to adopt and implement a new pension plan for state employees and teachers to be administered by the Maine Public Employees Retirement System and shall be referred to as the “Adjustable Pension Plan.”

## SUMMARY OF NEW PLAN PROVISIONS

Membership All state employees and teachers hired on or after July 1, 2015.

### DEFINED BENEFIT COMPONENT

Contribution Employee = approximately 4.65%.

Employer = approximately 1%.

Normal Retirement Age Member's Social Security unreduced retirement age less 2 years (not less than 65).

Normal Retirement Service Requirement 12 quarters of Social Security coverage.

Normal Retirement Benefit Greater of Aggregate Floor Benefit or Adjustable Benefit:

- Annual Floor Benefit = 1% of base salary for the year.
- Aggregate Floor Benefit = sum of annual Floor Benefits for each year.
- Adjustable Benefit = number of member's units x unit value (at time of benefit commencement). The number of units credited to the member each year is based on salary. The value of each unit can vary based on plan earnings.

Early Retirement Age 5 years prior to Normal Retirement Age.

Early Retirement Service Requirement 20 quarters of Social Security coverage.

Early Retirement Benefit Same as Normal Retirement Benefit, but reduced actuarially for commencement before Normal Retirement Date.

Late Retirement Age Any time post Normal Retirement Age.

Late Retirement Service Requirement 12 quarters of Social Security.

**January 15, 2013**

## SUMMARY OF NEW PLAN PROVISIONS

### Late Retirement Benefit

Same as Normal Retirement Benefit, but based on greater of aggregate Floor Benefit or Adjustable Benefit as of actual retirement date.

### Deferred Retirement Benefit

Payable if member terminates prior to Early Retirement Date with 20 quarters of Social Security coverage. Payable at Normal Retirement Age or reduced at Early Retirement Age. **Note:** Can elect to withdraw employee contributions at termination and forfeit any additional benefit.

### Forms of Benefit Payment

- Life of member only (normal form).
- Joint and 50% survivor lifetime payment.
- Joint and 100% survivor lifetime payment.

Member can "purchase" 1%, 2%, or 3% COLA under any one of these benefit forms. **Note:** all optional forms will be reduced to be actuarially equivalent to normal form.

### Active Employee Death Benefits

#### Pre Normal Retirement Date

Return of employee contributions.

#### Post Normal Retirement Date

Greater of 50% Survivor Annuity to spouse or a refund of member contributions.

### Disability

Must have 20 quarters of coverage and Social Security disability award. Then eligible for monthly benefit calculated as Normal Retirement Benefit, but actuarially reduced for payment earlier than Normal Retirement Age.

### Reemployment

#### Pre Normal Retirement Date

Current 30-day rule applies, benefit suspended if reemployed for more than 90 days, employee and employer must begin making contributions. When re-retire, have benefit equal to benefit at first retirement **plus** new benefit based solely on benefit (if any) earned during reemployment.

**SUMMARY OF NEW PLAN PROVISIONS**

Post Normal Retirement Date	Retiree cannot return to work prior to date of retirement, no suspension of benefits, no new employer or employee contributions, and no new benefit accruals.
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**SOCIAL SECURITY COMPONENT**

<u>Contributions</u>	Employee and employer would pay FICA taxes.
<u>Benefits</u>	According to Social Security laws, retirement ages all as set by Social Security law.
<u>Death and Disability Benefits</u>	
Benefits	According to Social Security law.

**DEFINED CONTRIBUTION COMPONENT**

<u>Contributions</u>	Employer (to 401(a)) = 1%.  Employee (to 457) = as employee elects, subject to IRS limits.
<u>Vesting</u>	100% full and immediate vesting.
<u>Benefits</u>	Based on account balance. Will have annuity purchase available to create lifetime payment stream if member so elects.

**MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM**  
**ADJUSTABLE PENSION PLAN**

Established \_\_\_\_\_, 2013

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**ARTICLE I.**

**PURPOSE OF PLAN**

The Maine Adjustable Pension Plan ("APP" or "Plan") is hereby established effective \_\_\_\_\_, \_\_\_\_\_. The Plan is a governmental qualified defined benefit plan under Internal Revenue Code Sections 401(a) and 414(d) and 414(k).

**ARTICLE II.**

**DEFINITIONS**

This Article covers all generally applicable definitions used in this Plan. When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows, unless a different meaning is plainly required by the content:

**Section 2.01. "Active Member"** means any person included in the Plan under Article III, who is earning covered service quarters who has not become an Inactive Member.

**Section 2.02. "Actuarial Equivalent" or "Actuarial Equivalence"** means a benefit of equivalent actuarial value determined using an interest rate of 5.5% and the RP 2000 Combined Healthy mortality table with an equal weighting of male and female, unless a different basis for actuarial equivalence is set forth in the specific Plan provision.

**Section 2.03. "Actuarial Present Value"** unless otherwise specific in the Plan, means a benefit determined by using the applicable mortality table, the applicable interest rate as of the look-back month, and the applicable stability period, where:

(a) the applicable mortality table is the mortality table prescribed in the Secretary of the Treasury under Code § 417(e)(3)(B) in effect on the first day of the applicable stability period;

(b) the look-back month is the October immediately preceding the beginning of a calendar year;

(c) the applicable interest rate is the interest rate pursuant to Code § 417(e)(3)(C) for the applicable stability period, determined as of October in the previous calendar year; and

(d) the applicable stability period is the calendar year in which the Annuity Starting Date for the distribution occurs.

**Section 2.04. "Actuary"** means the individual or the organization designated by the Board to be the technical advisor to the Board.

**Section 2.05. "Adjustable Benefit"** means the benefit described in Section 6.01(a)(2).

**Section 2.06. "Alternate Payee"** means a spouse, former spouse, child or other dependent of a Member or Retiree who is recognized by a qualified domestic relations order as having a right to receive all or a portion of the benefits payable by the Retirement System with respect to that Member or Retiree.

**Section 2.07. "Applicable Form"** means the appropriate form or forms as designated and furnished by the Retirement System to make the election or provide the notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Retirement System may, but is not required to, prescribe an oral, electronic, or telephonic form in lieu of or in addition to a written form in compliance with Treas. Reg. § 1.401(a)-21.

**Section 2.08. "Base Salary"** means for a calendar year, the base salary earned by the Member and paid by the Employer in that calendar year subject to the following inclusions, exclusions and limitations.

(a) Base salary includes:

- (1) Workers' compensation benefits,
- (2) Amounts constituting spousal maintenance paid from the Member's salary,

(3) Any money withheld from a Member's salary to be paid by the employer to a third party under a tax sheltered annuity contract (pursuant to Code Section 403(b)) or a deferred compensation plan (pursuant to Code Section 457(b)) for the future benefit of an employee,

(4) Any money withheld from a Member's salary pursuant to the employer's Code Section 125 plan or 132(f)(4) program to be redirected for permissible benefits under such plan, and

(5) Pick-up contributions.

(b) Base salary does not include:

(1) Payment for any unused accumulated or accrued sick leave or payment for any unused vacation leave,

(2) Any other payment that is not compensation for actual services rendered or that is not paid at the time the actual services are rendered, and

(3) Any other payments made to the employee that are not part of Base Salary.

For any calendar year beginning after December 31, 2001, the Base Salary of a Member for any year taken into account under the Plan shall not exceed Two Hundred Thousand Dollars (\$200,000) (as increased by the cost of living adjustment for the year, pursuant to Code Section 401(a)(17)(B)). The cost of living adjustment for a calendar year applies to Base Salary for the determination period that begins within such a calendar year.

**Section 2.09. "Beneficiary"** means a person or persons designated by a Member to receive a benefit from the Plan. In the event no Beneficiary is named or none survive the Member, the Member's estate shall be the beneficiary. Designation of a Beneficiary may be

changed by the Member in writing on the Applicable Form(s) provided for that purpose at any time prior to Retirement. Any new designation, timely filed with the Retirement System, of a Beneficiary invalidates, supersedes, and revokes any prior designation. Only the last such designation, on file with the Retirement System prior to Retirement, shall have effect.

**Section 2.10. "Benefit"** means any payment made, or required to be made, pursuant to the provisions of the Plan to a Member or Member or Disability Recipient or beneficiary under the Plan.

**Section 2.11. "Board"** means the Board of Trustees of the Maine Public Employees Retirement System, established by law and under the provisions of the Plan to administer the Plan.

**Section 2.12. "Code"** means the Internal Revenue Code of 1986, as applicable to governmental plans, as amended from time to time, and the Internal Revenue Code of 1954, as of September 2, 1974, as applicable to governmental plans.

**Section 2.13. "Code Section 415(d) Cost of Living Adjustment"** means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 415(d) for any applicable year.

**Section 2.14. "Disability" or "Disabled"** means a Member who has received a Social Security Disability award, provided that the following conditions are satisfied:

(a) Such disability commenced on a specified date during the period of the Member's employment with the Employer, as evidenced by a SSA disability award submitted with the Member's disability retirement application, reflecting a disability onset date on or before the Member's termination date.

(b) In no event will the disability commencement date be earlier than the latest disability onset date alleged by the Member in his SSA disability application(s).

**Section 2.15. "Disability Retirement" and "Disability Retirement Benefit"** means the Plan benefit paid to a Member in accordance with Section 6.06.

**Section 2.16. "Disability Retirement Date"** means the first day of the calendar month in which a Member becomes entitled to receive a disability insurance benefit under the Federal Social Security Act, as amended. However, in no event will the Disability Retirement Date be earlier than one (1) calendar month following the date of the Member's Termination of Employment as a result of Disability.

**Section 2.17. "Disabilitant," Disability Benefit Recipient" or "Disability Recipient"** means a Member who is receiving disability benefits, but who is not earning Quarters of Coverage under the plan.

**Section 2.18. "Domestic Relations Order"** means a judgment, decree or order, issued by a court of competent jurisdiction, including approval of a property settlement agreement, that:

(a) Relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent, as that term is defined in federal tax law, of an Active or Inactive Member; and

(b) Is made pursuant to a domestic relations law of this State or another state.

**Section 2.19. "Early Retirement Age"** for a Member hereunder shall be the date that is five years prior to the Member's Normal Retirement Age.

**Section 2.20. "Early Retirement Benefit"** means a Plan benefit payable and calculated pursuant to Section 6.04.

**Section 2.21. "Early Retirement Date"** for a Member hereunder shall be the first day of the month coinciding with or next following the latest of the Member's attainment of the Early Retirement Age and prior to the Member attaining Normal Retirement Age, completion of five years of Quarters of Coverage (20 Quarters of Coverage), and a complete Termination of Employment. In order to commence benefits following the attainment of Early Retirement Age, the Member must cease working for the Employer and any participating employer. There is no in-service distribution available under the Plan. Additionally, no benefits will be payable until the Member properly completes the Applicable Form(s) for a pension and files the same with the Retirement System.

**Section 2.22. "Effective Date"** means January 1, 2015.

**Section 2.23. "Eligible Employee"** means an Employee eligible to be covered under the Plan.

**Section 2.24. "Employee"** means a state employee, including any person serving during any probationary period required under the Civil Service Law and rules of the Civil Service Appeals Board, or a teacher. However, notwithstanding any other provision of the Plan to the contrary, the term "Employee" does not include: (a) an individual who is a nonresident alien and who receives no earned income (within the meaning of Code Section 911(d)(2)) from their employer which constitutes income from sources within the United States within the meaning of Code Section 861(a)(3); (b) a leased employee; or (c) any person treated in good faith by their employer as an independent contractor, regardless of whether such person is later determined to be an employee for tax purposes.

**Section 2.25. "Employer"** means: the State of Maine or a public school as defined by 5 M. R. S. § 17001(30) participating in the Plan.

**Section 2.26. "Executive Director"** means the executive director of the Maine Public Employees Retirement System.

**Section 2.27. "Floor Benefit"** means the benefit described in Section 6.01(a)(1).

**Section 2.28. "FMLA"** means the Family and Medical Leave Act of 1993, as amended from time to time.

**Section 2.29. "Inactive Member"** means any person who was an Active Member in this Plan, but has separated from Service, become Disabled, Retired, or has died, who has a remaining interest in the Plan.

**Section 2.30. "Internal Revenue Code"** means, the United States Internal Revenue Code of 1986, as amended.

**Section 2.31. "Late Retirement Benefit"** means a Plan benefit payable and calculated pursuant to Section 6.05.

**Section 2.32. "Late Retirement Date"** means the first day of the month coinciding with or next following the day the Member qualifies for a Late Retirement Benefit as of which the Member Retires. In order to commence benefits following the attainment of Late Retirement Age, the Member must cease working for the Employer and any participating employer. There is no in-service distribution available under the Plan. Additionally, no benefits will be payable until the Member properly completes the Applicable Form(s) for a pension and files the same with the Retirement System.

**Section 2.33. "Market Value"** means the current or most recently quoted price for a security or aggregation of securities.

**Section 2.34. "Member"** means any person who is an Active or Inactive Member of the Plan.



**Section 2.35. "Military Service"** means service performed while on active duty in the Armed Forces of the United States and for which the Member was granted an honorable discharge.

**Section 2.36. "Normal Retirement Age"** means the age upon which the Member is eligible to commence an unreduced Social Security Benefit, less two years, but in any event not less than age 65.

**Section 2.37. "Normal Retirement Benefit"** means a Plan benefit payable and calculated pursuant to Section 6.01.

**Section 2.38. "Normal Retirement Date"** is the first day of the month coinciding with or next following the latest of the Member's attainment of Normal Retirement Age, so long as the Member has 12 Quarters of Coverage, and has Terminated Employment. In order to commence benefits following the attainment of Normal Retirement Age, the Member must cease working for the Employer. There is no in-service distribution available under the Plan. Additionally, no benefits will be payable until the Member properly completes the Applicable Form(s) for a pension and files the form(s) with and in the manner prescribed by the Retirement System.

**Section 2.39. "Pick-Up Contributions"** means Member contributions to the Retirement System which are assumed and paid by the Employer through a reduction of a Member's salary for services rendered, in accordance with Code Section 414(h), in lieu of employee contributions.

**Section 2.40. "Plan Year"** means a year beginning July 1 and ending on June 30, which is also the Plan's fiscal year.

**Section 2.41. "Public School"** means as follows:

- (a) "Public School" includes:

(1) Any public school conducted within the State under the authority and supervision of a duly elected board of education, superintending school committee or school directors; and

(2) Any school which received any direct state aid in 1950 and municipal tuition funds amounting to at least the amount of that state aid during 1950.

(b) "Public School" does not include:

(1) Maine Wesleyan Seminary and College, commonly known as Kents Hill School, as of September 23, 1971;

(2) Bridgton Academy, as of September 1, 1979;

(3) Gould Academy, as of September 1, 1979;

(4) North Yarmouth Academy, as of September 1, 1979; and

(5) Public charter schools, as authorized by Title 20-A, chapter 112.

**Section 2.42. "Qualified Domestic Relations Order"** means a domestic relations order that:

(a) Creates or recognizes the right of an Alternate Payee, or assigns to an Alternate Payee the right, to receive all or a portion of the benefits payable with respect to an Active or Inactive Member or Disability Recipient under the Plan;

(b) Directs the Retirement System to disburse benefits to the Alternate Payee; and

(c) Meets the requirements of section 16.04 of Article XVI of the Plan.

**Section 2.43. "Quarters of Coverage"** is the basic measure for determining whether a Member has earned credit under the Plan. One Quarter of Coverage is credited to a Member upon attainment of one Quarter of Coverage under Social Security. No more than four quarters may be earned in one calendar year.

**Section 2.44. "Retiree"** refers to any Member who has Terminated Employment with the Employer and who is receiving a retirement benefit provided under the Plan. Such Retiree is no longer deemed a Member under the Plan.

**Section 2.45. "Retirement"** means the receipt of Plan benefits, other than Disability Benefits, by a Member of the Plan on or after attainment of the Member's Early Retirement Date or Normal Retirement Date following a bona fide termination of employment.

**Section 2.46. "Retirement Allowance" or "Retirement Benefit"** means the retirement payments to which a Member, or Alternate Payee, is or may be entitled to as provided by the provisions of the Plan.

**Section 2.47. "Retirement Date"** means the first day of the month that the Member's Retirement Benefit becomes payable.

**Section 2.48. "Retirement System"** means the Maine Public Employees Retirement System.

**Section 2.49. "Spouse"** means a person who, as of the date of the Member's or Member's death, as applicable, is lawfully joined with the Member or Member or Disability Recipient in a marriage which is recognized under the laws of the State of Maine.

**Section 2.50. "State Employee"** means any regular classified or unclassified officer or employee in a department of the State of Maine; any employee of the Maine Community College System except those who make the election provided under Title 20-A, section 12722; any employee of the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf except as provided in Title 20-A, section 7407, subsection 3-A; any employee of the Maine Military Authority; any employee of the Northern New England Passenger Rail Authority; any employee of the Maine Port Authority; any employee of the

Efficiency Maine Trust who on June 30, 2009 is an employee of the Public Utilities Commission energy efficiency or renewable energy programs who elects to remain a state employee; any employee of the Efficiency Maine Trust who accepts employment with the Efficiency Maine Trust prior to July 1, 2010 who was a state employee immediately prior to accepting such employment who elects to remain a state employee; and any employee transferred from the Division of Higher Education Services to the Finance Authority of Maine who elects to be treated as a state employee.

**Section 2.51. "Surviving Spouse"** means the Spouse alive at the time of the death of the Member or Member.

**Section 2.52. "Teacher"** means:

(a) Any employee of a public school who fills any position that the Department of Education requires be filled by a person who holds the appropriate certification or license required for that position and:

(1) Holds appropriate certification from the Department of Education, including an employee whose duties include, in addition to those for which certification is required, either the setup, maintenance or upgrading of a school computer system the use of which is to assist in the introduction of new learning to students or providing school faculty orientation and training related to use of the computer system for educational purposes; or

(2) Holds an appropriate license issued to a professional employee by a licensing agency of the State;

(b) Any employee of a public school who fills any position not included in paragraph (a), the principal function of which is to introduce new learning to students, except that a coach

who is employed by a public school and who is not otherwise covered by the definition of teacher as defined in this subsection or an employee who is employed in adult education as defined in Title 20-A, section 8601-A, subsection 1 and who is not otherwise covered by the definition of teacher defined in this subsection may not be considered a teacher for purposes of the Plan;

**Section 2.51. "Termination," "Terminate Employment," "Termination of Employment," or "Terminated"** means a severance of employment with the Employer, including Retirement, Disability Retirement, resignation or discharge, lapse of recall rights after layoff, death, or vacation of office by an elected or appointed Member. Provided however, that Termination shall not include: (i) absence from active employment which is not treated by the Employer as a Termination of Employment; (ii) absence due to military service to the extent required under USERRA and Code Section 414(u)(8)(A), (iii) absence due to leave which qualifies as family or medical leave under the FMLA, to the extent required under the FMLA. Unless otherwise required by law or unless the terms of the leave otherwise specify, if an Employee on an authorized leave of absence fails to return to active employment upon expiration of the leave of absence, the Employee will be considered Terminated as of the date immediately preceding the approved leave period.

**Section 2.53. "26 CFR Part 31"** means 26 Code of Federal Regulations, Part 31, as amended effective July 1, 1991, or as hereafter amended.

**Section 2.54. "Unit," "Units," and "Unit Value"** all have the meanings as set forth in Section 6.02.

**Section 2.55. "Vested"** means the Member or beneficiary has a non-forfeitable right to a benefit under the Plan. A Member must have a minimum of 20 Quarters of Coverage in order to become Vested under the Plan.

### **ARTICLE III.**

#### **MEMBERSHIP**

**Section 3.01. Membership.** All Employees hired or rehired on or after July 1, 2015, become members of the Plan as a condition of their employment.

**Section 3.02. Continued Membership.** The membership of the following Members is considered to have continued during the period of the employee's service in the Armed Forces of the United States:

A. Any Member entering a class of service in the Armed Forces of the United States, if the Member does not withdraw accumulated contributions; or

B. Any Member who enlists in or is inducted or drafted into the service of the Armed Forces of the United States, if the member does not withdraw accumulated contributions.

### **ARTICLE IV.**

#### **CONTRIBUTIONS**

**Section 4.01. Employer Contributions.** The Employer shall make contributions to fund the Plan. The amount of these contributions shall be based upon the actuarial assumptions adopted by the Board, the benefits provided in the Plan, actuarial valuation results, and such other factors as the Board shall deem appropriate to assure proper funding of the Plan, after taking into account the mandatory Member contributions. Contributions by the Employer shall be applied as necessary to assure the payment of benefits to Members, Retirees, Disability Recipients and Beneficiaries.

**Section 4.02. Mandatory Member Contributions.** Active Members will be required to make contributions to fund the Plan. The amount of these contributions shall be based upon actuarial assumptions adopted by the Board, the benefits provided in the Plan, actuarial valuation results, and such other factors as the Board shall deem appropriate to assure proper funding of the Plan, after taking into account the contributions. The initial amount of Member contributions shall be 4.65% of Base Salary. The Employer shall pick up and pay through salary reduction Member contributions in accordance with Code Section 414(h)(2) as follows:

(1) The contributions designated as Member contributions shall be paid by the Employer by making salary reductions on a pre-tax basis from the Member's Base Salary.

(2) No Member shall be given any option to receive these amounts directly instead of having them paid to the Plan.

**Section 4.03. Continued Contributions During Leave of Absence.** Subject to the applicable limits of Code Section 415, if the terms of an authorized leave of absence permit the Member to continue accumulating benefits during said leave of absence, the Member shall be required to continue making Member contributions in the same amount and at the same rate as immediately prior to the commencement of the leave of absence.

**Section 4.04. Back Contributions for Leaves of Absence.** See Article V.

## **ARTICLE V.**

### **QUARTERS OF COVERAGE AND LEAVES**

**Section 5.01. Quarters of Coverage.** Quarters of Coverage means all quarters earned during periods of employment when the employee was covered by Social Security and the Plan and contributions were made to the Retirement System. No more than four Quarters of Coverage may be earned in one calendar year.

**Section 5.02. USERRA Military Quarters of Coverage.** Notwithstanding any provision of the Plan to the contrary, contributions, benefits, and Quarters of Coverage with respect to qualified military service shall be provided in accordance with Code Section 414(u). Code Section 414(u) provides that: (i) individuals reemployed under the Uniform Services Employment and Reemployment Rights Act of 1994 ("USERRA") must be treated as not having incurred a break in Service because of qualified military service, (ii) periods of qualified military service must be counted for vesting and benefit accruals (if the Employee makes up the required contribution), (iii) make-up of contributions up to the maximum the individual could have made if continuously employed must be allowed during the period beginning on reemployment and lasting for the lesser of three (3) times the period of qualified military service or five (5) years, (iv) any accrued benefits contingent on make-up of contributions must be made by the Employer, (v) earnings are not required to be credited unless and until after the employee contributes make-up contributions, (vi) allocations of forfeitures to the individual's account are not required during qualified military service, (vii) make-up contributions are based on compensation the individual would have received during the period of qualified military service (if not reasonably certain, compensation for the 12 month period (or, if shorter, the period of employment) immediately preceding qualified military service can be used), and (viii) make-up contributions are subject to the limitations of Code Sections 402(g), 415, and 404(a) for the year to which the contribution relates, not the calendar year in which contribution is made.

**Section 5.03. Member Leaves of Absence.**

(a) USERRA, FMLA Leave. Notwithstanding any provision of this Plan to the contrary, if any period of absence is required to be counted under USERRA, the FMLA or any other applicable federal or state law for the purpose of computing the Quarters of Coverage



earned, and the amount of any benefit payable under the Plan, then said period of absence shall be counted toward Quarters of Coverage in accordance with and subject to the requirements of such law, provided that the required contributions are made to the Retirement System.

(b) Other Leaves of Absence. Unless otherwise required by law or unless the terms of the leave otherwise specify, an authorized leave of absence granted to a Member will be counted for the purpose of computing Quarters of Coverage earned, and benefits payable under the Plan, and for purposes of meeting the Plan's minimum 20 Quarters of Coverage for vesting, provided that the required contributions are made to the Retirement System. However, if the Member does not return to active employment upon expiration of the authorized leave period, then subsection (c) shall apply.

(c) Failure to Return to Service. Unless otherwise required by law or unless the terms of the leave otherwise specify, if a Member does not return to active employment with the Employer upon expiration of a leave of absence, the Member's interest under the Plan, if any, including the Member's Quarters of Coverage for the purpose of computing the amount of any benefit payable under the Plan, and for purposes of meeting the Plan's minimum Quarters of Coverage requirements for vesting, and any minimum Quarters of Coverage requirements for Retirement or death benefit eligibility, will be limited to those Quarters of Coverage accrued as of the date immediately preceding the approved leave period.

## **ARTICLE VI.**

### **BENEFITS**

#### **Section 6.01. Normal Retirement Benefit.**

(a) Each Member who attains his Normal Retirement Age shall be eligible for a monthly benefit hereunder beginning on his Normal Retirement Date or, if later, the date the

Member properly completes the Applicable Form(s). The benefit ends with the payment made in the month of the Member's death. The monthly benefit amount payable in Form A, described in Section 8.02(a), will be the greater of the Floor Benefit or the Adjustable Benefit, as defined below, divided by 12.

(1) A Member's **Floor Benefit** is equal to the sum of the Floor Benefits earned in each calendar year by the Member. The Floor Benefit for a calendar year in which the Member earns a year of service (four Quarters of Coverage) is 1% of the Member's Base Salary earned in that calendar year.

(2) A Member's **Adjustable Benefit** is equal to the number of the Member's Units multiplied by the Unit Value. The Unit Value will be the value as of the end of the calendar year immediately preceding the calendar year in which the Member Terminates Employment.

(b) Retroactive payment of more than 60 days of Normal Retirement Benefits back to the later of the Member's Normal Retirement Date or date of Termination is not permitted.

**Section 6.02. "Units"** means the following:

(a) The Units credited to a Member for each Plan Year are equal to the Floor Benefit earned during the Plan Year divided by the Unit Value. For this purpose, the Unit Value shall be the Unit Value as of the beginning of the Plan Year.

(b) The Unit Value as of the beginning of a Plan Year is equal to the Unit Value as of the end of the immediately preceding Plan Year.

(c) The Unit Value as of the end of a Plan Year is equal to the Unit Value as of the beginning of that Plan Year plus or minus an additional amount equal to the percentage by which the Return On Plan Assets for the Plan Year exceeds or is less than 5% multiplied by the Unit

Value as of the last day of the preceding Plan Year, except that the excess percentage shall not be more than 5%. For example, if the Unit Value as of the beginning of the Plan Year equals \$40 and the return on plan assets is 15%, the Unit Value as of the end of the Plan Year equals \$42 (\$40 times (15% minus 5%, not greater than 5%)). For purposes of this paragraph the Unit Value as of the beginning of the first Plan Year is \$10.

**Section 6.03. "Return on Plan Assets"** means the Investment Return (as defined in this section) divided by the Return Base (as defined in this section) where:

(a) For purposes of subsection (b), "Assets" shall refer to the fair market value of assets in the Plan on the measurement date reduced by the value of retiree liability measured using the yield curve (as published by the Internal Revenue Service for plans that made an election under Code Section 430(h)(2)(D)(ii)) in effect on the measurement date and the Plan's mortality table used to determine Actuarial Equivalence;

(b) The Investment Return is equal to the fair market value of Assets as of the end of the Plan Year less the fair market value of Assets as of the beginning of the Plan Year; less contributions received by the Plan during the Plan Year, plus administrative expenses, plus lump sum distributions made during the Plan Year, and plus the value of monthly annuity benefits for Members who began receiving payments during the Plan Year valued using the assumptions set forth in (a) above at the time payments first began; and

(c) The Return Base is equal to the fair market value of Assets as of the beginning of the Plan Year reduced by adjusted administrative expenses made during each month of the Plan Year, reduced by adjusted lump sums paid during the Plan Year, reduced by adjusted value of monthly annuity benefits for Members who began receiving payments during the Plan Year valued using the assumptions set forth in (a) above at the time disbursements first began during

each month of the Plan Year, and increased by the adjusted contributions received in each month of the Plan Year.

The adjusted disbursements and adjusted contributions for a month are the disbursements or contributions for the month multiplied by a fraction:

(1) The numerator of which is the number of whole months from the end of the month in which the disbursement or contributions was made or received until the end of the Plan Year; and

(2) The denominator of which is 12.

**Section 6.04. Early Retirement Benefit.**

(a) Each Member who attains his Early Retirement Age shall be eligible for a monthly benefit hereunder as of his Early Retirement Date or later, upon properly completing the Applicable Form(s). The Benefit ends with the payment made in the month following the Member's month of death. The monthly benefit amount will be the greater of the Floor Benefit or the Unit Benefit, as defined in Section 6.01, divided by 12, and adjusted actuarially for commencement before the Member's Normal Retirement Date.

(b) A Member who is otherwise eligible for an Early Retirement Benefit may apply for and receive an Early Retirement Benefit while a Disability Benefit determination is pending. Upon a determination that the Member is entitled to receive a Disability Benefit, the Member's Benefit will be changed to a Disability Benefit (if greater), retroactive to the Disability Retirement Date. However, no change in the form of benefit payment or designation of the Beneficiary may be made, and no Beneficiary may be named if one had not been previously named.

(c) Retroactive payment or more than 60 days of Early Retirement Benefits back to the later of the Member's Early Retirement Date or date of Termination is not permitted.

**Section 6.05. Late Retirement Benefit.**

(a) A Member may retire from the active Service of the Employer on the first day of any month after his Normal Retirement Date, in which case the Member shall receive a Late Retirement Benefit. The Late Retirement Benefit shall be calculated in the same manner as the Normal Retirement Benefit, based on the Member's Floor Benefit or Adjustable Benefit as of the Member's actual termination date.

(b) Retroactive payment of more than 60 days of Late Retirement Benefits back to the later of the Member's Late Retirement Date or date of Termination is not permitted.

**Section 6.06. Disability Benefit.**

(a) A Member who becomes Disabled after completion of five (5) or more years of Quarters of Coverage (20 Quarters of Coverage), and prior to attainment of Normal Retirement Age, and is otherwise entitled to receive a Disability Retirement Benefit, shall receive such benefit in accordance with and subject to the requirements of this Section. The Disability Retirement Benefit shall be calculated in the same manner as the Early Retirement Benefit, including any applicable actuarial reductions. Provided the following four requirements are satisfied, Disability Retirement Benefit payments shall be payable as of and may be paid retroactively to the Member's Disability Retirement Date, and shall continue to be payable each month thereafter during the Member's Disability.

(1) Disability Retirement Application Must Be Filed Within 1 Year After Termination. No later than one (1) year after the Member's Termination of Employment due to Disability, the Member must complete and submit a disability retirement

application form to the Retirement System (regardless of whether the Member has yet received an SSA disability award.

(2) Application for Disability Award Must Be Filed Within 1 Year. Within one year after the Member's Termination of employment due to Disability, the Member must file an application for a federal SSA disability award and within said one (1) year period the Member must provide to the Retirement System documentation deemed sufficient to establish that the Member has filed such application. Such documentation may include a copy of such application, a copy of the Disability award or determination received in response to such application, or an affidavit completed by the Member (on the Applicable Form provided for such purpose) in which the Member affirms that he or she has filed such application.

(3) Disability Award Must Be Submitted Within 1 Year of Termination, or if Later, Within 6 Months After Date of Award. Except as otherwise provided below, the Member must submit the SSA disability award, reflecting a Disability onset date on or before the Member's Termination date, to the Retirement System within one (1) year after the Member's Termination of employment due to Disability or within six (6) months after the date of such award or determination, whichever is later.

(4) Special Rule in Case of Disability Award on Subsequent SSA, Disability Application. In the event that a Member complies with the requirements of the Plan concerning filing a retirement application and filing an application for a SSA disability award and the Member's application for a SSA disability award is finally denied, the Member must make a subsequent application for a SSA disability award within six (6) months following such denial. The Member must allege in the subsequent SSA

application a disability onset date that is on or before the Member's Termination date, and where the Member is subsequently granted a SSA disability award, the Member must within six (6) months after the date of such award or determination, or if later, one (1) year after the Member's Termination of employment, submit documentation which the Retirement System deems sufficient to establish that:

(i) Within six (6) months after the SSA's denial of the Member's initial application for a disability award, the Member filed a subsequent application for a SSA disability award in accordance with this Subsection; and

(ii) The Member's SSA disability award reflects a disability onset date on or before the Member's Termination date; or, the Member's SSA disability award reflects a disability onset date that immediately follows the date of denial of the Member's prior SSA disability application (due to application of SSA res judicata rules) but the Member's actual Disability onset date was on or before the Member's Termination date.

(b) If the Member is otherwise eligible to receive a Disability Retirement Benefit and except as otherwise permitted in the Plan with respect to payment of Disability Retirement Benefits retroactive to the Member's Disability Retirement Date, Disability Retirement Benefits shall be payable as of the first day of the month following or coinciding with the date of acceptance of the Member's completed disability retirement application form by the Retirement System, provided such application includes: (1) an SSA disability award reflecting a disability onset date on or before the Member's Termination date; or (2) where the Member has received a SSA disability award in response to a subsequent SSA disability application as provided herein, documentation which the Retirement System deems sufficient to establish that the disability

onset date reflected in the SSA disability award immediately follows the date of denial of the Member's prior SSA disability application (due to application of SSA res judicata rules) and that the Member's actual Disability onset date was on or before the Member's Termination date. In no event shall Disability Retirement Benefits be payable before the Member's Disability Retirement Date.

(c) Under no circumstances shall any Member be entitled at one time to more than one type of retirement benefit granted under the Plan.

(d) No interest shall be paid on any retroactive payment of Disability benefits.

**Section 6.07. Return to Employment Before Normal Retirement Date.**

(a) General Rule. Unless otherwise provided in this Section, if a Retiree returns to Service as an Employee with an Employer at any time before the Retiree's Normal Retirement Age, but after at least 30 days after the Member's Benefit commenced, any monthly benefit shall be suspended as of the date of said return to Service, and the provision of this Section apply.

(b) Re-Computation of Benefit in Case of Suspension. In any case where the payment of a Retiree's benefit shall have been suspended under this Section, the benefit payable on his re-retirement shall be the benefit computed in accordance with this Article at the time of his first retirement, plus any new benefit earned during the period of his re-retirement. In no event shall the resulting benefit be less than the benefit payable at the time of his previous benefit commencement. A Retiree who is reemployed as an Eligible Employee shall not be authorized to change his form of benefit payment on his subsequent re-retirement, or to change his Beneficiary, or to name a Beneficiary if one had not been previously named. For the purposes of this Section, any such Member's benefit earned subsequent to his reemployment by



the Employer as an Eligible Employee shall be calculated from his date of reemployment to the date of his subsequent termination as an Eligible Employee.

(c) Death in Service After Reemployment. If a Retiree returns to Service with an Employer as an Employee and he dies during the period of his reemployment and before re-retirement, then his Beneficiary, if any, shall be entitled to any benefit payable to his Beneficiary under the form of benefit originally selected by the Retiree.

**Section 6.08. Return to Employment On and After Normal Retirement Date.**

(a) General Rule. Unless otherwise provided in this Section, if a Retiree returns to Service as an Employee with an Employer at any time on and after the Retiree's Normal Retirement Age, but after at least 30 days after the Member's Benefit commenced, the Member's benefit shall not be suspended as of the date of said return to Service, and the provisions of this Section apply.

(b) Recompilation. In any case where the Retiree returns under this Section, the retiree will not accrue any new benefits under the Plan, because of the Retiree's in-retirement-pay status.

**Section 6.09. 30-Day Rule – Suspension of Benefits.** If any Retiree returns within the first 30 days after the Member's Benefit commenced, the provisions of this Section apply, rather than the provisions of Section 6.07 or 6.08. In this case, the Retiree's benefit will be immediately suspended as of said return to Service. The benefit payable on the Member's re-retirement shall be computed in accordance with this Article on the basis of his Quarters of Coverage, Floor Benefit, and Adjustable Benefit, at the time of his subsequent re-retirement. The Retiree must reapply for the benefit and complete all Applicable Forms as though he had not previously retired. The Member's benefits shall be recomputed.

**Section 6.10. Recovery from Disability.**

(a) Any Disability Retirement Benefit payable under the Plan to any Disability Recipient shall be suspended as of the first day of the month coinciding with or following the date his Disability ceases. A Disability Recipient's Disability shall be considered to have ceased upon the date as of which the SSA determines that the Recipient is no longer Disabled. The Recipient shall be required to notify the Retirement System within sixty (60) days after the Recipient receives notice that the SSA has determined that the Recipient is no longer Disabled.

(b) Conditioned Receipt of Disability. The Retirement System shall have the right to require the Disability Recipient to prove at any time, as a condition for continued receipt of Disability benefits under the Plan, the continuing receipt of disability insurance benefits under the Federal Social Security Act, as amended.

(c) Suspension of Disability Retirement. In any case where the payment of a Recipient's Disability Benefit is suspended, the period of absence from employment due to such Disability shall be treated as a leave of absence without pay, except that such period of absence shall not be counted as Quarters of Coverage. Any Member who retired or is a Disability Recipient and who dies or who has been or shall be subsequently declared ineligible for a Disability Retirement Benefit because of the cessation of said Disability shall have a right to any benefit afforded under any other provision of this Plan to which he or his Beneficiary might otherwise be entitled. In such case, any Disability Retirement payments made prior to the date as of which his Disability ceases or as of which it is declared to no longer exist shall be retained by the Retiree and disregarded in computing any other benefit payable under the Plan.

**ARTICLE VII.**

**TERMINATION BEFORE RETIREMENT; VESTING**

**Section 7.01. Vesting Requirement for Deferred Retirement Benefit.** A Member whose employment is terminated for any reason other than death, disability or Retirement shall be entitled to a Vested benefit only if the Member has 20 Quarters of Coverage. Payment of such Vested retirement benefit shall commence on the last day of the month in which his Normal Retirement Date occurs, if the Member so elects by properly filing an application for retirement benefits with the Retirement System, and shall be payable on the last day of each month thereafter during his lifetime, unless the Member elects an optional form of benefit payment under Article VIII. The amount of such monthly retirement benefit shall be computed in the manner prescribed for Normal Retirement in Article VI, as applicable.

**Section 7.02. Vesting at Normal Retirement Age.** Notwithstanding any other provision of the Plan to the contrary, if a Member has satisfied the requirements for Normal Retirement Date as of the date of his Termination, the Member shall be Vested in his Normal Retirement Benefit.

**Section 7.03. Withdrawal of Member Contributions.**

(a) If a non-vested Member's employment is terminated for any reason, he may request a withdrawal of his Member Contributions plus interest to the date of distribution at the only year treasury bill rate determine as of the last day of the prior plan year, or the federal reserve H.15 as determined by the Board for the year of the Member's termination. That withdrawal would occur only after the proper completion of the applicable forms by the Member and after receipt by the Retirement System. Upon such withdrawal, no further benefits will be payable from this Plan.

(b) If a Vested Member's Employment is terminated for any reason other than death, Disability or Retirement, he will be entitled to a monthly benefit under Section 6.01, beginning as of his Normal Retirement Age, or a reduced benefit under Section 6.04, beginning as of his Early Retirement Age, as the Member shall properly elect. There is no lump sum withdrawal of Member Contributions permitted in this situation.

**Section 7.04. Forfeitures.** Forfeitures of Employer contributions arising from Termination of Employment, withdrawal or any other reason may not be applied to increase the benefits any individual would otherwise receive under the Plan. However, forfeitures will remain trust assets, and as such, may be used to reduce the Employer's contribution.

## **ARTICLE VIII.**

### **FORMS OF RETIREMENT INCOME**

**Section 8.01. Standard Benefit Payment Form; Other Payment Options.** A Member may elect, or may revoke a previous election and make a new election, at any time prior to his Retirement Date, to have his Retirement benefit payable under the standard benefit payment option or under one of the other benefit payment options set forth in this Article. The standard benefit payment option is a monthly retirement benefit payable to the Retiree during his lifetime only. At the death of the Retiree all payments will cease and no further benefits will be payable to the estate of the Retiree or other persons. The benefit shall be paid in accordance with and subject to the terms of the benefit payment option elected. Election of any form of benefit shall be made by the Member in writing on the Applicable Form, and shall be subject to approval by the Retirement System.

**Section 8.02. Description of Benefit Forms.**

(a) Form A: Standard Benefit – Straight Life Option. The amount of any optional benefit set forth below shall be the Actuarial Equivalent of the amount of the standard benefit that would otherwise be payable to the Retiree under Section \_\_\_\_ (monthly retirement benefit payable to the Retiree during his lifetime only. This standard benefit option will be referred to as "Form A").

(b) Form B: 100% Joint and Survivor Option. A retirement benefit computed and paid in the same manner as Form A above, but with an actuarially calculated reduction in the retirement benefit to account for the survivor benefit provided under this Form B. If the Member elects Form B, he will receive a decreased retirement benefit which shall be payable during his lifetime. If the Retiree's designated Beneficiary should survive the Retiree, the benefit shall continue to be paid to the Beneficiary after the Retiree's death during the lifetime of the Beneficiary in the same amount as the Retiree. This option will be referred to as Form B.

(c) Form C: 50% Joint and Survivor Option. A retirement benefit computed and paid in the same manner as Form A above, but with an actuarially calculated reduction in the retirement benefit to account for the survivor benefit provided under this Form C. If the Member elects Form C, then he will receive a decreased retirement benefit which shall be payable during his lifetime. If the Retiree's designated Beneficiary should survive the Retiree, the benefit shall continue to be paid to the Beneficiary after the Retiree's death during the lifetime of the Beneficiary in an amount equal to 50% of the amount paid to the Retiree. This option will be referred to as Form C.

(d) Form A1 to A3: Straight Life Option. A retirement benefit computed and paid in the same manner as Form A above, but with an actuarial calculated reduction in the retirement

benefit to account for the COLA provided under these Forms A1 to A3. If the member election Form A1 to A3, then he will receive a decreased retirement benefit which shall be payable during his lifetime with a 1% (Form A1), 2% (Form A2) or 3% (Form A3) COLA, as selected by the Member at retirement.

(e) Form B1 to B3: 100% Joint and Survivor Option with COLA. A retirement benefit computed and paid in the same manner as Form B above, but with an actuarially calculated reduction in the retirement benefit to account for the survivor benefit and the COLA provided under this Form B1 to B3. If the member elects Form B1 to B3, then he will receive a decreased retirement benefit which shall be payable during his lifetime with a 1% (Form B1), 2% (Form B2), or 3% (Form B3) COLA, as selected by the Member at retirement. If the Retiree's designated Beneficiary should survive the Retiree, the benefit shall continue to be paid to the Beneficiary after the Retiree's death during the lifetime of the Beneficiary in the same amount as paid to the Retiree, with the same COLA percentage as elected by the Retiree at retirement. This option will be referred to as Form B1, B2 and B3 (depending on the COLA amount selected by the Retiree at retirement).

(f) Form C1 to C3: 50% Joint and Survivor Option with COLA. A retirement benefit computed and paid in the same manner as Form C above, but with an actuarially calculated reduction in the retirement benefit to account for the survivor benefit and the COLA provided under this Form C1 to C3. If the member elects Form C1 to C3, then he will receive a decreased retirement benefit which shall be payable during his lifetime with a 1% (Form C1), 2% (Form C2) or 3% (Form C3) COLA, as selected by the Member at retirement. If the Retiree's designated Beneficiary should survive the Retiree, a benefit in the amount of 50% of the Member's benefit shall continue to be paid to the Beneficiary after the Retiree's death during the

lifetime of the Beneficiary, with the same COLA percentage as elected by the Retiree at retirement. This option will be referred to as Form C1, C2 and C3 (depending on the COLA amount selected by the Retiree at retirement).

**Section 8.03. Cancellation of Election.** The election by a Member of any option in this Article VIII shall be null and void if either the Member or his designated Beneficiary dies before the Member's Retirement Date.

**Section 8.04. Rules for Small Benefits.**

(a) The Actuarial Present Value of a Vested Plan benefit shall be distributed in a cash single sum payment to the Member, Member, or Beneficiary, as applicable, if the Actuarial Equivalent of the benefit payable to the recipient does not exceed One Thousand Dollars (\$1,000) on the date of distribution. The Actuarial Present Value of said Plan benefit shall be determined in accordance with Section 2.03.

(b) If the Actuarial Present Value of a Plan benefit is between One and Five Thousand Dollars (\$5000) on the date of distribution, the only form of benefit distribution is a single lump sum payment. The Member may elect to have that payment made at any time from their date of termination until their Normal Retirement Age, as properly elected on a form provided by and received by the Retirement System. The Actuarial Present Value of the Plan benefit shall be determined in accordance with Section 2.03.

**Section 8.05. Compliance with Internal Revenue Section 401(a)(9).** All distributions shall be made in compliance with Code Section 401(a)(9).

**ARTICLE IX.**

**DEATH BENEFITS**

**Section 9.01. Death in Service Pre-Commencement of Retirement Benefit – Vested**

**Member.** In the event a Vested Member's employment ceases by reason of his death prior to his Termination, there shall be no benefit payable from the Plan, except for the following:

(1) If the Vested Member is eligible for an Early Retirement Benefit, the Vested Member's spouse, if any, will receive the greater of:

- (i) The Member's contributions pursuant to Section 7.03, or
- (ii) Spouse's 50% benefit, determined as if the Member had commenced a Form C Early Retirement or Normal Retirement benefit depending on which (the Member was eligible for) with his spouse as the designated Beneficiary, on the day before the Member died.

(2) If the Vested Member is not eligible for an Early Retirement Benefit, the Vested Member's Beneficiary will receive the Member's contributions pursuant to Section 7.03.

(3) If the Vested Member is eligible for an Early Retirement Benefit but is not survived by a Spouse, the Vested Member's Beneficiary will receive the Member's contributions pursuant to Section 7.03.

**Section 9.02. Death in Service Pre-Commencement of Retirement Benefit-Non-**

**vested Member.** In the event a Non-vested Member's employment ceases by reason of his death prior to his Termination, there shall be no benefit payable from the Plan, except the Member contributions pursuant to Section 7.03 shall be paid to the Member's Beneficiary.



**Section 9.03. Death Post-Commencement of Retirement Benefit.** In the event a Retiree dies after his Normal Retirement Date, the only benefit payable from the Plan, if any, shall be the survivor benefit, if any, elected under Article VI.

**ARTICLE X.**

**LIMITATIONS ON BENEFITS**

**Section 10.01. Effective Date.** The Plan shall be administered so as to comply with this Article, except as otherwise provided herein.

**Section 10.02. Limitation on Annual Benefit.**

(a) In no event shall the aggregate annual benefit for a calendar year (the "limitation year") provided under this Plan and all other defined benefit plans (without regard to whether the plan has terminated) of the Employer for any Member exceed an amount equal to One Hundred Sixty Thousand Dollars (\$160,000) as adjusted pursuant to Code Section 415(d)(1)(A).

(b) Adjustment for Benefits Commencing Before Age 62.

(1) If the retirement income benefit under the Plan begins before age sixty-two (62) and occurs in a limitation year beginning on or after July 1, 2015, and the Plan does not have an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the One Hundred Sixty Thousand Dollar (\$160,000) limitation for the Member's retirement income benefit commencement date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's retirement income benefit commencement date that is the actuarial equivalent of the One Hundred Sixty Thousand Dollar (\$160,000) limitation (adjusted under subsection (h) for years of participation less than ten (10), if required) with actuarial equivalence computed using a five percent (5%) interest rate assumption and the

applicable mortality table for the retirement income benefit commencement date (expressing the Member's age based on completed calendar months as of the retirement income benefit commencement date).

(2) If the retirement income benefit under the Plan begins before age sixty-two (62) and occurs in a limitation year beginning on or after July 1, 2015, and the Plan has an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the One Hundred Sixty Thousand Dollar (\$160,000) limitation for the Member's retirement income benefit commencement date is the lesser of the limitation determined under paragraph (1) and the One Hundred Sixty Thousand Dollar (\$160,000) limitation (adjusted under subsection (h) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Member's retirement income benefit commencement date to the annual amount of the immediately commencing straight life annuity under the Plan at age sixty-two (62), both determined without applying the limitations of this Article.

Furthermore, notwithstanding the requirements of this section, the adjustments provided for in this subsection shall not apply (i) in the event the Member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, or (ii) in the case of Disability benefits or pre-Retirement death benefits.

(c) Adjustment for Form Subject to Code Section 417(e)(3). For distributions made in any form other than a straight life annuity or a qualified joint and survivor annuity to which

Code Section 417(e)(3) does not apply, such benefit shall be adjusted to a straight life annuity, beginning at the same age, which is the actuarial equivalent of such benefit.

(1) The actuarially equivalent straight life annuity is equal to the greater of (or the reduced limitation applicable at the retirement income benefit commencement date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) the annual amount of the straight life annuity (if any) payable to the Member under the Plan commencing at the same retirement income benefit commencement date as the Member's form of benefit; and

(B) the annual amount of the straight life annuity commencing at the same retirement income benefit commencement date that has the same actuarial present value as the Member's form of benefit, computed using a five percent (5%) interest rate assumption and the applicable mortality table described in Internal Revenue Service guidance (Internal Revenue Service Notice 2008-85 for years after December 31, 2008).

(d) Adjustment for Form Not Subject to Code Section 417(e)(3). As required by final Treasury Regulations, for distributions made in any form to which Code Section 417(e)(3) applies, such benefit shall be adjusted to a straight life annuity, beginning at the same age, which is the actuarially equivalent straight life annuity benefit which is the greatest of (or the reduced limitation applicable at the retirement income benefit commencement date which is the "least of" when adjusted in accordance with the following assumptions):

(1) The annual amount of the straight life annuity commencing at the retirement income benefit commencement date that has the same actuarial present value

as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in Article \_\_\_\_ of the Plan for actuarial experience;

(2) The annual amount of the straight life annuity commencing at the retirement income benefit commencement date that has the same actuarial present value as the particular form of benefit payable, computed using a five and five-tenths percent (5.5%) interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Internal Revenue Service guidance (Internal Revenue Service Notice 2008-85); or

(3) The annual amount of the straight life annuity commencing at the retirement income benefit commencement date that has the same actuarial present value as the particular form of benefit payable computed using the applicable interest rate for the distribution under Internal Revenue Service guidance, using the rate in effect for the first day of the plan year with a one-year stabilization period and the applicable mortality table for the distribution under Internal Revenue Service guidance (Internal Revenue Service Notice 2008-85), divided by one and five-one-hundredths (1.05).

(e) Limitations on benefits under this Article shall not apply where the total annual benefits payable to a Member under this Plan and all other qualified defined benefit plans (whether or not terminated) of the Employer do not exceed Ten Thousand Dollars (\$10,000) in the aggregate. This minimum limitation is not applicable for a Member whose Employer maintains or has maintained a defined contribution plan in which such Member participated.

(f) The Ten Thousand Dollars (\$10,000) minimum limitation, if provided, must be reduced where a Member has less than ten (10) years of Quarters of Coverage (40 Quarters of Coverage) with the Employer at the time the Member begins to receive retirement benefits under

the Plan, and the maximum dollar limitation must be reduced where a Member has less than ten (10) years of Quarters of Coverage when retirement benefits under the Plan commence. These adjustments are made by multiplying the applicable limitations by the appropriate fraction:

(A) For the Ten Thousand Dollars (\$10,000) minimum limitation – years of Quarters of Coverage with the employer as of and including, the current limitation year divided by ten (10); or

(B) For the maximum dollar limitation – years of participation with the employer as of and including, the current limitation year divided by ten (10).

(g) For purposes of applying the limits under Code Section 415(b) (Limit), the following will apply:

(A) a Member's applicable Limit will be applied to the Member's annual benefit in the Member's first limitation year without regard to any automatic cost of living adjustments under Section \_\_\_\_\_;

(B) to the extent the Member's benefit equals or exceeds the Limit, the Member will no longer be eligible for cost of living adjustments under Section \_\_\_\_\_ until such time as the benefit plus the accumulated adjustments under Section \_\_\_\_\_ are less than the Limit;

(C) thereafter, in any subsequent limitation year, a Member's annual benefit, including any automatic cost of living increases under Section \_\_\_\_\_, shall be tested under the then applicable benefit Limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but

(D) in no event shall a Member's benefit payable under the Plan in any limitation year be greater than the Limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding provisions are applied by reducing the Code Section 415(b) limit applicable at the annuity starting date to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit.

**Section 10.03.**      **Limitation on Annual Additions.**

(a) To the extent required under Code Section 415(c), in no event shall the "annual addition" for a Member for any calendar year (the "limitation year"), exceed the lesser of:

(1) Forty Thousand Dollars (\$40,000), as adjusted for increases in the cost of living under Code Section 415(d); or

(2) One hundred percent (100%) of the "compensation" of such Member received from an Employer during the limitation year.

(b) For purposes of this Section, "compensation" means all of a Member'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), and any amount contributed or deferred by the Employer at the election of the Employee and which is not

includable in the gross income of the Employee by reason of Code Section 125 or 457, but shall exclude Employee contributions picked up under Code Section 414(h)(2). Compensation shall also include any amount deferred by the Employer at the election of the Employee which is not includable in the gross income of the Employee by reason of Code Section 132(f)(4). The following types of payments, if paid by the later of (i) two and one-half (2½) months following a Member's Termination of Employment, or (ii) the last day of the limitation year that includes the Member's Termination of Employment, will be included as compensation for purposes of this Section: payments that, absent a Termination of Employment, would have been paid to the Member while he or she continued in employment and that are regular compensation for services rendered, and payments of accrued bona fide sick, vacation, or other leave, but only if the Member would have been able to use the leave if employment had continued. Any payments not described in the preceding sentence are not considered compensation if paid after severance from employment, even if they are paid within two and one-half (2½) months following severance from employment, except for payments to the individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service. An Employee who is in qualified military service (within the meaning of Code Section 414(u)(1)) shall be treated as receiving compensation from the Employer during such period of qualified military service equal to (i) the compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received from the Employer but for the absence during the period of qualified military service, or (ii) if the

compensation the Employee would have received during such period was not reasonably certain, the Employee's average compensation from the Employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service). A Member's compensation for purposes of this Section shall not exceed the annual limit under Code Section 401(a)(17).

(c) For purposes of this Section, "annual addition" means the sum of the following amounts credited to a Member's accounts for the limitation year under this Plan and any other plan maintained by an Employer: (i) employer contributions; (ii) employee contributions; (iii) forfeitures; and (iv) allocations under a simplified employee pension plan. Amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by an Employer are treated as annual additions to a defined contribution plan. Also, 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), maintained by an Employer are treated as an annual additions to a defined contribution plan.

(d) If the annual addition for a Member under the Plan would be greater than the annual addition for such Member as limited by subsection (a), then the excess shall be corrected as permitted under the IRS Employee Plans Compliance Resolution System (currently set forth in Revenue Procedure 2008-50).



**Section 10.04.            Interpretation of this Article.**

(a)     The annual additions and annual benefit of a Member shall be adjusted pursuant to this Article so as to produce the maximum annual benefit and maximum annual additions permissible for such Member.

(b)     For purposes of this Section and subject to Code Section 415(h), all defined benefit plans of an Employer, whether or not terminated, are to be treated as a single defined benefit plan, and all defined contribution plans of an Employer are to be treated as a single defined contribution plan.

**ARTICLE XI.**

**UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT ACT**  
**("USERRA")**

(a)     The provisions set forth in this Section are designed to comply with the applicable provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") and the Uniformed Services Employment and Reemployment Act ("USERRA") and are effective as indicated herein.

(b)     Effective with respect to death occurring, while a Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Code Section 401(a)(37), survivors of the Member are entitled to any additional benefits that the Plan would provide if the Member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Member's death while employed. In any event, a deceased Member's period of qualified (as in contributions paid?) military service must be counted for vesting purposes.

(c)     To the extent required by Code Sections 3401(h) and 414(u)(2), an individual receiving differential wage payments (while the individual is performing qualified military

service (as defined in chapter 43 of title 38, United States Code)) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Code Section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

## **ARTICLE XII.**

### **DISTRIBUTION AND ROLLOVER RULES**

**Section 12.01.**        **Distribution Rules Imposed by Federal Law.** 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 Treasury regulations promulgated thereunder, including the incidental benefit rules under Code Section 401(a)(9)(G), and shall comply with the following rules:

(a)     The Plan shall apply a good faith reasonable interpretation of the minimum distribution requirements of Code Section 401(a)(9) in accordance with the Final Regulations under Code Section 401(a)(9).

(b)     A Member's entire interest will be distributed, or begin to be distributed, to the Member no later than the Member's 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 Member reaches age seventy and one-half (70½), or (ii) the calendar year in which the Member Retires.

(c)     If the Member dies before distributions begin, the Member's entire Vested interest (if any) will be distributed, or begin to be distributed, no later than as follows:

(1) If the Member's surviving spouse is the Member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age seventy and one-half (70½), if later.

(2) If the Member's surviving spouse is not the Member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, over the life of the designated beneficiary or over a period certain not exceeding:

(A) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or

(B) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(3) If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(4) If the Member's surviving spouse is the Member's sole designated beneficiary and the surviving spouse dies after the Member but before distributions to the

surviving spouse begin, this subsection (c), other than (c)(1), will apply as if the surviving spouse were the Member.

If annuity payments irrevocably commence to the Member before the Member's required beginning date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under this subsection (c)), the date distributions are considered to begin is the date distributions actually commence.

(d) The amount that must be distributed on or before the Member's required beginning date (or, if the Member dies before distributions begin, the date distributions are required to begin under subsection (c)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's required beginning date.

(e) Any additional benefits accruing to the Member in a calendar year after the first distribution year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(f) If the Member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a non-spouse beneficiary, annuity payments to be made on or after the Member's required beginning date to the designated beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment

for such period that would have been payable to the Member using the applicable table set forth in the Treasury Regulations.

**Section 12.02.**      **Rollover of Distributions.** 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 Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. 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 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); (iii) the portion of any distribution that is not includible in gross income; or (iv) any other distributions which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Code Section 402(g) or 415.

(b) An "Eligible Retirement Plan" is any one of the following that accepts the Distributee's Eligible Rollover Distribution: (i) an individual retirement account described in Code Section 408(a); (ii) an individual retirement annuity described in Code Section 408(b); (iii) an annuity plan described in Code Section 403(a); (iv) a qualified trust described in Code Section 401(a); (v) an eligible employer described in Code Section 457(e)(1)(A); (vi) an annuity plan described in Code Section 403(b); or (vii) a Roth IRA described in Code Section 408A.

The portion of an Eligible Rollover Distribution that is not includible in gross income may be transferred only to (I) an individual retirement account or individual retirement annuity described in Code Sections 408(a) or 408(b); or (II) a qualified defined contribution plan described in Code Section 401(a), a qualified plan described in Code Section 403(a), a qualified defined benefit plan described in Code Section 401(a), or an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(c) A "Distributee" includes an employee or former employee. A Distributee also includes the employee's or former employee's surviving spouse. A Distributee further includes a non-spouse beneficiary who is a designated beneficiary as defined by Code Section 401(a)(9)(E). However, a non-spouse beneficiary may only make a direct rollover of the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

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

**Section 12.03.**      **Acceptance of Eligible Rollover Distributions.** The Plan does not accept rollovers.

### **ARTICLE XIII.**

#### **CLAIMS AND LITIGATION**

**Section 13.01.**      **Disputes.** In the event of disagreement between a Member, Member, Disability Recipient or Beneficiary and the Retirement System with respect to any

rights, claims, or responsibilities under the Plan which cannot be resolved by the Retirement System as provided under Article \_\_\_\_, the aggrieved party may make an appeal regarding such rights, claims, or responsibilities to the Board pursuant to 5 M.R.S. § 17451 and Board Rule Ch. 702. In the event that any such rights, claims, or responsibilities result in a suit or other legal action by the aggrieved party, such action shall be defended in the same manner as other suits against the Retirement System.

#### **ARTICLE XIV.**

##### **AMENDMENT AND TERMINATION**

The Legislature shall have the right at any time, and from time to time, to amend, in whole or in part, or terminate, the Plan; provided, however, that no such amendment shall:

- (a) Reduce the previously earned benefits of any Active Member, Inactive Member, Retiree, Disability Recipient or Beneficiary, based on Unit value and Quarters of Coverage at the time of the amendment; or,
- (b) Authorize or permit any part of the Trust Fund held by the Board to be diverted to purposes other than for the exclusive benefit of Members and their Beneficiaries.

The Legislature delegates to the Board the ability to make any amendments required for federal law compliance or administrative reason.

#### **ARTICLE XV.**

##### **NON-ALIENATION OF BENEFITS**

- (a) The right of a Member to a retirement allowance, the retirement allowance itself, the refund of a Member's accumulated contributions, any death benefit, any other right accrued or accruing to any Member under this Part and the money in the various funds created by this Part may not be subject to execution, garnishment, attachment or any other process and shall be unassignable except that:

(1) Retirement allowance available for child support. A Member's retirement allowance is available to satisfy any child support obligation that is otherwise enforceable by execution, garnishment, attachment, assignment or other process;

(2) Recovery of overpayments by the Retirement System. Any amounts due the Retirement System as the result of overpayment or erroneous payment of benefits, an excess refund of contributions or overpayment or erroneous payment of life insurance benefits may be recovered from an individual's contributions, any benefits or life insurance benefits payable under this Part to the individual or the beneficiary of the individual or any combination of contributions and benefits. If the overpayment or excess refund of contributions resulted from a mistake of or incorrect information provided by an employee of the Retirement System, or a mistake of the retiree or the recipient of the benefit or life insurance benefit, a penalty or interest may not be assessed by the Retirement System. In all cases of recovery of overpayments through the reduction of a retirement benefit, whether with or without the assessment of interest by the Retirement System, the recovery practices must be reasonable and consider the personal economic stability of the retiree in the establishment of the recovery schedule. The Executive Director may also take action to recover those amounts due from any amounts payable to the individual by any other state agency or by an action in a court of competent jurisdiction. Whenever the Executive Director makes a decision to recover any amounts under this subsection, that decision is subject to appeal under Board Rule Ch. 702.

(3) Qualified domestic relations order. The rights of a Member, Member, beneficiary or other payee under this Part are subject to the rights of or assignment to an



alternate payee under a qualified domestic relations order in accordance with Article \_\_\_\_\_.

(b) None of the benefits, payments, proceeds, or distributions payable under the Plan shall be subject to the claim of any creditor of any Member or to the claim of any creditor of any Beneficiary hereunder, or to any legal process of levy or attachment by any creditor of any such Member or Beneficiary; and no such benefits shall be in any manner liable for or subject to the debts, liabilities, engagements, or torts of any Member or Beneficiary; and neither shall any such Member or Beneficiary have any right to alienate, commute, anticipate, transfer, encumber, pledge, or assign any of the benefits, payments, proceeds, or distributions under this Plan.

#### **ARTICLE XVI.**

#### **QUALIFIED DOMESTIC RELATIONS ORDERS** **[DISCUSS CURRENT ODRO's]**

**Section 16.01.**      **Determination by Executive Director.** The executive director or the executive director's designee has exclusive authority to determine whether a domestic relations order is a qualified domestic relations order under this section. A determination by the executive director or the executive director's designee under this section may be appealed to the Board as provided by 5 M.R.S. § 17451 and Board Rule Ch. 702.

**Section 16.02.**      **No Jurisdiction Over Retirement System.** The Retirement System may not be made a party with respect to a divorce or other domestic relations action in which an Alternate Payee's right to receive all or a portion of the benefits payable to a Member or retiree under the Retirement System is created or established. A party to such an action who attempts to make the Retirement System a party to the action contrary to this subsection is liable to the Retirement System for its costs and attorney fees.

**Section 16.03.**      **Benefits and Withdrawal of Contributions.** For the purposes of this section, benefits payable with respect to a Member or Member under any of the programs of the Retirement System include the types of benefits payable by the Retirement System and a withdrawal of contributions from the Retirement System.

**Section 16.04.**      **Requirements.** A domestic relations order is a qualified domestic relations order only if the order:

(a) Clearly specifies the name, social security number and last known mailing address, if any, of the Member or retiree and the name, social security number and mailing address of each alternate payee covered by the order;

(b) Clearly specifies the amount or percentage of the Member's or retiree's benefits to be paid by the Retirement System to each Alternate Payee or the manner in which the amount or percentage is to be determined;

(c) Clearly specifies the number of payments or the period to which the order applies;

(d) Clearly specifies that the order applies to the Retirement System;

(e) Does not require the Retirement System to provide a type or form of benefit or an option not otherwise provided by the Retirement System;

(f) Does not require the Retirement System to provide increased benefits determined on the basis of actuarial value;

(g) Does not require the payment of benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a qualified domestic relations order; and

(h) Does not require the payment of benefits to an Alternate Payee before the retirement of a Member, the distribution of a withdrawal of contributions to a Member or other distribution to a Member required by law.

**Section 16.05.**      **Additional Criteria.** The Board may also require by rule that a qualified domestic relations order meet one or more of the following requirements.

(a) The order must provide for a proportional reduction of the amount awarded to an Alternate Payee in the event of the retirement of the Member before normal retirement age.

(b) The order may not purport to require the designation of a particular person as the recipient of benefits in the event of a Member's or Member's death.

(c) The order may not purport to require the selection of a particular benefit payment plan or option.

(d) The order must provide clearly for each possible benefit distribution under plan provisions.

(e) The order may not require any action on the part of the Retirement System contrary to its governing laws or plan provisions other than the direct payment of the benefit awarded to an Alternate Payee.

(f) The order may not make the award of an interest contingent on any condition other than those conditions resulting in the liability of the Retirement System for payments under its plan provisions.

(g) The order may not purport to award any future benefit increases that are provided or required by the Legislature.

(h) The order must provide for a proportional reduction of the amount awarded to an Alternate Payee in the event that benefits available to the retiree or Member are reduced by law.

**Section 16.06.**      **Determination.**      The Executive Director or the Executive Director's designee, upon receipt of a proposed domestic relations order, written request for a determination and payment of a fee established by the Retirement System, shall determine whether the proposed order, once adopted by the court. is a qualified domestic relations order and shall notify the Member or retiree and each Alternate Payee of the determination.

(a)      If the proposed order is determined to conform to the requirements of a qualified domestic relations order, once issued by a court and upon receipt of a certified copy of the order by the Retirement System, the Retirement System shall pay benefits in accordance with the order and shall give effect to the plain meaning of its terms notwithstanding any failure of the order to cite or reference statutory or rule provisions. A beneficiary or recipient of a right or benefit provided for or awarded in a qualified domestic relations order may not be deprived of that right or benefit, or any part of that right or benefit, by a subsequent act or omission of the Member, another claimant or beneficiary or the Retirement System, notwithstanding any provision of law to the contrary or any policy or procedure the Retirement System employs in the implementation of this Part.

(b)      If the proposed order, or the final order, does not conform to the requirements of a qualified domestic relations order, the Member or Member or any Alternate Payee named in the order may appeal the Executive Director's determination in the manner specified in 5 M.R.S. § 17451 or may petition the court that issued the order to amend the order so that it is qualified. Except as otherwise provided by law, the court that issued the order or that otherwise would have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated.

**Section 16.07.**      **Interim Accounting.** During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined by the Executive Director, the Executive Director's designee, the Board, a court of competent jurisdiction or otherwise, the Retirement System shall account separately for the amounts, in this section referred to as the "segregated amounts," that would have been payable to the Alternate Payee during that period if the order had been determined to be a qualified domestic relations order.

**Section 16.08.**      **Payment of Segregated Amounts.** If a domestic relations order is determined to be a qualified domestic relations order, the Retirement System shall pay the segregated amounts to the person or persons entitled to the segregated amounts and shall thereafter pay benefits pursuant to the order.

**Section 16.09.**      **Payments if Determined Not Qualified or if No Determination Within 18 Months.** If a domestic relations order is determined not to be a qualified domestic relations order or if the issue as to whether a domestic relations order is a qualified domestic relations order is not resolved within 18 months of the date the order and written request for a determination are received by the Retirement System, the Retirement System shall pay the segregated amounts without interest, and shall thereafter pay benefits, to the person or persons who would have been entitled to such amounts if there had been no order. This subsection may not be construed to limit or otherwise affect any liability, responsibility or duty of a party with respect to any other party to the action from which the order arose.

**Section 16.10.**      **Determination After 18 Months.** Any determination that an order is a qualified domestic relations order that is made after the close of the 18-month period established in subsection 9 must be applied prospectively only.

**Section 16.11.**        **No Liability.** The Retirement System, the Board and officers and employees of the Retirement System are not liable to any person for making payments of any benefits in accordance with a domestic relations order in a cause of action in which a Member or a Retiree was a party or for making payments in accordance with Subsection \_\_\_\_.

**Section 16.12.**        **Information Provided to Spouse.** Upon being furnished with an attested copy of a complaint for divorce, the Retirement System shall provide the spouse of a Member or Retiree with the same information that would be provided to the Member or Retiree.

**Section 16.13.**        **Rules.** The Board may adopt rules to implement this section. The rules may provide for charging a reasonable fee for processing domestic relations orders.

**Section 16.14.**        **Application.** This section applies to all domestic relations orders issued.

## **ARTICLE XVII.**

### **INFORMATION NOT PUBLIC RECORD**

**Section 17.01.**        **Medical Information.** Medical information of any kind in the possession of the Retirement System, including information pertaining to diagnosis or treatment of mental or emotional disorders, is confidential and not open to public inspection and does not constitute "public records" as defined in 1 M.R.S § 402(3). Records containing medical information may be examined by the employee to whom they relate or by the Employer for any purposes related to any claim for workers' compensation or any other benefit. The employee must be advised in writing by the Retirement System of any request by the Employer to examine the employee's medical records. Medical information obtained pursuant to this section remains confidential, except as otherwise provided by law, and except when involved in proceedings

resulting from an appeal pursuant to 5 M.R.S. § 17451 or proceedings regarding claims for other retirement benefits.

**Section 17.02.**      **Home Contact Information.**      Except as provided in this subsection, records of home contact information of Members and benefit recipients of any of the programs of the Retirement System and of staff members that are in the possession of the Retirement System are confidential, not open to public inspection and not public records as defined in 1 M.R.S § 402(3).

(a)      For purposes of this subsection, "home contact information" means a home address, home telephone number, home facsimile transmission number or home e-mail address.

(b)      This subsection does not apply to the home address of a Member or a benefit recipient of any of the programs of the Retirement System used only for Membership recruitment purposes by a nonprofit or public organization established to provide programs, services and representation to Maine public sector retirees unless the Retirement System Member or benefit recipient has signed a form made available by the Retirement System indicating that the individual does not authorize disclosure of that individual's home address. The Retirement System may not provide information under this subsection to an organization if the Retirement System has determined that the organization obtained information for the purpose of Membership recruitment but used the information for a purpose other than Membership recruitment.

(c)      **Investment activity information.**      Disclosure of private market investment activity of the Retirement System is governed by this subsection.

(1)      Documentary material, data or information in the possession of the Retirement System that consists of trade secrets or commercial or financial information

that relates to actual or potential private market investments of the Retirement System is confidential and not open to public inspection and does not constitute "public records" as defined in 1 M.R.S. § 402(3), if, in the sole discretion of the Retirement System, the disclosure of the material, data or information may:

(i) Impair the Retirement System's ability to obtain such material, data or information in the future;

(ii) Cause substantial harm to the competitive position of the Retirement System or of the person or entity from whom the information was obtained; or

(iii) Result in the potential violation of state and federal laws and regulations relating to insider trading.

(2) The following information concerning any fund in which the Retirement System is invested is not exempt from disclosure:

(i) The Retirement System's total commitment to the fund;

(ii) The date of the commitment to the fund;

(iii) Contributions and distributions made to or received from the fund;

(iv) The market value of the investment;

(v) The name of the fund; and

(vi) The interim internal rate of return of the fund.

(3) For purposes of this subsection, "private market investment" means:

(i) Direct investments in land, timber, mineral rights, private company equity or private company debt;



(ii) Indirect investments in limited partnerships, limited liability corporations or other entities that may invest in the investments described in subparagraph (1);

(iii) Investments in unregistered securities or funds offered under exemptions provided in Section 144(A) of the Securities Act of 1933, as amended, or Section 3(c)1 or 3(c)7 of the Investment Company Act of 1940, as amended; or

(iv) Investments or potential investments of the Retirement System pursuant to the state innovation finance program authorized under Title 10, section 1026-T.

(d) **Personnel records of Maine Public Employees Retirement System staff.** The following records are confidential and not open to public inspection and are not public records as defined in 1 M.R.S. § 402(3):

(1) Papers relating to applications, examinations or evaluations of applicants. Except as provided in this subsection, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the Retirement System for use in the examination or evaluation of applicants for positions as Retirement System employees, are confidential.

(i) Notwithstanding any confidentiality provision to the contrary, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the

applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in 1 M.R.S. § 402(3)(O).

(ii) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(iii) This paragraph does not preclude a union representative from access to personnel records, consistent with paragraph D, that may be necessary for the bargaining agent to carry out collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this paragraph remain confidential and are not open to public inspection;

(2) Personal information. Records containing the following information are confidential, except that the records may be examined by the employee to whom they relate when the examination is permitted or required by law:

(i) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(ii) Performance evaluations and personal references submitted in confidence;

(iii) Information pertaining to the creditworthiness of a named employee;

(iv) Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;

(v) Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability,

marital status and sexual orientation; social security number; personal contact information as provided in 1 M.R.S. § 402(3)(O); and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance; and

(vi) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written decision, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

- (a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final

written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days.

This paragraph does not preclude a union representative from having access to personnel records that are necessary for the bargaining agent to carry out collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this paragraph remain confidential and are not open for public inspection; C. Other information to which access by the general public is prohibited by law; and

(1) Certain information for grievance and other proceedings. The Retirement System may release specific information designated confidential by this paragraph to be used in negotiations, mediation, fact finding, arbitration, grievance proceedings and other proceedings in which the Retirement System is a party. For the purpose of this paragraph, "other proceedings" means unemployment compensation proceedings, workers' compensation proceedings, human rights proceedings and labor relations proceedings.

(2) **Treatment of confidential information.** Confidential information provided under subsection (d) is governed by the following.

(c) Only the information that is necessary and directly related to the proceeding may be released.

(d) The proceeding for which the confidential information is provided must be private and not open to the public if possible. If the proceeding is open to the public, the confidential information may not be disclosed except exclusively in the presence of the fact finder, the parties and counsel of record and the employee who is the subject of the proceeding and provisions are made to ensure that there is no public access to the confidential information.

(e) The Retirement System may use this confidential information in proceedings and provide copies to an employee organization if that organization is a party to the proceedings and the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the Retirement System are not open to public inspection and are not public records.

### **ARTICLE XVIII.**

#### **INFORMATION FOR ADMINISTRATIVE OR JUDICIAL PROCEEDINGS**

If information regarding the availability, calculation or value of any benefit is required for an administrative or judicial proceeding, the party seeking the information must file written questions requesting that information with the Executive Director. The Executive Director, or the executive director's designee, shall make a certified response to those questions within 30 days and the certified response is admissible as evidence in any administrative or judicial proceeding. A subpoena or other form of discovery directed at obtaining the information may not be issued nor may employees of the Retirement System be required to testify on the subjects covered by the certified response unless there is an express finding by an administrative agency or a court that there is a compelling necessity to permit further discovery or to require testimony.

### **ARTICLE XIX.**

#### **MISCELLANEOUS**

##### **Section 19.01. Construction.**

(a) Words used in this Plan in the masculine gender shall be construed to include the feminine gender where appropriate, and words used in this Plan in the singular or plural shall be construed as being in the plural or singular where appropriate. Any typos shall be ignored and a

misspelled word shall be interpreted as though it were correctly spelled. Political correctness shall be assumed, notwithstanding the apparent meaning.

(b) The Plan shall be construed, enforced, and administered and the validity thereof determined in accordance with the Code, and, when not inconsistent with the Code, the laws of the State of Maine.

(c) 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 governmental retirement plan under the provisions of Code Sections 401 and 414(d) and the trust as exempt from tax under Code Sections 501 and 115, and (ii) causes the Plan to comply with all applicable requirements of the Code and federal law shall prevail over any different interpretation.

(d) In resolving any conflict between the Plan and any policy or contract issued under the Plan, the provisions of the Plan shall prevail.

(e) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(f) Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(1) as conferring upon any Member, Beneficiary, or any other person a right or claim against the Board, the Employer, or the Retirement System, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(2) as a contract or Agreement between the Employer and any Member or other person;

(3) as being consideration for, or an inducement or condition of, employment of any Member or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Member or other person to continue or terminate the employment relationship at any time; or

(4) as giving any Member the right to be retained in the service of an Employer or to interfere with the right of an Employer to discharge any Member or other person at any time.

**Section 19.02.**            **Non-Diversion.**

(a) The assets of the Plan shall never inure to the benefit of an Employer and shall be held for the exclusive purposes of providing benefits to Members in the Plan and their beneficiaries and defraying reasonable expenses of administering the Plan, except in the case of a contribution which is made by an Employer under a mistake of fact as determined solely by the Retirement System. Such contribution shall be returned (or credited?) to the Employer, upon demand, and shall be reduced for any loss incurred but unadjusted for any gains earned during the time the mistaken contribution was part of the Plan fund.

(b) Trust assets shall be managed in compliance with Code Section 503(b).

**Section 19.03.**            **Legally Incompetent; Power of Attorney.** Any Member, Former Member, Terminated Member, or Beneficiary receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent and of age until the Retirement System receives a written notice, in a form and manner acceptable to it, that such person is incompetent or a minor, and that a guardian or other person legally vested with the care of his estate has been appointed and is authorized to take action by Title 18-A, article V. Payment of any benefit to an incapacitated person, as defined in Title 18-A, section 5-101, or a minor shall be made in

accordance with Title 18-A, article V. Any payment so made shall be a complete discharge of liability under the Plan. No person may act as an attorney-in-fact for an Employee, Member, Member Disability Benefit Recipient or Beneficiary with respect to a matter involving the Plan unless a valid power of attorney document appointing such person and authorizing such action is submitted in a form and manner acceptable to the Retirement System. The Retirement System shall be entitled to rely upon a power of attorney document which it reasonably determines to be valid, without liability for actions taken by the Retirement System at the request of the designated attorney-in-fact, unless and until the Retirement System receives notice that the power of attorney is no longer effective.

**Section 19.04.**      **Non-Discrimination.** The Retirement System shall administer the Plan in a uniform and consistent manner with respect to all Members.

**Section 19.05.**      **Limitation of Liability; Legal Actions.**

(a) It is expressly understood and agreed by each Employee who becomes a Member hereunder that, except for willful neglect or fraud, neither the Employer, the nor the Board shall be in any way subject to any suit or litigation, or to any legal liability, for any cause or reason or thing whatsoever, in connection with the Plan or its operation, and each such Member hereby releases the Employer, all its employees and agents, and the Board from any and all liability or obligation.

(b) The Employer and the Retirement System shall be the only necessary parties to any action or proceeding involving any rights under the Plan or the proper administration thereof, and no Member, Member, Disability Benefit Recipient, Beneficiary, or other persons having or claiming to have an interest in the Plan shall be entitled to any notice of process. Any final judgment which is not appealed or appealable that may be entered in any such action or



proceeding shall be binding and conclusive on the parties hereto and all persons having or claiming to have an interest in the Plan.

Each fiduciary under the Plan shall be responsible only for the specific duties assigned under the Plan and shall not be directly or indirectly responsible for the duties assigned to another fiduciary. Any person or a group of persons may serve in more than one (1) fiduciary capacity with respect to the Plan.

**Section 19.06.**      **Claims.** Any payment to a Member or Beneficiary, or to their legal representatives, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Employer, either of which may require such Member, Beneficiary, or legal representative, as a condition precedent to such payment, to execute a receipt and release, in such form as shall be determined by the Retirement System.

**Section 19.07.**      **Errors in Benefits.**

(a)      **Underpayments.** Any underpayments from the Plan fund to a Member, Disability Benefit Recipient or to a Beneficiary caused by administrative errors shall be corrected with simple [**compound**] interest from the date of the miscalculated payment. The rate applied shall be the actuarially assumed rate utilized by the Plan actuary for estimating future plan investment earnings as of the date of the correction. Underpayments shall be made up from the Plan.

(b)      **Overpayments.** [**Should we use current Maine procedure?**] In the event of an overpayment from the Trust Fund to a Member or to a Beneficiary caused by administrative error, the following provisions shall apply:

(1)      **Determination of Reasonableness of Collection from Retired Members or Beneficiaries.** The Retirement System will make a determination of whether collection of the overpayment (in full or in part) from a Member or Beneficiary is reasonable under

the particular facts and circumstances involved. The Retirement System shall consider (1) the hardship of collection on the Member or Beneficiary; (2) any legal impediments to collection; and (3) the potential risk of litigation if collection is pursued.

(2) Collection Process. If a determination under this subsection is made that collection from the Member or Beneficiary is reasonable, the overpayment shall be corrected with interest compounded annually from the date of the miscalculated payment. The rate applied shall be the actuarially assumed rate utilized by the plan actuary for estimating future plan investment earnings as of the date of the correction. In collecting amounts of the overpayment (in full or in part), the Retirement System shall have the discretion to use any of the following options: (i) single sum payments; (ii) installment payments; (iii) actuarial reduction of future Retirement payments; or (iv) deductions from Retirement payments.

**Section 19.08.** **Notice.** Any notice given under the Plan shall be sufficient if given to: (1) the Board if addressed to the Retirement System at its office; (2) the Employer if addressed to the address of the Governing Authority indicated in the Adoption Agreement; or (3) a Member or Beneficiary, when addressed to the Member at his or her address as it appears in the records of the Retirement System or the Employer.

**Section 19.09.** **Change of Address.** The Member, Member, Beneficiary, Alternate Payee and Employer is responsible for furnishing a change of address to the Retirement System.

**Section 19.10.** **Right of Recovery.** If the Retirement System makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Retirement System may recover that incorrect payment, whether or not it was made

due to the error of the Retirement System, from the person to whom it was made, or from any other appropriate party. If any such incorrect payment is made directly to a Member, the provisions of Section 20.08 apply.

**Section 19.11.**      **Evidence of Action.** Any action by any Employer pursuant to any of the provisions of the Plan shall be evidenced by ordinance or resolution of the governing body, and the Retirement System shall be fully protected in acting in accordance with such resolution or ordinance so certified to it. All orders, requests, and instructions to the Retirement System by an Employer or by any duly authorized representative, shall be in writing and the Retirement System shall act and be fully protected in acting in accordance with such orders, requests, and instructions.

**Section 19.12.**      **Reliance.** The Retirement System or Board shall not incur any liability in acting upon any notice, request, signed letter, telegram, or other paper or document believed by the Retirement System or Board to be genuine or to be executed or sent by an authorized person.

**Section 19.13.**      **Entire Plan.** The Plan document and the documents incorporated by reference herein shall constitute the only legally governing documents for the Plan. No statement by the Trustees, Employer, or Retirement System shall be used in any claim unless in writing, signed by the party against whom the claim is being made.