

**STATE OF MISSOURI
DEFERRED COMPENSATION INCENTIVE 401(a) PLAN
FOR PUBLIC EMPLOYEES
(2008 Restatement)**

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**STATE OF MISSOURI
DEFERRED COMPENSATION INCENTIVE 401(a) PLAN FOR PUBLIC EMPLOYEES**

ARTICLE I – INTRODUCTION

1.1 ***History of Plan.*** Pursuant to section 105.900 to 105.927 of the Revised Statutes of the State of Missouri, the State of Missouri, through the Missouri State Public Employees Deferred Compensation Commission and the Office of Administration of the State of Missouri, established a profit sharing plan pursuant to Section 401(a) of the Internal Revenue Code known as the State of Missouri Deferred Compensation Incentive 401(a) Plan for Public Employees (the “Plan”; f/k/a the “Missouri State Employees Deferred Compensation Incentive Plan”). It is intended that this Plan be treated as a “governmental plan” within the meaning of Section 414(d) of the Code. The employer contributions which are made to Participant accounts under this Plan are matching contributions based on a Participant’s elective deferrals under the State of Missouri Deferred Compensation Plan for Public Employees, a separate plan administered under Section 457(b) of the Code.

The Trust created as part of this agreement is established for the exclusive benefit of Participants and their Beneficiaries, and no part of the Trust Fund, except such part as may be needed for expenses and taxes, shall be used for any other purpose.

The Plan was completely amended and restated from time to time, most recently in the form of a First Restated Plan Document, generally effective January 1, 2002. First Restated Plan Document was adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) and is to be construed in accordance with EGTRRA and guidance issued thereunder.

On and after August 28, 2007, the administration of the Plan was transferred to the Board of Trustees of the Missouri State Employees’ Retirement System (“MOSERS” or the “Board”) under RSMo section 105.915. The Board amended the First Restated Plan Document to reflect certain changes in the law, including the transfer of administration, among other changes, generally effective August 28, 2007.

The Board now wishes to amend and restate the Plan further to incorporate changes that have been made to the Plan and to make other changes that the Board finds necessary or desirable, including changing the name of the Plan to the State of Missouri Deferred Compensation Incentive 401(a) Plan for Public Employees.

1.2 ***Adoption of Amendment.*** The Plan is hereby amended and completely restated (the “2008 Restatement”).

1.3 ***Effective Date of Plan Amendments.*** Except as otherwise provided in the Plan, this 2008 Restatement is effective as of January 1, 2008.

The rights and benefits of any person entitled to benefits under the Plan shall be determined in accordance with the applicable provisions of the Plan in effect at the time the applicable event occurs, except as otherwise explicitly provided in the Plan.

1.4 ***Purpose and Type of Plan.*** This Plan is intended to provide a means whereby the Employer may encourage its Employees to establish a regular method of savings and thereby create a fund available for their use at retirement or in the event of death. It is intended that the Plan shall qualify as a profit sharing plan under Section 401 of the Internal Revenue Code of 1986, as amended (the “Code”).

ARTICLE II – GENERAL DEFINITIONS

2.1 **Amendment Date** means the date on which an amendment to the Plan is adopted or becomes effective, whichever is later.

2.2 **Annuity Contract** means any group annuity contract issued by an insurance company to the Board or to the Trustee to fund the benefits provided under the Plan, as such contract may be amended from time to time.

2.3 **Annuity Starting Date** means the date distributions commence.

2.4 **Beneficiary** means the person or persons (natural or otherwise) designated as such by a Participant in accordance with the Plan.

2.5 **Board** means the Board of Trustees of the Missouri State Employees' Retirement System.

2.6 **Code** means the Internal Revenue Code of 1986, as amended. Reference to a section of the Code shall include that section and any comparable section or sections of any future legislation that amends, supplements or supersedes said section.

2.7 **Compensation** for a Plan Year means actual wages in box 1 of Form W-2 for services to the Employer, plus the amount of salary reduction as a result of an election pursuant to a plan or plans governed by Section 125, 132(f)(4), 414(h)(2), 401(k), 403(b) or 457(b) of the Code (inclusively).

Compensation shall not include: (a) fringe benefits not paid in cash through the regular payroll (e.g., automobile expenses reimbursed through accounts payable) and (b) amounts attributable to nondeductible moving expenses.

In order to be taken into account for purposes of this section, compensation generally must be paid or treated as paid to the Employee before the Termination of Employment of the Employee. However, payments of compensation made within two and one-half months after the Termination of Employment of an Employee shall be treated as compensation to the extent such amounts are compensation for services rendered that would have been paid absent a termination of employment, or payments for leave the Employee would have been able to use if employment had continued.

Compensation of each Participant taken into account under the Plan shall in no event exceed the amount specified in Section 401(a)(17) of the Code as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code (\$230,000 for 2008).

2.8 **Covered Compensation** means the Compensation of an Employee for service in Covered Employment while he is a Participant.

2.9 **Covered Employment** means all service performed for an Employer while classified by the Employer as an Employee (regardless of retroactive reclassification). Covered Employment shall not include service as a temporary state fair employee or, effective March 1, 1994, service as an Independent Contractor. For these purposes, an “Independent Contractor” means any person receiving any type of compensation from an Employer or for services rendered pursuant to one or more written contracts, if such individual is not an employee of the Employer.

2.10 **Deferred Compensation Plan** means the State of Missouri Deferred Compensation 457(b) Plan for Public Employees, as amended from time to time.

2.11 **Employee** means any individual who is a common law employee of the Employer, regardless of part-time or full-time status.

2.12 **Employer** means the State of Missouri or any of its agencies or departments which have adopted the Plan from time to time with the approval of the State Trustee. Employers are identified on Schedule 2.12 attached hereto, which schedule may be updated from time to time by the Board.

2.13 **Highly Compensated Employee** means, for any Plan Year, an Employee who:

- (a) was a 5% owner, as defined in Section 416(i)(1)(A)(ii) of the Code, at any time during the determination year or the look back year; or
- (b) had compensation from an Employer during the look back year in excess of the amount specified in Section 414(q)(1)(B)(i) of the Code, as adjusted by the Secretary for increases in the cost of living (\$105,000 for 2008), and if the Sponsor so elects in the Plan, was in the top-paid group for the look-back year.

A Highly Compensated Employee includes any Employee who separated from service (or was deemed to have separated prior to the Plan Year), performs no service for the Sponsor or an Affiliate during the Plan Year, and was an active Highly Compensated Employee for either the year of separation or any Plan Year ending on or after the Employee’s fifty-fifth birthday.

The determination of who is a Highly Compensated Employee will be made in accordance with Section 414(q) of the Code and the regulations thereunder.

The determination year is the plan year for which the determination of who is highly compensated is being made. The look-back year is the 12-month period immediately preceding the determination year, or if the Sponsor so elects in the Plan, the calendar year beginning with or within such 12-month period. Compensation for purposes of this section means compensation with the meaning of Section 415(c)(3) of Code. Employer required to be aggregated under Sections 414(b), 414(c), 414(m) or 414(o) of the Code are treated as a single employer. If the Sponsor makes a top-paid group election, the top-paid group consists of the top 20% of Employees ranked on the basis of compensation received during the look-back year. For purposes of determining the number of employee in the top-paid group, employees described in Sections 414(q)(5) and the regulations thereunder are excluded.

2.14 **Individual Account** means the separate account reflecting the share of each Participant in the Trust Fund, including any or all sub-accounts established by the Plan Administrator in accordance with Article V.

2.15 **Normal Retirement Age** includes that range of ages ending not later than 70½ and beginning with the age at which the Participant is eligible to retire pursuant to the Employer's retirement system, by virtue of age, length of service, or both, without consent of the Employer and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. In the case of a Participant who continues to work beyond the ages specified in the preceding sentence, the Normal Retirement Age shall be that date or age designated by the Participant, but such date or age shall not be later than the mandatory retirement age provided by the Employer or the date or age at which the Participant separates from service with the Employer.

2.16 **Participant** means any Employee in Covered Employment who has met the requirements of Article III; or a former Employee who has amounts credited to an account under the Plan.

2.17 **Plan** means the State of Missouri Deferred Compensation Incentive 401(a) Plan for Public Employees (f/k/a the Missouri State Employees Deferred Compensation Incentive Plan) as set forth in this document and as it may be amended from time to time.

2.18 **Plan Administrator** means the Board or its designee named in accordance with Section 12.1.

2.19 **Plan Year** means the twelve month period ending June 30.

2.20 **Pooled Investment Fund** means a portion of the Trust Fund invested in a portfolio in which the Individual Account of more than one Participant shares the investment performance rateably.

2.21 **RSMo** means the means the Revised Statutes of the State of Missouri, as amended.

2.22 **Segregated Investment Fund** means an investment vehicle in which the Individual Account of only one Participant is affected by the investment performance.

2.23 **Spouse** means an individual of the opposite sex to whom a Participant is lawfully married at the Participant's Annuity Starting Date. **Surviving Spouse**, in the case of a Participant who dies before such time, means the individual of the opposite sex to whom the Participant is lawfully married on the date of death of the Participant, provided that a former spouse shall be treated as the Spouse or the Surviving Spouse to the extent provided under a qualified domestic relations order, as defined in Section 414(p) of the Code.

2.24 **Termination of Employment** means the termination of a Participant's employment with the Employer, such that the Participant is no longer performing duties for the Employer in a capacity as a common law employee, for which he is entitled to receive Compensation and is not on an authorized leave of absence, layoff, vacation, sick or disability leave, or jury duty. A Termination of Employment can occur upon termination of employment by reason of retirement, discharge, quit, or death.

2.25 **Trust Agreement** means the trust agreement entered into by and between the Board and the Trustee in accordance herewith for the purpose of holding and investing the Trust Fund; provided that, to the extent that funds are invested in an Annuity Contract of which the Board or the Employer is the contract holder, the Annuity Contract shall constitute the Trust Agreement; and provided further that, to the extent that funds are invested in a custodial account described in Section 401(f) of the Code, the custodial agreement shall constitute the Trust Agreement.

2.26 **Trustee** means the person or persons serving as trustee of the Trust Fund, or any successor(s) thereto; provided that to the extent that funds are invested in an Annuity Contract of which the Board or the Employer is the contract holder, the insurance company shall be the Trustee; and provided further that, to the extent that funds are invested in a custodial account described in Section 401(f) of the Code, the custodian shall be the Trustee.

Except as otherwise provided in the Trust Agreement, the members of the Board shall act as the Trustee under Sections 105.900 to 105.927 of the RSMo; and such Trustee agrees to hold in trust, manage and administer contributions to the Trust Fund, and the income or gain or loss therefrom, for the purposes herein set forth.

2.27 **Trust Fund.** means all of the Plan assets held by the Trustee in accordance with the Trust Agreement.

2.28 **Valuation Date** means the last day of each Plan Year or such segment of each Plan Year as may be designated by the Plan Administrator before the beginning of such period. In addition, with respect to assets invested in a Segregated Investment Fund, Valuation Date includes each business day as of which public securities markets are open for trading.

ARTICLE III – ELIGIBILITY PROVISIONS

3.1 **General Rule.** An Employee shall be eligible to become a Participant in the Plan after the Employee is in Covered Employment.

3.2 **Eligibility for Employer Contributions.** An Participant who (i) has completed 12 consecutive months of continuous service with the Employer (beginning from the date that the individual becomes an Employee) and (ii) is making continuous deferrals to the Deferred Compensation Plan that total at least \$25.00 per month (e.g., \$12.50 per pay period for a Participant paid on a semi-monthly basis) shall become eligible for Employer Contributions as of the date on which such requirements have been met.

An Employee who incurs a Termination of Employment after becoming eligible for Employer Contributions and who is later reemployed in Covered Employment shall become eligible for Employer Contributions on the date of such reemployment.

ARTICLE IV – CONTRIBUTIONS

4.1 ***Employer Contributions.*** The Employer, in its sole discretion, may contribute to the Trust Fund an amount referred to as an Employer Contribution. In the event that an Employer Contribution is made to the Plan, such contribution shall be calculated as follows: in accordance with Section 105.927 of the RSMo, a contribution shall be made each month to the Plan on behalf of each Participant who (i) has contributed to the Deferred Compensation Plan during such month an amount equal to at least \$25 (e.g., \$12.50 per pay period for a Participant paid on a semi-monthly basis) and (ii) has otherwise met the requirements for eligibility for Employer Contributions under Article III hereof. The amount of such Employer Contribution shall be determined in accordance with Section 105.927 of the RSMo, or such amount as may be appropriated by the General Assembly of the State of Missouri, and approved by the Governor of the State of Missouri.

All contributions made pursuant to this section shall be entitled “Employer Contributions” and shall be allocated to the Employer Contributions Account of Participants in accordance with Article V.

4.2 ***Transfer of Employer Contributions.*** The Employer shall make all contributions to the Trust Fund in the form of cash. Employer contributions for any Plan Year shall be paid to the Trust Fund in one or more installments.

4.3 ***Exclusive Benefit of Participants.*** All contributions under the Plan shall be paid to the Trustee and deposited in the Trust Fund. All assets of the Trust Fund, including investment income, shall be held for the exclusive benefit of Participants and Beneficiaries and shall be used to pay benefits to such persons or to pay administrative expenses of the Plan and the Trust Fund and shall not be diverted to or used for any other purpose and shall not revert to or inure to the benefit of the Employer, except as provided in Section 16.9.

4.4 ***Rollover Contributions.*** The Trustee, at the sole discretion of the Plan Administrator, in each case, may accept Participant rollover contributions or (inclusively) direct rollovers as specified in this paragraph. The Plan may accept a direct rollover of an eligible rollover distribution or a Participant contribution of an eligible rollover distribution from a qualified plan described in Section 401(a) or 403(a) of the Code, or an annuity contract described in Section 403(b) of the Code. The plan may accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income. Notwithstanding the foregoing, the Plan Administrator will not accept a rollover contribution to the extent that such rollover contribution consists of after-tax amounts not be subject to taxation if received by the Participant.

A separate Rollover Account shall be established for each such contribution. In the event an amount contributed to the Plan pursuant to this section shall be determined not to qualify as an eligible rollover distribution as defined above, such amount shall be distributed to the Employee who made the rollover contribution to the Plan.

The Plan Administrator may establish such procedures as it deems appropriate to assure that such contribution will not adversely affect the qualified status of the Plan.

ARTICLE V – BENEFIT ALLOCATION

5.1 **Individual Accounts.** The Plan Administrator shall establish and maintain a separate Individual Account for each Participant (which may consist of various sub-accounts established by the Plan Administrator) to reflect the Participant’s share of Contributions made pursuant to Article IV, if any, and the income, loss, appreciation and depreciation attributable thereto. A Participant’s Individual Account shall consist of the following accounts in addition to such other accounts or subaccounts as the Plan Administrator may at any time deem appropriate.

- (a) An “**Employer Contributions Account**” to reflect the Participant’s interest in the Trust Fund attributable to Employer Contributions made to the Trust Fund by an Employer on behalf of the Participant.
- (b) A “**Rollover Account**” to reflect the Participant’s interest in the Trust Fund attributable to rollover contributions made to the Trust Fund by an Employee in accordance with Section 4.4 of the Plan.

The Plan Administrator shall keep accurate records of all contributions, receipts, investment distributions and all other transactions, including the portion of each Individual Account that is invested in a Segregated Investment Fund, and, if applicable, the portion of each Individual Account that is invested in a Pooled Investment Fund.

The amount credited to the Individual Account of a Participant from time to time as of the most recent Valuation Date shall constitute the entire interest of the Participant in the Plan.

5.2 **Valuation of Accounts.** As soon as practicable after each Valuation Date, the Trustee shall determine the fair market value of the Trust Fund as of such Valuation Date. The fair market value of a Pooled Investment Fund means the net value of all of the assets and liabilities of such Pooled Investment Fund as of the close of business on the Valuation Date, including income, loss, appreciation, and depreciation since the immediately preceding Valuation Date; less the dollar amount of all contributions paid to the Trustee for the period elapsed since the immediately preceding Valuation Date that have not yet been credited to Individual Accounts. The fair market value of a Segregated Investment Fund means the net value of all of the assets and liabilities of such Segregated Investment Fund as of the close of business on the Valuation Date, less the dollar amount of all contributions paid to the Trustee for the period elapsed since the immediately preceding Valuation Date that have not yet been credited to Individual Accounts.

A written report of the status of the Participant's Individual Account shall be furnished at least quarterly and within forty-five (45) days after the end of each reporting period to the Participant.

5.3 **Accounting Procedure.** As of each Valuation Date within a reasonable time after the fair market value of the Trust Fund on such date has been determined and, with respect to a year-end Valuation Date, after the amount of the Employer contribution for the Plan Year has been determined, the Plan Administrator shall:

- (a) First, charge to the appropriate Individual Accounts all payments or distributions made from Participants' accounts that have not been charged previously, in accordance with Section 5.4;
- (b) Next, in the event assets are invested in a Pooled Investment Fund or Funds, adjust the net credit balances of the Individual Accounts of all Participants in each Pooled Investment Fund upward or downward, pro rata, in proportion to the net credit balances of such Individual Accounts before such adjustment, so that the total of the net credit balances of such Individual Accounts after such adjustment will equal the fair market value of that Pooled Investment Fund as of such date;
- (c) Finally, allocate and credit contributions, if applicable, in accordance with any relevant Plan provision.

5.4 **Accounting for Payments and Distributions.** The Plan Administrator shall charge to the appropriate Individual Account of each Participant all payments and distributions made under the Plan to or for the benefit of such Participant or his Beneficiary since the immediately preceding Valuation Date.

ARTICLE VI – VESTING

6.1 **Fully Vested Accounts.** Except as otherwise described in Article IX, the amounts credited to the Individual Account of a Participant shall be fully vested at all times and in all events.

ARTICLE VII – LIMITATIONS ON ANNUAL ADDITIONS

7.1 **General Rule.** In no event shall the sum of the Employer contributions and forfeitures allocated to the account of a Participant for the Plan Year exceed the lesser of:

- (a) The amount specified in Section 415(c)(1)(A) of the Code, as adjusted annually for any applicable increases in the cost of living in accordance with Section 415(d) of the Code, as in effect as of the last day of the Plan Year (\$46,000 for 2008); and

- (b) 100% of the Participant's compensation for such year.

For purposes of this Article, this amount is referred to as the maximum permissible amount.

The compensation limit referred to in (b) shall not apply to any contribution from medical benefits after separation from service within the meaning of Section 401(h) of the Code or Section 419A(f)(2) of the Code which is otherwise treated as an annual addition.

If a short limitation year is created because of an amendment changing the limitation year to a different twelve consecutive month period, the maximum permissible amount shall not exceed the dollar limitation in paragraph (a) above multiplied by the following fraction where the numerator is the number of months in the short limitation year and the denominator is twelve.

7.2 Reduction of Benefits. Reduction of contributions to all defined contribution plans where required to comply with Section 415 of the Code shall be accomplished by reducing contributions or by the allocation of forfeitures for the Participant for defined contribution plans maintained by a member of the Controlled Group in which he participated, such reduction to be made beginning with the plan to which the amount contributed on behalf of the Participant is the largest without regard to the reduction provided for in this section.

(a) If the Participant does not participate in, and has never participated in another qualified plan, a welfare benefit fund (as defined in Section 419(e) of the Code), an individual medical account (as defined in Section 415(l)(2) of the Code), or a simplified employee pension (as defined in Section 408(k) of the Code) maintained by the Controlled Group, which provides an annual addition as defined in Section 7.4, the amount of annual additions which may be credited to the Participant's Individual Account for any limitation year will not exceed the lesser of the maximum permissible amount specified in Section 7.1 or any other limitation contained in this Plan. If the Employer contribution that would otherwise be contributed or allocated to the Participant's account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount contributed or allocated will be reduced so that the annual additions for the limitation year will equal the maximum permissible amount.

(b) Prior to determining the Participant's actual compensation for the limitation year, the Plan Administrator may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the participant's compensation for the limitation year, uniformly determined for all participants similarly situated.

(c) As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the Participant's actual compensation for the limitation year.

(d) Amounts that cannot be credited to the Participant's Individual Account in the Plan of a particular Participant for a Plan Year because of the limitations of this section shall be disposed of as follows:

(i) For limitation years beginning before January 1, 2007, refunds shall be made in the following order, if applicable: (1) the Participant after-tax contributions not matched by the Employer, if any, and any income attributable thereto; (2) the Participant's before-tax contributions not matched by the Employer, if any, and any income attributable thereto; (3) if the Participant is entitled to an allocation of Employer contributions for a subsequent year, the excess amount in the Participant's Individual Account will be used to reduce Employer contributions (including any allocation of forfeitures) for such Participant in the next limitation year, and each succeeding limitation year if necessary; and (4) if the Participant is not entitled to an allocation of Employer contributions for a subsequent year, the excess amount in the Participant's Individual Account shall be allocated to suspense accounts and used to reduce Employer contributions for the next limitation year (and succeeding limitation years as necessary) for all of the remaining Participants as an Employer contribution for such year;

If a suspense account is in existence at any time during a limitation year pursuant to this section, it will not participate in the allocation of investment gains and losses. If a suspense account is in existence at any time during a particular limitation year, all amounts in the suspense account must be allocated and reallocated to Participants' Individual Accounts before any Employer or any Participant contributions may be made to the Plan for that limitation year. Excess amounts may not be distributed to Participants.

(ii) For limitation years beginning on or after January 1, 2007, corrections of excess annual additions shall be made in accordance with the principles set out in the Employee Plans Compliance Resolution System.

7.3 Coordination With Coverage Under Additional Plans. If, in addition to this Plan, the Participant is covered under another qualified master or prototype defined contribution plan, a welfare benefit fund, an individual medical account maintained, or a simplified employee pension maintained by the Controlled Group, that provides an annual addition as defined in Section 7.4, during any limitation year. The annual additions which may be credited to a Participant's Individual Account under this Plan for any such limitation year will not exceed the maximum permissible amount reduced by the annual additions credited to a Participant's account under the other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions for the same limitation year. If the annual additions with respect to the Participant under other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the Employer are less than the maximum permissible amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Individual Account under this Plan would cause the annual additions for the

limitation year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans and funds for the limitation year will equal the maximum permissible amount. If the annual additions with respect to the Participant under such other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's Individual Account under this Plan for the limitation year.

Prior to determining the Participant's actual compensation for the limitation year, the Sponsor may determine the maximum permissible amount for a Participant in the manner described in Section 7.1.

As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the Participant's actual compensation for the limitation year. If, pursuant to this paragraph or as a result of the allocation of forfeitures, a participant's annual additions under this Plan and such other plans would result in an excess amount for a limitation year, the excess amount will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a simplified employee pension will be deemed to have been allocated first, followed by annual additions to a welfare benefit fund or individual medical account, regardless of the actual allocation date.

If an excess amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the excess amount attributed to this Plan will be the product of, (a) the total excess amount allocated as of such date, times (b) the ratio of (i) the annual additions allocated to the Participant for the limitation year as of such date under this Plan to (ii) the total annual additions allocated to the Participant for the limitation year as of such date under this and all the other qualified master or prototype defined contribution plans.

Any excess amount attributed to this Plan will be disposed in the manner described in Section 7.2.

If the Participant is covered under another qualified defined contribution plan maintained by the employer which is not a master or prototype plan, annual additions which may be credited to the Participant's Individual Account under this Plan for any limitation year will be limited in accordance with the preceding paragraphs in this Section 7.3 as though the other plan were a master or prototype plan.

7.4 **Definitions.** For purposes of this Article, the following definitions apply

(a) "Annual additions" means the sum of the following amounts credited to a Participant's account for the limitation year: (i) Employer contributions; (ii) Participant contributions; (iii) forfeitures; (iv) amounts allocated to an individual medical account, as defined in Section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Controlled Group 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 Section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the Controlled Group are treated as annual additions to a defined contribution plan; and (v) allocations under a simplified employee pension.

For this purpose, any excess amount applied under Sections 7.2 or 7.3 in the limitation year to reduce employer contributions will be considered annual additions for such limitation year.

(b) “Compensation” means wages within the meaning of Section 3401(a) of the Code (for 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 exceptions for agricultural labor and services performed outside the United States), plus the amount of salary reduction as a result of an election pursuant to a plan or plans governed by Section 125, 132(f)(4), 401(k), 403(b), or 457(b) of the Code (inclusively); plus deemed Section 125 compensation in a cafeteria plan with automatic enrollment where the Participant is unable to certify other health coverage and the Employer does not collect information regarding the Participant’s other health coverage as part of the enrollment process.

In order to be taken into account for purposes of this section, compensation generally must be paid or treated as paid to the Employee before the Termination of Employment of the Employee. However, payments of compensation made within two and one-half months after the Termination of Employment of an Employee shall be treated as compensation to the extent such amounts are compensation for services rendered that would have been paid absent a termination of employment, or payments for leave the Employee would have been able to use if employment had continued.

(c) “Controlled Group” means the Participant’s employer and any other entity required to be aggregated with such employer under Notice 89-23, or other subsequent generally applicable guidance provided by the Code, regulations thereunder and the Internal Revenue Service from time to time.

(d) “Excess amount” means the excess of the Participants annual additions for the limitation year over the maximum permissible amount.

(e) “Limitation year” means the calendar year.

(f) “Projected annual benefit” means the annual retirement benefit (adjusted to an actuarially equivalent straight life if such benefit is expressed in a form other than a straight life annuity or qualified joint and survivor annuity) to which the Participant would be entitled under the terms of the plan assuming: (i) the Participant will continue employment until normal retirement age under the plan (or current age, if later), and (ii) the Participant’s compensation for the current limitation year and all other relevant factors used to determine benefits under the plan will remain constant for all future limitation years.

ARTICLE VIII – PAYMENT OF BENEFITS

8.1 **Commencement of Distributions:** Subject to Article XI, the Participant may elect, in the manner prescribed by the Plan Administrator, the time at which distributions under the Plan are to commence; provided that the Participant is eligible for a distribution from the Plan no earlier than the date on which the Plan Administrator is in receipt of a written notice of the date of the Participant's Termination of Employment. The Participant may choose to defer payments until no later than April 1st of the year following the year the Participant attains age 70 ½ and has experienced a Termination of Employment.

Distributions may commence from the Rollover Account on any date chosen by the Participant in accordance with procedures established by the Plan Administrator.

Except as provided in Section 8.2, the amount of any payment to a Participant shall be based upon the amount of the Participant's Individual Account as of the most recent Valuation Date.

8.2 **Forms of Distribution:** Subject to the provisions of Article XI herein, a Participant (or Beneficiary, where applicable) may elect to receive his or her Individual Account in any one or a combination of the following forms of distribution as the Participant (or Beneficiary, where applicable) after the earlier of (i) the Participant's Termination of Employment; or (ii) the date on which the Participant attains age 70 ½ in accordance with such procedures as the Plan Administrator may specify:

(a) In one lump sum payment or partial lump-sum payment (which may represent either all of such Participant's Individual Account or only the portion remaining after distribution of a portion thereof pursuant to subsection (b) and which may be rolled over at the election of the participant to an insurance company for the purchase of an individual annuity contract);

(b) Periodic payments of (i) a designated dollar amount, until the Individual Account balance has been depleted; or (ii) a specified number of payments, over a period not to exceed 30 years. The Participant may elect that such payments be on a monthly, quarterly, semi-annually or annual basis. The amount of each payment will vary and is calculated using the Individual Account balance on the date of each payment divided by the number of remaining payments.

8.3 **Accounts of Former Employees.** The amount credited to the Individual Account of the Participant, if any, after the Termination of Employment of such Participant shall be adjusted in accordance with Article V as of each Valuation Date following such Termination of Employment until such amount shall have been distributed in full in accordance with this Article. Distribution of the balance of the amount credited to the Individual Account of a Participant determined as of the Valuation Date (or the date for valuing Individual Accounts in accordance with the terms of an Annuity Contract) immediately preceding the distribution shall constitute payment in full of the benefits of such Participant hereunder. Any balance of such Individual

Account remaining unpaid at the death of a Participant or Beneficiary shall be distributed in accordance with Article X.

8.4 *Direct Rollover of Eligible Rollover Distributions.* A distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee (a “direct rollover”). A distributee includes an Employee or former Employee. In addition, the Employee’s or former Employee’s Surviving Spouse and the Employee’s or former Employee’s Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the Spouse or former Spouse.

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: 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 years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and any hardship distribution.

An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified plan described in Section 401(a) of the Code, that accepts the distributee’s eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

Effective January 1, 2008, a distributee shall also include a Participant’s Beneficiary who is not the Participant’s spouse, provided that for such non-spousal Beneficiary, an eligible retirement plan shall include only an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b).

8.5 *Permissive Service Credit Transfers.* A Participant may use all or a portion of his Individual Account as a direct trustee-to-trustee transfer to a retirement system of the Employer to purchase permissive service credit or for the repayment of service credits, provided that (a) the retirement system permits such a transfer, and (b) the Participant demonstrates to the Plan Administrator’s satisfaction that the transfer is to a defined benefit governmental plan (as defined in Code Section 414 (d)) and the transfer is permissible for the purchase of service credit (as defined in Code Section 415(n)(3)(A)) or for the repayment of service credits permissible by Code Section 415(k)(1).

8.6 *Protected Payment Options.* Notwithstanding anything to the contrary in the Plan, a Plan amendment shall not eliminate an optional form of benefit for a Participant with

respect to benefits accrued before the applicable Amendment Date, except as permitted by regulation under Section 411(d)(6) of the Code. Any payment option, including a payment option of a predecessor Plan that was merged into this Plan, that is not permitted to be eliminated by such regulations, shall continue to apply to benefits accrued before the applicable Amendment Date.

8.7 ***Suspension of Payments:*** If a former Employee is receiving payments in accordance with Section 8.2 and returns to Covered Employment with the Employer, payments to such Participant shall be suspended when he or she either: (i) elects to make deferrals under the Deferred Compensation Plan; or (ii) is scheduled to work over 1,000 hours in Covered Employment in a Plan Year. Subsequent payment of the Participant's Individual Account shall be made in accordance with the generally applicable terms of the Plan.

ARTICLE IX – FORFEITURES

9.1 ***Forfeitures.*** There shall be no forfeiture of amounts credited to the Individual Account of a Participant under the Plan on account of length of service.

9.2 ***Lost Participants.*** A Participant who is a former Employee, or Beneficiary of a deceased Participant, entitled to a distribution under this Plan will be treated as a “Lost Participant” if a communication (such as a statement of the Participant's or Beneficiary's account, a notice, disclosure statement, or check) is returned by the United States Postal Service as undeliverable after it was mailed to the Participant or beneficiary using the address for the Participant or beneficiary reflected in the records of the Plan Administrator as the most recent mailing address.

The Plan Administrator shall make reasonable efforts to locate a Lost Participant. When deciding the extent of the search to be undertaken, the Plan Administrator shall consider the size of the Participant's account balance and the expenses involved in attempting to locate the Lost Participant. Reasonable search expenses may be charged to the Participant's Individual Account.

Notwithstanding any provisions of the Plan to the contrary, if a Lost Participant is entitled to a benefit payable under the Plan, a distribution check has been issued and outstanding for more than 180 days and reasonable efforts to locate the Lost Participant have been unsuccessful, the account balance of the Lost Participant shall be paid to the Unclaimed Property Division of the Office of the State Treasurer under Missouri's Uniform Disposition of Unclaimed Property Act. A Participant or Beneficiary shall have no claim against the Plan for the payment of benefits after payment has been made to the Unclaimed Property Division in accordance with this Section.

ARTICLE X – PAYMENT OF DEATH BENEFITS

10.1 ***Payment of Death Benefits.*** If the Participant dies prior to his or her Termination of Employment, or the Participant dies before the benefits to which he is entitled under this Plan

have been fully paid, the benefits payable under this Plan shall be paid to his or her designated Beneficiary.

Upon receipt of notification of the death of a Participant, the Plan Administrator will verify the beneficiaries on file and notify them of their options.

The Beneficiary shall have the right to elect the time and mode of payment of such benefits, subject to the limitations set forth in this Plan.

If the Participant dies after the commencement of distributions has begun, then any amount not distributed to the Participant during his life shall be distributed to the Beneficiary at least as rapidly as under the method of distribution used by the Participant at the time of the Participant's death.

In addition, if the Participant dies prior to the commencement of distributions, the Participant's Individual Account shall be distributed to the Beneficiary following one of these requirements:

(a) If the Beneficiary is the Participant's surviving spouse, distribution of the Individual Account may be delayed until December 31 of the calendar year in which the Participant would have attained age 70½. The amount must then be paid over a period not extending beyond the life expectancy of the Spouse Beneficiary, using the Single Life Expectancy table.

(b) If the Beneficiary is a person other than the Participant's spouse, distribution of the Individual Account must begin on or before December 31 of the calendar year following the Participant's death, and the entire amount must be paid over a period not to exceed 15 years.

(c) If the Beneficiary is not a person, such as a trust or estate, it must be distributed by the end of the calendar year which contains the fifth anniversary of the Participant's death.

10.2 Beneficiary Designation. Each Participant from time to time, may designate on a form acceptable to the Plan Administrator (which may be submitted by electronic or other means as designated by the Plan Administrator), any Beneficiary (including a trust) or Beneficiaries (concurrently, or contingently) to whom his benefits under the Plan are to be paid if he dies before he receives all of such benefits. A beneficiary designation form shall be effective only when the form is filed in writing with the Plan Administrator while the Participant is alive and shall cancel all beneficiary designation forms previously signed and filed by the Participant.

10.3 Failure to Designate. If a Participant shall not have validly designated a Beneficiary or no Beneficiary or Beneficiaries entitled to receive distribution of all of the amount payable under the Plan survives the Participant, then that portion of the amount payable as to which there is no qualified surviving Beneficiary shall be paid to the Surviving Spouse of the Participant, and if the Participant leaves no Spouse, to the estate of the Participant.

ARTICLE XI – LATEST TIME OF PAYMENT

This Article does not contain the general rules of the Plan governing the time and form of distributions. In particular, this Article in and of itself does not give any right to a Participant or Beneficiary to defer distributions beyond the time of distribution provided in the preceding Articles. The provisions of this Article, which are included to comply with the Code, in certain limited circumstances as specifically provided in this Article, merely may accelerate the time of distribution provided by the preceding Articles.

11.1 **Sixty-Day Rule.** Unless the Participant elects otherwise in writing, the latest date on which payment of benefits must commence shall be the sixtieth day after the close of the Plan Year in which the *latest* of the following events occurs:

- (a) The Participant attains Normal Retirement Age;
- (b) The Participant incurs a Termination of Employment; or
- (c) Ten years have elapsed from the date the Participant commenced participation in the Plan.

11.2 **Minimum Distribution Requirements.**

(a) **General Rules.** The requirements of this section are effective as of January 1, 2003 and will take precedence over any inconsistent provisions of the Plan. All distributions required under this section will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code and the minimum distribution incidental benefit requirements of Section 401(a)(9)(G) of the Code.

(b) **Required Minimum Distributions During Participant's Lifetime.** The Participant's entire interest will be distributed, or will begin to be distributed, to the Participant no later than the April 1st of the calendar year following the *later* of: the calendar year in which the Participant attains seventy and one-half years of age; or the calendar year in which the Participant incurs a Termination of Employment. (Such date is referred to as the Participant's "**Required Beginning Date**").

During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (i) the quotient obtained by dividing the Participant's Individual Account balance by the distribution period in the Uniform Lifetime Table set forth in Treas. Reg. § 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(ii) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's Spouse, and this Spouse is at least 10 years younger than the Participant, the quotient obtained by dividing the Participant's Individual Account balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this subsection beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(c) **Distributions Directly From the Trust Upon Death of Participant.** Upon the death of the Participant, the Participant's entire interest will be distributed in accordance with this Article XI.

If the Participant dies before distributions begin, the Participant's entire interest will be distributed by December 31st of the calendar year containing the fifth anniversary of the Participant's death; unless such Beneficiary has elected the life expectancy rule as described in paragraph 11.1(d) below.

If the Participant dies on or after distributions begin, the *minimum* amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Individual Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year, unless the Beneficiary has elected the life expectancy rule of paragraph 11.1(e)(i) or (ii), whichever is applicable.

(d) **Death of Participant Before Distributions Begin.** If this subsection applies, and if the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then distributions to the surviving Spouse will begin by December 31st of the calendar year immediately following the calendar year in which the Participant died, or by December 31st of the calendar year in which the Participant would have attained age seventy and one-half years, if later.

(ii) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then distributions to the designated beneficiary will begin by December 31st of the calendar year immediately following the calendar year in which the Participant died.

(iii) If there is no designated Beneficiary as of September 30th of the year following the year of the Participant's death, the Participant's entire interest

will be distributed by December 31st of the calendar year containing the fifth anniversary of the Participant's death.

(iv) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this subsection, other than Section 11.1(d)(i) above, will apply as if the surviving Spouse were the Participant.

For purposes of this subsection, unless Section 11.1(d)(iv) above applies, distributions are considered to begin on the Participant's Required Beginning Date (or, if Section 11.1(d)(iv) above applies, the date distributions are required to begin to the surviving Spouse under Section 11.1(d)(i) above). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 11.1(d)(i) above), the date distributions are considered to begin is the date distributions actually commence.

If the Participant dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the *minimum* amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Individual Account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined in accordance with the provisions in Section 11.1(e)(i) below applicable to death after distributions have begun.

If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30th of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31st of the calendar year containing the fifth anniversary of the Participant's death.

If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse are required to begin to the surviving Spouse under Section 11.1(d)(i) above, this subsection will apply as if the surviving Spouse were the Participant.

(e) Death of Participant On or After Distributions Begin.

(i) *Participant Survived by Designated Beneficiary.* If this subsection applies, and if the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Individual Account balance by the

longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(3) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) *No Designated Beneficiary.* If this subsection applies, and if the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30th of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Individual Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(f) **Definitions.**

(i) *Designated Beneficiary:* The individual who is designated as the Beneficiary under Section 10.2 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Code and Treas. Reg. §1.401(a)(9)-4, Q&A-1.

(ii) *Distribution calendar year:* A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 11.1(c). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required

Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31st of that distribution calendar year.

(iii) *Life expectancy*: Life expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9.

(iv) *Participant's Individual Account balance*: The Participant's Individual Account balance as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Individual Account balance as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The Individual Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

ARTICLE XII – ADMINISTRATION

12.1 *Appointment of Agents*. The Plan Administrator shall have the power to appoint agents to act for and in the administration of this Plan and to select depositories for the assets of this Plan.

12.2 *Resolution of Questions of Fact*. The Employer, or its authorized agent, the Plan Administrator, shall be authorized to resolve any questions of fact necessary to decide the Participant's right under this Plan and such decision shall be binding on the Participant and any Beneficiary thereof.

12.3 *Interpretation of Plan*. The Plan Administrator shall be authorized to construe the Plan and to resolve any ambiguity in the Plan.

12.4 *Agreement by Participants*. The Participant specifically agrees not to seek recovery against an Employer, the Plan Administrator or any employee of an Employer or the Plan Administrator, or any endorser for any loss sustained by the Participant or his Beneficiary, for the non-performance of their duties, negligence or any other misconduct of the above named persons except that this paragraph shall not excuse fraud or wrongful taking by any person.

12.5 *Suspension of Payment*. The Plan Administrator, if in doubt concerning the correctness of their action in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the person to receive the payment or allow the filing in any State court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them. The Plan Administrator shall comply with the final orders of the court in any such suit and the

Participant, for himself and his Beneficiary, consents to be bound thereby insofar as it affects the benefits payable under this Plan or the method or manner of payment.

ARTICLE XIII – PROVISIONS RELATING TO THE BOARD

13.1 ***Control of Trust Assets.*** The Trustee shall accept all contributions made pursuant to the terms of the Plan, and only such contributions, and shall hold, invest and reinvest Plan assets in accordance with the Plan for the exclusive benefit of the Participants of the Plan and their Beneficiaries.

To the extent that assets of the Trust Fund are invested in Participant-directed Segregated Investment Funds, the Trustee shall have no authority, discretion or responsibility with respect to investment of such assets except execution of proper directions of the Participant.

If the Board adopts a separate Trust Agreement, the provisions of such separate Trust Agreement shall override the provisions of this Article to the extent they are inconsistent.

13.2 ***Trustee Removal or Resignation.*** A person who is a member of the Board shall become a Trustee of the Plan and Trust as of the date such person is appointed as a member of the Board. Any Board member who ceases to act in such a capacity shall automatically be considered removed from his position as a Trustee of the Trust Fund. An active Board member may resign his position as Trustee only by resigning his position as a member of the Board.

13.3 ***Distributions from the Plan.*** The Trustee shall have no discretion with respect to making distributions under the Plan and shall make distributions only at such times and in such manner as the Plan Administrator directs. The Trustee shall have no responsibility to ascertain whether such directions of the Plan Administrator comply with the Plan.

13.4 ***Trustee Powers.*** Subject to the other provisions of the Trust Agreement and without limiting the powers of the Trustee, the Trustee is authorized and empowered:

- (a) to adopt and oversee the Trust Fund, in accordance with Section 105.927 of the RSMo;
- (b) to review and approve the insurance policy held under the Trust Agreement; and to exercise all ownership rights under insurance policies in accordance with the terms of the Plan;
- (c) to pay premiums, interest, or other charges due and payable to acquire or maintain any insurance policy held under the Trust Agreement, provided that funds for such payments are then available in the Trust Agreement;
- (d) to vote in person or by proxy any corporate stock or security, or to exchange any other applicable voting rights; and

- (e) to compromise, settle and/or adjust any claim or demand by or against the Trust Fund and to agree to any rescission or modification of any contract or agreement affecting the Trust Fund.
- (f) to transfer assets of the plan to a group trust pursuant to RSMo 105.915 that is operated or maintained exclusively for the commingling and collective investment of monies; provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Code Section 401(a), individual retirement accounts that are exempt under Code Section 408(e), and eligible governmental plans that meets the requirements of Code Section 457(b); and during such period of time as an investment through any such medium shall exist, the declaration of trust of such fund shall constitute a part of the Plan. For this purpose, a trust includes a custodial account that is treated as a trust under Code Section 401(f) or under Code Section 457(g)(3).

13.5 **Investment Policy.** Investments in which Participant Individual Accounts may be invested shall be selected in accordance with the requirements provided under Section 105.915 of the RSMo. All Plan assets not subject to investment direction by the Participant shall be invested by the Trustee in accordance with the provisions of Sections 105.900 to 105.927 of the RSMo.

13.6 **Fund Accounting.** No share or interest of a Participant in the Trust Fund need be invested separately or segregated except as may be provided in this Plan. The Trustee shall adopt and employ such generally accepted accounting practices as he may see fit.

13.7 **Limitation of Liability.** The Trustee shall use the care, skill, prudence and diligence in the exercise of its power and the performance of its duties hereunder that a prudent person, who is familiar with such matters, would use in the conduct of an enterprise of a like character and with the aims under the prevailing circumstances. The Trustee may at any time request instruction of the Plan Administrator or Participant as to any action relating to the Trust Fund. The Trustee shall not be liable for any action taken or omitted on the instruction of the Participant or the Plan Administrator or in the absence of such instructions, for the omission of any actions to which the Participant or the Plan Administrator are required or authorized to instruct it; or for any failure of contributions to meet pension or other liabilities under this Plan. The Trustee shall be protected in acting upon any notice, resolution, order, certificate, opinion, telegram, or letter or other document believed by the Trustee to be genuine and to have been signed by the proper party or parties.

ARTICLE XIV – PARTICIPANT CONTROL OF INVESTMENTS

14.1 **Directed Investments.** The Plan Administrator may establish one or more Pooled Investment Funds, with different investment objectives, from time to time; and establish procedures consistent with the Plan permitting Participants to direct investment of all or a designated portion of their Individual Accounts among such Pooled Investment Funds. The Plan

Administrator also may designate Segregated Investment Funds in which Participants may direct investment of all or a designated portion of their Individual Accounts.

Investments in which Participant's Individual Accounts may be invested shall be selected in accordance with the requirements provided under Section 105.915 of the RSMo. All Plan assets not subject to investment direction by the Participant shall be invested by the Trustee in accordance with the provisions of Sections 105.900 to 105.927 of the RSMo.

If the Plan Administrator establishes or designates Participant directed investment options, each Participant shall be entitled to direct the manner in which assets credited to his Individual Account shall be invested and reinvested at the times and in the manner provided in this Article.

The Plan Administrator reserves the right to change any investment options which may be established pursuant to this Article, including the right to eliminate particular funds, at any time.

14.2 Directed Investment Procedures. To the extent that the Plan Administrator has established Participant-directed funds pursuant to Section 14.1 and the Deferred Compensation Plan, a Participant's (or Beneficiary's, if applicable) Individual Account shall be invested in the same manner that such Participant (or Beneficiary, if applicable) has directed the investment of his account under the Deferred Compensation Plan. The Employer, Board, Administrator, and Trustee shall be under no duty to question any investment direction of a Participant (or Beneficiary, if applicable), or to review any directed investments, or to make suggestions to the Participant (or Beneficiary, if applicable), nor shall they be held responsible in any manner for investment loss or depreciation in asset value of any directed investment.

The Plan Administrator in its sole discretion may establish conditions, rules and procedures for directing investments by Participants, including, but not limited to, limits on the time and frequency of changing investment directions. The Plan Administrator in its sole discretion also may establish "black-out" periods, when specified changes are not permitted, to facilitate changes in the available funds or recordkeeping system. Such conditions, rules and procedures shall be disseminated in a manner reasonably determined to be available to all affected Plan Participants within a reasonable time before the effective date of such condition, rule or procedure.

The Plan Administrator shall deliver to the Trustee all investment directions received by the Plan Administrator in accordance with this section.

14.3 Charges to Accounts. Brokerage commissions, transfer taxes and other charges and expenses in connection with the purchase or sale for each segregated account shall be added to the cost of such securities or be deducted from the proceeds thereof, as the case may be; and expenses directly allocable to the execution of such transactions and administration with respect to such a segregated account, including charges of mutual fund managers and underwriters, may be charged to such segregated account, at the discretion of the Plan Administrator.

14.4 *Accounting for Transfers Between Pooled Investment Funds.* The following procedures shall apply in the case of any transfers between Pooled Investment Funds. The amount credited to the Individual Account of a Participant who delivers a direction to transfer assets from a Pooled Investment Fund, determined as of the effective Valuation Date, shall be transferred as soon as administratively feasible after such Valuation Date. An amount equal to the fair market value of the assets so transferred to another Pooled Investment Fund shall be credited to the Individual Account of such a Participant as of the Valuation Date immediately preceding the actual transfer for the purpose of the accounting procedures applicable to the recipient fund.

ARTICLE XV – AMENDMENT AND TERMINATION

15.1 *Amendment and Termination.* The State of Missouri, through the Board, may at any time amend, modify or terminate this Plan without the consent of the Participant (or any Beneficiary thereof). All amendments shall become effective on the first day of the month following the giving of not less than forty-five (45) days prior notice of the amendment. Notice shall be deemed given when the amendment is posted on a public bulletin board in the offices of the Board. No amendments shall deprive the Participant of any of the benefits to which he is entitled under this Plan with respect to deferred amounts credited to his account prior to the effective date of the amendment.

If the Plan is curtailed, terminated, or the acceptance of additional deferred amounts suspended permanently, the Plan Administrator shall nonetheless be responsible for the supervision of the payment of benefits resulting from amounts deferred prior to the amendment, modification, or termination in accordance with Article VIII hereof.

15.2 *Parties to the Plan.* Any companies that may issue any policies, contracts, or other forms of investment media used by the Board or specified by the Participant are not parties to this Plan.

ARTICLE XVI – MISCELLANEOUS

16.1 *Anti-Assignment.* The payments, benefits or interest provided for under the Plan shall not be subject to any claim of any creditor of any Participant in law or in equity and shall not be subject to attachment, garnishment, execution or other legal process by any such creditor, nor shall the Participant have any right to assign, transfer, encumber, anticipate or otherwise dispose of any such payments, benefits, or interest.

Notwithstanding anything in this section to the contrary, the Plan Administrator may comply with a “qualified domestic relations order,” as defined in Section 414(p) of the Code.

If any portion of the Trust Fund which is attributable to the benefits, rights, or interest of any Participant is transferred to any other entity pursuant to this section to satisfy a debt or other obligation of such Participant, the amount credited to the Individual Account of such Participant shall be reduced by the amount so transferred.

16.2 ***Military Leave Benefits.*** Effective December 12, 1994, notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

16.3 ***Rights of Employee.*** Neither the action of any Employer in maintaining the Plan, nor any action taken by any Employer or the Trustee, nor any provision of the Plan shall be construed as giving to any Employee the right to be retained in the employ of an Employer, or the right to any payments other than those expressly provided for in the Plan to be paid from the Trust Fund. Each Employer expressly reserves the right at any time to dismiss any Employee without any liability for any claim against the Employer or against the Trust Fund other than with respect to the benefits provided for by the Plan.

16.4 ***Source of Benefits.*** All benefits to be paid under the Plan shall be paid solely out of the Trust Fund and no Employer assumes any liability or responsibility therefor. Except as may be provided in Article XIII, any interest in the Trust Fund of any Participant or Beneficiary shall be an undivided interest therein and no Participant or Beneficiary shall be deemed to have any claim to or interest in any specific asset or amount of money of the Trust Fund.

16.5 ***Rules of Construction.*** The terms and provisions of the Plan shall be construed according to the principles, and in the priority, as follows: first, in accordance with the meaning under, and which will bring the Plan into conformity with the Code; and secondly, in accordance with the laws of the State of Missouri. The Plan shall be deemed to contain the provisions necessary to comply with such laws. If any provision of the Plan shall be held illegal or invalid, the remaining provisions of the Plan shall be construed as if such provision had never been included. Wherever applicable, the masculine pronoun as used herein shall include the feminine, and the singular shall include the plural. The term profit shall mean profit or loss, as the case may be, and the term credit shall mean credit or charge, as the case may be.

16.6 ***Information from Participants.*** Each former Employee who is a Participant shall file in the form acceptable to the Plan Administrator (which may be submitted by electronic or other means as designated by the Plan Administrator) his post office address and each change of post office address with the Plan Administrator from time to time. Any communication, statement or notice addressed to such a Participant at his last post office address filed with the Plan Administrator will be binding upon the Participant for all purposes of the Plan, and the Trustee and the Plan Administrator shall not be obligated to search for or to ascertain the whereabouts of any such Participant.

16.7 ***Conclusiveness of Records.*** The records of the Employer and the Plan Administrator as to all information furnished shall be conclusive on all persons unless proved to the satisfaction of the Employer or the Plan Administrator furnishing the same to be incorrect.

16.8 ***Applicability of Plan.*** The provisions of the Plan shall be binding upon all persons entitled to benefits under the Plan and their respective heirs and legal representatives, upon the Board, each Employer, its successors and assigns, and upon the Trustee and the Trustee's successors.

16.9 ***Mistaken Contributions.*** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Plan Administrator, to the Employer.

16.10 ***Hold Harmless and Limited Liability.*** The Employer, the Plan Administrator and any employee of the Employer or Administrator are hereby held harmless from all court costs and all claims for the attorney's fees arising from any action brought by the Participant or any Beneficiary thereof under this Plan or to enforce his rights under this Plan, including any amendments hereof.

Pursuant to Section 105.920 of the RSMo, the financial liability of the State of Missouri under this Plan shall be limited in each instance to the value of the particular fixed or variable life insurance or annuity contract, mutual funds or other such investment options purchased on behalf of any Employee.

16.11 ***No Contract of Employment.*** Participation in this Plan by a Employee shall not be construed to give a contract of employment to the Participant or to alter or amend an existing employment contract of the Participant, nor shall participation in this Plan be construed as affording to the Participant any representation or guarantee regarding his continued employment.

16.12 ***Distribution to Minors or Incompetents.*** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Plan Administrator, benefits will be paid to such person as the Plan Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

IN WITNESS WHEREOF, the undersigned have executed this 2008 Restatement to the Plan this _____ day of _____, 2008.

**MISSOURI STATE EMPLOYEES'
RETIREMENT SYSTEM, on behalf of the
STATE OF MISSOURI**

By

Title

**SCHEDULE 2.12 -
ADOPTING EMPLOYERS**

The following Employers have adopted the Plan as of January 1, 2008:

The State of Missouri (All non-local/agency divisions)

Highway and Highway Patrol
Missouri Agricultural & Small Business Development Authority
Missouri Consolidated Health Care
Missouri Housing Development Commission
Missouri State Employees' Retirement System
State Environmental Improvement