



pennsylvania
STATE EMPLOYEES' RETIREMENT SYSTEM

Commonwealth of Pennsylvania
State Employees' Retirement Board
Investment Advisor Monitoring Policy
Adopted October 29, 2014

SERS employs external investment advisors to manage pension fund assets. SERS' Statement of Investment Policy charges the investment office with responsibility for coordinating all investment activities and matters for SERS, including the continual review and analysis of investment advisors. It also allows for the use of external investment consultants to provide various investment-related services, including assistance with the analysis of investment advisors.

SERS' investment office, in consultation with its external general investment consultant and external real estate investment consultant, developed this Investment Advisor Monitoring Policy ("Policy"). The purpose of this Policy is to provide the SERS Board with an enhanced communication tool to keep the Board informed of investment advisors that warrant additional monitoring by SERS' investment office and external consultants.

An Investment Advisor Evaluation List (Appendix 1) was developed to clearly communicate which investment advisors have been identified as experiencing quantitative or qualitative pattern changes worthy of greater review by SERS' investment office and external investment consultants. Although a quantitative analysis is clearly important, it is not a best practice to rely exclusively on such data when evaluating investment advisors due to the imperfect nature of many indices used as portfolio benchmarks. In addition, the placement of an investment advisor on the Investment Advisor Evaluation List does not automatically serve as evidence of a problem with the investment advisor. This can only be determined after SERS' investment office and external investment consultants enhance its ongoing monitoring.

A. Investment Advisor Monitoring Guidelines and Evaluation List

The Investment Advisor Monitoring Guidelines formalize the identification and application of qualitative and quantitative criteria employed by SERS with respect to the monitoring of current investment advisors in the following asset classes and sub-asset classes of the SERS' investment program.

- Global Public Equity
- REITs, Commodities, and MLPs within Real Assets
- Diversifying Assets
- Fixed Income
- Liquidity Reserve

The Investment Advisor Monitoring Guidelines: 1) establish clear expectations between the SERS' Board, investment office, external investment consultants, and investment advisors, 2) enhance communication among the SERS' Board, investment office, external investment consultants, 3) encourage the use of prudently applied criteria to evaluate investment advisors, 4) foster a long-term approach toward performance evaluation of investment advisors, 5) focus the resources of SERS' investment office and external investment consultants on those investment advisors most likely to require additional attention, 6) avoid costly turnover in investment advisory relationships driven by a period of short-term poor performance, and 7) improve the probability that SERS will identify problematic relationships which otherwise might produce unsatisfactory investment returns.

In general, the Investment Advisor Monitoring Guidelines apply to investment advisors with assets that are valued at least monthly. Investment advisors that are in liquidation are excluded from the Investment Advisor Monitoring Guidelines.

The SERS Board endeavors not to make adverse retention decisions about investment advisors based upon performance absent at least three years of performance data, recognizing that investment strategies are best assessed over full market cycles. All of the criteria identified in the Investment Advisor Monitoring Guidelines are intended to provide a normal, minimum standard for retaining investment advisors.

However, the SERS Board may terminate any current investment advisor for any reason whatsoever in accordance with the provisions of investment advisory agreements between SERS and the external investment advisors. These Investment Advisor Monitoring Guidelines do not limit SERS' ability to take such action.

B. Criteria for Active and Passive Management

Addition to the Investment Advisor Evaluation List

SERS' investment office, in consultation with its external investment consultant, will place an investment advisor on the Investment Advisor Evaluation List for any of the following reasons:

Quantitative Factors

1. The active investment advisor's rolling, three-year return falls below the rolling, three-year benchmark return for four (4) consecutive quarters. This is a net of fee comparison.
2. The active investment advisor's rolling, three-year return ranks below the median of the external investment consultant's peer group for four (4) consecutive quarters (excludes investment advisors with no relative peer group). This is a gross of fee comparison.
3. The passive investment advisor's rolling three-year return is not in line with the rolling, three-year benchmark return. SERS' investment office and the external investment consultant will determine what variance from the benchmark is deemed acceptable, given the passive strategy. This is a net of fee comparison.
4. The active or passive investment advisor's return significantly deviates from its expected return established in its investment strategy statements (investment guidelines) with SERS. This is a net of fee comparison.

Qualitative Factors

1. A significant and potentially adverse event related, but not limited, to any of the following qualitative issues or events, will be considered:
 - Violation of investment guidelines
 - Deviation from stated investment style and/ or shifts in the firm's philosophy or process
 - Turnover of one or more key personnel
 - Change in firm ownership or structure
 - Significant loss of clients and/or assets under management

- Significant and persistent lack of responsiveness to client requests
- Litigation
- Failure to disclose significant information, including potential conflicts of interest
- Chronic violations of the SERS' Statement of Investment Policy
- Any other issue or situation of which SERS' investment office, external investment consultants, and/or SERS Board members become aware that is deemed material.

Removal from the Investment Advisor Evaluation List

An investment advisor may be removed from the Investment Advisor Evaluation List when SERS' investment office and the external investment consultant agree that the investment advisor has satisfactorily met the quantitative or qualitative criteria for removal from the Evaluation List. Generally for active investment advisors, two consecutive quarters of rolling, three-year performance above the benchmark and a ranking above the median of the external investment consultant's peer group following placement on the Evaluation List will be required for an investment advisor's removal from the Evaluation List for performance reasons. For index fund investment advisors, one period of rolling, three-year performance in line with the benchmark following placement on the Evaluation List will be required for an investment advisor's removal from the Evaluation List for performance reasons. SERS' investment office and the external investment consultant will typically make a decision to recommend retention or termination twelve (12) months following placing an investment advisor on the Evaluation List. At the point of decision, SERS' investment office and the external investment consultant may recommend renewing inclusion on the Evaluation List for an additional period of time subject to supporting due diligence.

C. Application of Criteria

1. The Investment Advisor Evaluation List is a confidential internal document and will only be used for internal purposes.
2. SERS' investment office, in consultation with external investment consultants, will provide the SERS Board with a current Investment Advisor Evaluation List at the same board meeting when the RVK quarterly performance is provided to the SERS' Board. The Evaluation List will include all investment advisors which have been added or removed and summary of the reasons for the addition or removal.
3. The Investment Advisor Evaluation List will be provided to the SERS Board in executive session.
4. When an investment advisor is placed on the Investment Advisor Evaluation List, SERS' investment office and external investment consultants will enhance its ongoing monitoring of the investment advisor to assess whether or not genuine issues of concern actually exist.
5. If genuine issues of concern are identified, SERS' investment office and external investment consultants will assess the cause, magnitude, and likely duration of the issues.

6. If the analysis from SERS' investment office and external investment consultants reveal that the issues are not of concern, the investment advisor will be removed from the Investment Advisor Evaluation List.
7. If the investment advisor resolves the issues of concern to the satisfaction of SERS' investment office and external investment consultants, the investment advisor will be removed from the Investment Advisor Evaluation List.
8. If SERS' investment office and external investment consultant determine that the issues of concern have persisted without satisfactory resolution or are unlikely to be resolved within 12 months, then a recommendation on whether to retain the investment advisor will be provided to the SERS' Board.
9. In emergency situations, the Chief Investment Officer, in consultation with the SERS Board Chairman, may make investment decisions (i.e. halt trading or terminate an investment advisor). Emergency situations are defined as those that are unforeseeable and in the absence of action, the Fund may be adversely impacted. In the event such action is taken, the SERS Board will be notified as soon as practical, but no later than the next scheduled board meeting. This is defined in SERS' Statement of Investment Policy.

Appendix 1: Investment Advisor Evaluation List (TEMPLATE)



Memorandum

To SERS Board Members
 From SERS Investment Office and RVK
 Subject Investment Advisor Evaluation List
 Date <insert date>

The following is the Investment Advisor Evaluation List (“Evaluation List”) as of <insert quarter-end date>. The Evaluation List is compiled in conformance with the criteria established in the Investment Advisor Monitoring Policy adopted by the Board on October 29, 2014.

The placement of an investment advisor on the Evaluation List does not automatically serve as evidence of a problem with the investment advisor. The Evaluation List was developed to clearly communicate which investment advisors have been identified as experiencing quantitative or qualitative pattern changes worthy of greater review by SERS’ investment office and external investment consultants.

Summary

Advisor	Asset Class	Strategy	Assets	Event Date
1. Additions Since Last Report				
2. On Evaluation List				
3. Deletions Since Last Report				

Evaluation List

Advisor	Reason	SERS Investment Office & RVK Recommendation

ATTACHMENT D

**FIFTH AMENDED AND RESTATED DEFERRED COMPENSATION PLAN FOR
OFFICERS AND EMPLOYEES OF THE
COMMONWEALTH OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA FIFTH AMENDED AND RESTATED
DEFERRED COMPENSATION PLAN

FIFTH AMENDED AND RESTATED DEFERRED COMPENSATION PLAN

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COMMONWEALTH OF PENNSYLVANIA FIFTH AMENDED AND RESTATED
DEFERRED COMPENSATION PLAN

1. ESTABLISHMENT OF THE PLAN

- 1.01 **Establishment of the Plan:** An eligible deferred compensation Plan is hereby established for Employees, pursuant to and in accordance with Act 81 of November 6, 1987 (amending P.L. 145, No. 99), as amended, [the "Enabling Statute"] and any other applicable State law, and in accordance with IRC § 457(b) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereto.
- 1.02 **Purpose of the Plan:** The purpose of the Plan is to provide eligible Employees with a convenient way to save on a regular and long-term basis and thereby help to supplement their retirement. Under the Plan, a designated amount of each Participant's Normal Compensation shall be withheld each pay period by the Employer and invested at the direction of the Participant. Under the Plan, Deferred Compensation is held by the Administrator in trust for the exclusive benefit of the Participants, their Alternate Payees and their Beneficiaries.
- 1.03 **No Modification of Employment Agreement:** Nothing in this Plan shall be deemed to constitute an employment contract or agreement between any Employee and the Employer, or to give any Employee the right to be retained in the employ of the Employer, nor shall anything in this Plan be construed to modify the terms of any employment contract or agreement between any Employee and the Employer or in any way obligate the Employer to continue the services of any Employee.
- 1.04 **No Right Other than Provided by Plan:** The establishment of the Plan shall not be construed as giving to any Participant, Alternate Payee, Beneficiary or any other person any legal or equitable right against the Employer or its representatives, except as expressly provided by the Plan.
- 1.05 **Plan is Binding:** This Plan, and all acts and decisions taken under it, are binding and conclusive, for all purposes, upon all interested persons and upon the heirs, executors, administrators, and successors of any and all such persons.
- 1.06 **Effective Date:** This Plan amends and restates any previous plan, and shall be effective as of December 1, 2014.

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2. **DEFINITIONS**

Any capitalized term not expressly defined below shall have the meaning ascribed to it in the provision where such term appears or as defined by the Code. Whenever a time frame is referenced such time frame may be longer or shorter as required or permitted by the Code or any other applicable law, but the Administrator shall give at least ten (10) days' notice (by public posting on its website or such other method reasonably calculated to convey such change) prior to the effective date of any change to such time frame. Whenever used in this Plan, the following terms shall have the respective meanings as set forth below:

- 2.01 **“Account”**. The bookkeeping account maintained for each Participant (or Alternate Payee or Beneficiary) which at all times shows: a) the amount of the Participant's Contributions; b) any amount designated as the Participant's Designated Roth Contributions; c) any amounts accepted as a Rollover; d) any Distributions to the Participant, Alternate Payee or Beneficiary; e) any in-plan rollover to designated Roth account; f) any investment income or loss; and g) any fees or expenses charged against the account.

The Administrator, in its sole discretion, may create or combine one or more separate sub-accounts (each a “sub-Account”) in maintaining a Participant's Account. Account may also refer to one or more of such sub-Accounts.

The value of a Participant's Account is based on the value of all applicable sub-Accounts under the Investment Accounts(s) in which the money in the Participant's Account is invested at any time.

A Participant, Alternate Payee or Beneficiary, as applicable, shall receive periodic Account reports in the form prescribed by the Administrator until a Distribution begins.

- 2.02 **“Administrative Service Agency”**. Any corporation or other organization selected by the Administrator to perform certain administration functions for the operation of the Plan.
- 2.03 **“Administrator”**. The Pennsylvania State Employees' Retirement Board, an independent administrative board of the Commonwealth of Pennsylvania, which has been directed to administer the Plan pursuant to and in accordance with the Enabling Statute.

Except as otherwise indicated, any reference in the Plan to the Administrator is deemed to also refer to the Administrative Service Agency to the extent of any delegation to it.

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- 2.04 **“Alternate Payee”**. Any spouse or former spouse of a Participant who is recognized by a PADRO as having a right to receive all or a portion of the Deferred Compensation payable to the Participant. Any reference to Alternate Payee throughout the Plan incorporates by reference the possibility of the existence of multiple Alternate Payees.
- 2.05 **“Beneficiary”**. The person or legal entity last validly designated in the Participation Agreement by the Participant to receive any undistributed Deferred Compensation payable upon the Participant's death. Any reference to Beneficiary throughout the Plan incorporates by reference the possibility of the existence of multiple Beneficiaries. If the Participant designates more than one Beneficiary for either a "primary" or "contingent" status, all Beneficiaries of that status shall have equal shares unless the Participant specifies otherwise. As of the Effective Date, the Participant cannot designate as a Beneficiary a class of persons and any such designation made on or after the Effective Date is ineffective for all purposes. If the Beneficiary designated by the Participant should predecease the Participant or die within 30 days of the Participant's death, or if a valid nomination of a Beneficiary is not in effect at the Participant's death, any money payable to a beneficiary shall be payable to the estate of the Participant.
- 2.06 **“Benefit Commencement Date”**. The date selected by the Participant, Alternate Payee, or the Beneficiary, or the "default" date that results from the payee's failure to make such an election, all as provided under Provision 7.
- 2.07 **“Code” or “IRC”**. The Internal Revenue Code of 1986, as amended, including any regulations or rulings under the Code. Any reference to Regulations is a reference to Treasury department regulations under the Code, unless otherwise specified. Where there is a conflict between the Code and Regulations, the Code shall prevail.

Any reference to a section of the Code or Regulations shall be construed to include a reference to the corresponding provision of any successor thereto.

- 2.08 **“Compensation”**. All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar Year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar Year but for any compensation reduction election permitted under the Code, including but not limited to IRC §§ 125, 132(f), 401(k), 403(b), 408(a) or 457(b) (including an election to defer compensation under Provision 5). As permitted by Treasury regulations or other similar guidance, Compensation also includes accrued bona fide sick, vacation or other leave pay payable to a Participant.

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For Plan Years after December 31, 2008, to the extent permitted by the applicable Code provisions and Treasury regulations, Compensation shall include pay received by a Participant from the Employer while performing Services in the Uniformed Services but only to the extent the pay does not exceed the amounts the Participant would have received if the Participant had continued to perform services for the employer rather than entering Services in the Uniformed Services

2.09 **“Contributions”**. Amount of Normal Compensation deferred by the Participant in accordance with the Plan, including Designated Roth Contributions.

The amount of such Contributions shall be set in accordance with the limits imposed by the Code, the Enabling Statute, the provisions of the Plan, and the Participation Agreement. Contributions shall normally be deferred in accordance with the Participation Agreement; however, if necessary, the Administrator may conform the Participation Agreement to comply with the limits established in the Code, Enabling Statute or the provisions of the Plan. Contributions shall be made according to the payroll methods of and at such times as may be determined by the Employer.

2.10 **“Deferred Compensation”**. The amount of Contributions that the Participant elects to contribute in his or her Participation Agreement, including Designated Roth Contributions, adjusted for any gains or losses, and adjusted for, or subject to, the applicable provisions of the Plan.

2.11 **“Designated Roth Contribution”**. An elective deferral that is:

- a) Designated irrevocably by the Participant at the time of the deferred election as a Designated Roth Contribution that is being made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and
- b) Treated by the Employer as includible in the Participant’s income at the time the Participant would have received that amount in cash if the Participant had not made a deferred election.

2.12 **“Distribution”**. Any kind of distribution or the particular kind of distribution provided by the Plan, including, but not limited to:

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- Retirement Distribution under Provision 7A
- Death Benefit Distribution under Provision 7B
- Unforeseeable Emergency Distribution under Provision 7C
- Voluntary In-Service Distribution under Provision 7E.

Any Distribution shall be paid as a cash payment(s) or as a transfer of ownership of the Investment Account(s) that is the applicable portion of the Account.

- 2.13 **“Employee”**. The individual, whether appointed, elected, salaried, or otherwise, who performs services for the Employer on a regular basis and where it is deemed that an Employer-Employee relationship exists. The State Employees' Retirement Board shall make the final determination of who is a Commonwealth Officer or an Employee.
- 2.14 **“Employer”**. The Commonwealth of Pennsylvania, including any agencies or departments, however designated, of the Commonwealth, as determined by the Administrator.
- 2.15 **“Includible Compensation”**. An Employee’s actual wages in box 1 of Form W-2 (or any successor form from the IRS for reporting personal income with a section for gross income) for a Year for services to the Employer, but subject to a maximum of \$200,000 (or any higher maximum as may apply under IRC § 401(a)(17)) and increased (up to the dollar maximum) by any compensation reduction election under the Code, including but not limited to IRC §§ 125, 132(f), 401(k), 403(b), 408(a) or 457(b) (including an election to defer Compensation under Provision 5). Includible Compensation shall be determined without regard to any community property laws.

Consistent with IRC § 457(e)(5), and solely for the purpose of determining the amount of Includible Compensation for the purpose of applying the deferral limit provided by Provision 5, Includible Compensation shall include the amount of cash wages paid as termination pay upon Severance from Employment on Account of unused leave during service for the Employer if the right to such payment is provided by a statute or regulation, collective bargaining agreement, or other bona fide wage policy of the Employer that is legally enforceable by the Participant to the extent that the payment is currently includible in the Participant's gross income for federal income tax purposes.

- 2.16 **“Investment Account”**. Each of the investment options made available for the purposes of the Plan as approved by the State Employees' Retirement Board.

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- 2.17 **“Normal Compensation”**. The total amount of wages, salary, and overtime that would otherwise be payable by the Employer to the Employee in the absence of any agreement to defer compensation under this Plan, or under any other deferred compensation plan, but excluding any amounts described by the second paragraph of Provision 2.15.
- 2.18 **“Normal Retirement Age”**. The age elected by the Participant which may not be earlier than the earliest age at which the Participant has the right to retire without the consent of the Employer and to immediately receive unreduced retirement benefits under the Employer's basic retirement plan and which may not be later than the later of the date that the Participant attains age 70½, or the date of the Participant's actual Severance from Employment.

Unless otherwise stated or required by law, a Participant shall be deemed to elect as a Normal Retirement Age the third Year following the Year a Participant first makes a contribution in accordance with Provision 5.03.

A Participant's election of a Normal Retirement Age under this provision shall be irrevocable once deferrals have been made utilizing the catch-up additional limitation under Provision 5. The Participant's Normal Retirement Age does not control his/her Benefit Commencement Date.

- 2.19 **“PADRO”**. A Plan Approved Domestic Relations Order issued pursuant to a state domestic relations law, which has been determined by the Administrator to meet the requirements of the Plan and has been issued by a court of competent jurisdiction pursuant to a state domestic relations law. Such order relates to the marital property rights of the spouse or former spouse of a Participant, including the right to receive all or a portion of the Deferred Compensation payable to the Participant in furtherance of the equitable distribution of marital assets.
- 2.20 **“Participant”**. Each Employee or former Employee who has Deferred Compensation under the Plan and who has not yet received all of the payments of Deferred Compensation to which he/she may be entitled under the Plan.
- 2.21 **“Participation Agreement”**. The agreement in the form(s) prescribed by the Administrator, as amended from time to time, entered into by and between the Employee and the Employer through the Administrator, under which the eligible Employee elects to participate in the Plan, and the Employee and the Employer agree to defer an amount of the Employee's Compensation according to the provisions of the Plan. The Participation Agreement may be amended from time to time in accordance with the provisions of the Plan.

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- 2.22 **“Payout Option”**. Except as limited below, any of the annuity options, income options, settlement options or other options for payment that are available under the applicable Investment Account(s) held under the Plan, or that may otherwise be made available by the Administrator on a uniform basis to all payees in similar circumstances. The Administrator shall not permit the use of any payout option that is based on gender-distinct actuarial tables or that otherwise unlawfully discriminates against any person. The Administrator shall not permit the Participant, Alternate Payee or Beneficiary to elect any Payout Option that, at the time the Distribution begins, does not satisfy the provisions of the Plan, including the applicable requirements of IRC § 457(d)(2) and IRC § 401(a)(9).
- 2.23 **“Permitted Plan”**. A plan permitted by the Code to accept rollovers from a qualified retirement plan, IRA, 403(b), 401(k), or a deferred compensation plan described in IRC § 457(b).
- 2.24 **“Plan”**. This plan, established and maintained by the State Employees' Retirement Board, pursuant to and in accordance with the Enabling Statute. The Plan may also be referred to as the Commonwealth of Pennsylvania Deferred Compensation Program.
- 2.25 **“Rollover Contributions”**. Any amount paid or distributed out of a Permitted Plan to the individual for whose benefit the Account or annuity is maintained if the entire amount received is paid into a Permitted Plan for the benefit of such individual not later than the sixtieth (60th) day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income.
- 2.26 **“Roth Account”**. An Account, together with any subaccounts as contemplated herein, containing Designated Roth Contributions, Rollover pursuant to Provision 7.12, or proceeds from such contributions or rollovers.
- 2.27 **“Segregated Account”**. An Account or portion thereof set apart for a Beneficiary upon the death of the Participant or for an Alternate Payee pursuant to a PADRO.
- 2.28 **“Service in the Uniformed Services”**. Consistent with 38 U.S.C. § 4303(13), the performance of duty on a voluntary or involuntary basis in a Uniformed Service under competent authority include active duty, active duty for training, initial active duty training, inactive duty training, full-time National Guard duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty. No period of Service in the Uniformed Services shall be acknowledged for purposes of the Plan unless a) the Participant seeking recognition of the

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period of Service in the Uniformed Services is eligible for reemployment in compliance with 38 U.S.C. § 4304; b) the Participant has applied for reemployment in compliance with 38 U.S.C. § 4312; and c) the Participant has furnished to the Plan Administrator satisfactory documentation concerning Service in the Uniformed Services as provided for by 38 U.S.C. § 4312(e)(3)(B).

- 2.29 **“Severance from Employment”**. The termination of the Participant’s employment with the Employer, including but not limited to death or retirement, as determined by the Administrator and within the meaning of IRC § 402(e)(4)(D)(i)(3). Severance from Employment does not occur if an Employee transfers between employers or returns to the same employer within two (2) weeks after the last day of earned compensation. An Employee whose employment is interrupted by qualified military service under IRC § 414(u) shall be deemed severed from employment until such time as he or she is reemployed following the term of duty. All other Employees shall be deemed to have severed their employment with the Employer for purposes of this Plan when both parties consider the employment relationship to have terminated and neither party anticipates any future employment of the Employee by the Employer. In the case of a Participant who is an independent contractor, Severance from Employment shall be deemed to have occurred when the Participant’s contract for services has completely expired and terminated, there is no foreseeable possibility that the Employer shall renew the contract or enter into a new contract for services to be performed by the Participant, and it is not anticipated that the Participant shall become an Employee of the Employer.

In the case of a Participant performing services for Employer under contract, where it has been deemed that an employment relationship exists, Severance from Employment shall be deemed to have occurred when the Participant's contract (or all contracts) under which services are performed has completely expired or terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will otherwise become an Employee of the Employer. An expiration or termination of a contractual relationship that would not be construed as a good faith and complete termination of such contractual relationship within the meaning of Regulations § 1.457-2(h)(3) shall not be a Severance from Employment.

- 2.30 **“Standard Rate of Compensation”**. Consistent with IRC § 414(u)(7), either: a) the rate of pay the Participant would have received from Employer but for an absence due to Service in the Uniformed Services during the period; or b) if the Employer determines that the rate of pay the Participant would have received during the period of the absence cannot be determined with reasonable certainty, the rate representing the average rate of pay for the months actually worked by the Participant.

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- 2.31 **“Unforeseeable Emergency”**. An unforeseeable emergency means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant, a spouse or dependent of the Participant (as defined by IRC § 152(a)), the Participant’s Beneficiary, or a spouse or dependent of Participant’s Beneficiary, loss of the Participant's property due to casualty, or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant. As defined by the Internal Revenue Service, and by way of example, the need to send the Participant's child to college or the desire to purchase a home is not considered an Unforeseeable Emergency. The determination as to whether an Unforeseeable Emergency exists is based on the facts of each individual case in accordance with the Code. For purposes of this definition, any such Beneficiary designated in a valid change of beneficiary form must be so designated by the Participant as the Participant’s Beneficiary no less than thirty (30) days prior to when the Unforeseeable Emergency first arises for this definition to apply to the Participant’s Beneficiary, or a spouse or dependent of Participant’s Beneficiary.
- 2.32 **“Uniformed Service”**. Consistent with 38 U.S.C. § 4303(16), any of the armed forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.
- 2.33 **“Year”**. The calendar year. For the purposes of administering the Plan, the Employer and the Administrator and the Administrative Service Agency shall be entitled to rely on the assumption that a Participant's taxable year is the calendar year, unless the Participant gives written notice specifying his/her taxable year.

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3. **PLAN ADMINISTRATION**

- 3.01 **Responsibility for Administration.** The Administrator, acting as the legal administrator of the Plan, and acting on behalf of the Employer, is empowered to do all things necessary or advisable to ensure the proper, efficient, and lawful administration of the Plan. Notwithstanding the generality of the foregoing, the Administrator is specifically empowered to enter into agreements to provide certain investment, marketing, service, and administrative functions that may be necessary or desirable for the operation of the Plan. These administration functions include, but are not limited to, the enrollment of Employees as Participants, the maintenance of Accounts and other records, payment of Plan approved fees, interpretation of the provisions of the Plan, the preparation of periodic reports to Participants, Alternate Payees, and Beneficiaries and the distribution of Deferred Compensation to Participants, Alternate Payees and Beneficiaries. The Administrator may designate the Administrative Service Agency, or any other person(s) or organization(s) to assist in the administration of the Plan. Any delegation shall be set forth in writing and may be revoked at any time.
- 3.02 **Responsibility of Administrative Service Agency.** Any delegation agreement with the Employer or the Administrator and any services shall at all times be subject to the general supervision of the Administrator and/or the Employer. Notwithstanding any delegation of responsibility by the Administrator to the Administrative Service Agency, the Administrator shall have the power to decide and govern all matters that may affect the status of the Plan under the Code. The Administrator has authority to control and manage the operation of the Plan.
- 3.03 **Appeals.** The Administrator shall have general authority to decide all matters under the Plan. Any decisions of the Administrative Service Agency to the extent of any delegation may be appealed to the Administrator. Any appeal of a decision by the Administrator shall go through the appeal process established by the Administrator.
- 3.03.1 **Determinations to be Fairly Made.** Any determination required or permitted to be made for the purposes of the Plan by the Administrator or the Employer shall be uniformly and consistently made according to reasonable procedures established by the Administrator.
- 3.03.2 **Matters to be Determined.** Determinations may include, but are not limited to, any determination as to whether an Employee is eligible to participate in the Plan, the amount of a Participant's Compensation, the amount of Contributions to be made, whether an amount of Contributions exceeds the limitations prescribed by the Plan,

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whether a Participant has incurred a hardship, whether a Participant has a Severance from Employment, whether a Beneficiary designation is valid or effective, and whether the claimant is the proper Beneficiary.

- 3.04 **All Necessary Powers.** The Administrator shall have such powers as may be necessary or advisable so as to discharge its duties under the Plan, including but not limited to:
- a) construing and interpreting the Plan, deciding all questions of eligibility, and determining the amount and time and payment of any Contributions or Distributions under the Plan;
 - b) prescribing rules and procedures consistent with the provisions of the Plan to be followed in making Contributions, applying for Distributions, asserting any rights or privileges under the Plan, or to effectuate any provision of the Plan; provided however, that any rules and procedures shall be uniformly and consistently applied to persons in similar circumstances;
 - c) receiving from the Administrative Service Agency or from a Participant, Alternate Payee or Beneficiary, any information which may be necessary or desirable for the administration of the Plan;
 - d) performing any acts which may be necessary or advisable to perform its duties under the Plan so as to comply with any provision of the Code;
 - e) assisting any Participant, Alternate Payee or Beneficiary regarding his/her rights and responsibilities under the Plan;
 - f) holding any amounts, property, rights, or investments under the Plan in trust for the exclusive benefit of Participants, their Alternate Payees and their Beneficiaries in accordance with Provision 6.01.
 - g) withholding or causing to be withheld from any amounts distributed pursuant to a PADRO all federal, state, city or other taxes as shall be required pursuant to any law or governmental ruling or regulation, including but not limited to Treasury Regulations.
- 3.05 **Administration Costs.** Consistent with the provisions of the Enabling Statute, the Employer shall not incur any expense in the operation and administration of the Plan other than its obligations to make Employee payroll deductions for deferral of compensation as provided by the Plan. The Plan shall make all necessary and reasonable charges against and from the Accounts for any other expenses for the administration of the Plan.

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4. **PARTICIPATION IN THE PLAN**

4.01 **Enrollment.** An Employee may become a Participant by entering into a Participation Agreement. At the time of entering into or amending a Participation Agreement, a Participant must agree to defer at least the minimum amount as may be provided by the Enabling Statute and prescribed by the Administrator.

4.02 **Amendment of Participation Agreement.** A Participant may amend an executed Participation Agreement to change the amount or type of Contribution, the designation of investment(s), and/or the designated Beneficiary. A change in the amount or type of Contribution shall be effective on the pay date designated by the Participant, provided that the Administrative Service Agency or Employer, prior to the beginning of the month on which the Participant designates the change(s) to be effective, receives an amended Participation Agreement. If the request is to change the allocation of how future Contributions are invested, such change will take effect on the first pay date after receipt of the request by the Administrative Service Agency. Consistent with the Enabling Statute, the Administrator may establish reasonable rules limiting the timing and frequency of Contributions or investment changes. A Participant may at any time amend the Participation Agreement to change the designated Beneficiary and such amendment shall become effective when received by the Administrator or Administrative Service Agency.

4.03 **Suspension of Contributions.** A Participant may at any time suspend Contributions by executing and delivering an amended Participation Agreement, and thereby be restored to Normal Compensation.

4.03.1 **Suspension of Contributions Due to Bankruptcy.** If a Participant files for bankruptcy, suspension of Contributions must occur. A Participant must notify the Administrator within thirty days of filing for bankruptcy. A Participant may only recommence Contributions upon the entry of a dismissal or discharge order.

4.03.2 **Suspension of Contributions Due to Unforeseeable Emergency Distribution.** If a Participant files for an Unforeseeable Emergency Distribution, suspension of Contributions must occur. A Participant may only recommence Contributions after six months beyond the date of the Unforeseeable Emergency Distribution.

4.04 **Recommencement of Contributions.** A Participant who has suspended Contributions may again resume Contributions by entering into an amended Participation Agreement in accordance with Provision 4.02 with respect to Compensation not yet earned. Any Participant who has received a Voluntary In-Service Distribution and subsequently recommences

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Contributions into a new Account will not be permitted to elect a Voluntary In-Service Distribution with regard to such new Account.

- 4.05 **Designated Roth Contributions.** Each Participant may make Designated Roth Contributions; provided, however, that a Participant shall not make a Designated Roth Contribution to the Plan for any Year to the extent such Designated Roth Contributions would exceed the limitations as defined in Provision 5.

The Plan will accept elective deferrals designated as Designated Roth Contributions made on behalf of Participants. A Participant's Designated Roth Contributions will be allocated to a Roth Account maintained for such deferrals. The Plan will maintain a record of the amount of Designated Roth Contributions in each Participant's Roth Account. Unless specifically stated otherwise, designated Roth Contributions will be treated as Elective Deferrals for all purposes under the Plan.

Contributions and withdrawals of Designated Roth Contributions will be credited and debited to the Roth Account maintained for each Participant. Gains, losses and other credits or charges will be separately allocated on a reasonable and consistent basis to each Participant's Roth Account and the Participant's other accounts under the Plan.

No contributions other than Designated Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Account except as provided in Provision 7.12 or unless otherwise authorized at law.

- 4.06 **Leave of Absence.** Contributions may continue under the Plan with respect to a Participant who is on an approved leave of absence from the Employer, with compensation.

If a Participant is absent from work on an approved leave of absence, without compensation, the Participation Agreement shall remain in effect and Contributions will continue in accordance with the Participation Agreement when the Participant returns to work.

- 4.07 **Deferral Date.** Contributions will occur for any calendar month only if a Participation Agreement providing for the deferral has been entered into before the beginning of the month, and further provided that the month is not earlier than the first calendar month which begins at least thirty-one (31) days after the execution of the Participation Agreement.

- 4.08 **Amendment of Participation Agreement by Employer.** The Employer shall have the right to amend the Participation Agreement to the extent that the Administrator or the Administrative Service Agency reasonably believes necessary to conform to the Plan and law.

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- 4.09 **Information to be Provided by the Participant.** Each Employee enrolling in the Plan shall provide to the Administrator or to the Administrative Service Agency at the time of initial enrollment, and later if there are any changes, any information required by the Administrator or by the Administrative Service Agency, including, without limitation, whether he/she is a participant in any other deferred compensation plan organized in accordance with IRC § 457(b) or under any other plan or arrangement that permits elective deferrals within the meaning of IRC § 457(c). If an Employee fails to provide any information deemed necessary or advisable by the Administrator or by the Administrative Service Agency, such Employee may be denied the right to participate in the Plan at the determination of the Administrator or of the Administrative Service Agency.

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5. **LIMITATIONS ON DEFERRALS**

- 5.01 **Normal Limitation.** Except as otherwise provided by Provision 5, the maximum amount deferred for any Participant for any taxable Year of the Participant, including any amount that is treated as deferred under the Plan according to IRC § 457(c) and including any Designated Roth Contributions, shall not exceed the lesser of: a) the maximum dollar amount specified by IRC § 457(b)(2)(A); or b) one hundred (100) percent of the Participant's Includible Compensation. Consistent with IRC § 457(e)(14), the deferral restrictions contained in the provision shall not apply to any qualified excess benefit arrangement as defined by IRC § 415(m)(3).
- 5.02 **Age 50 Catch-up.** A Participant who will attain age fifty (50) or more by the end of the calendar Year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals for the Year. The maximum dollar amount of the age 50 catch-up Annual Deferrals for a Year is determined by, and is subject to, the requirements of IRC § 414(v).
- 5.03 **Special 457 Catch-up.** In each of the last three (3) calendar Years ending before the Year in which the Participant attains Normal Retirement Age, and if the amount determined under this Provision exceeds the amount computed under Provision 5.01 or 5.02, then the Annual Deferral limit under this Provision shall be the lesser of:
- a) an amount equal to two (2) times the Provision 5.01 applicable dollar limit for such Year; or
 - b) the sum of:
 - 1) An amount equal to the aggregate Provision 5.01 limit for the current Year plus each prior calendar Year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus the aggregate amount of Compensation that the Participant deferred under the Plan during such Years, and
 - 2) An amount equal to the aggregate limit referred to in IRC § 457(b)(2) for each prior calendar Year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to Provisions 5.02 and 5.03), minus the aggregate contributions to Pre-2002 Coordination Plans for such Years.

However, in no event can the deferred amount be more than the Participant's Compensation for such Years.

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For purposes of this Provision 5.03, a Participant's Includible Compensation for the current taxable Year shall be deemed to include any Contributions for the taxable Year in excess of the amount permitted under the normal limitation. The Participant's Includible Compensation for any prior taxable Year shall be deemed to exclude any amount that could have been deferred under the normal limitation for such prior taxable Year.

5.04 **Coordination of Age 50 Catch-up with Special 457 Catch-up.** The age 50 catch-up described in Provision 5.02 does not apply for any taxable Year for which a higher limitation applies under the special 457 catch-up described in Provision 5.03. A Participant who is eligible for the age 50 catch-up described in Provision 5.02 for a Plan Year and for whom the Plan Year is also one of the Participant's last three (3) taxable Years ending before the Participant attains Normal Retirement Age is eligible for the larger of:

- a) The basic annual limitation described in Provision 5.01 and the age 50 catch-up described in Provision 5.02, or
- b) The basic annual limitation described in Provision 5.01 and the special 457 catch-up described in Provision 5.03.

5.05 **Contributions on Account of Prior Service in the Uniformed Services.** Consistent with 38 U.S.C. § 4318 and IRC § 414(u), when a Participant is reemployed with Employer after Service in the Uniformed Services, the Participant may make contributions to the Participant's Account (if the Participant has not already done so while engaged in Service in the Uniform Services) in the total amount that would have been permitted under Provision 5.01 if the Participant had been steadily employed in the position previously held with Employer at a Standard Rate of Compensation throughout the period of Service in the Uniformed Services. Contributions made in accordance with this Provision will not reduce the amount the Participant would otherwise be permitted to contribute under Provision 5.01 for any taxable Year subsequent to reemployment, except that no more than the amount permitted under the Normal Limitation in Provision 5.01 shall be permitted for any one calendar Year. A Participant shall only be permitted to make contributions under this Provision during the period beginning on the date of reemployment and extending for the lesser of: a) three times the period of the Participant's immediately preceding period of Service in the Uniformed Services; or b) five Years. This Provision is expressly designed to give effect to the rights provided by IRC § 414(u) and nothing in this Provision or any other provision shall be construed to provide rights in addition to those provided by IRC § 414(u). This Provision shall apply to reemployment on or after December 12, 1994.

5.06 **Eligible Rollover Contributions to Plan.** The Administrator will accept and credit as Contributions to a Participant's Account the amount rolled over from another Permitted Plan, provided that the other plan permits the Rollover.

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- 5.06.1 The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with IRC § 402 and to confirm that such plan is an eligible retirement plan within the meaning of IRC § 402(c)(8)(B).
- 5.06.2 For purposes of this Provision, an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of ten (10) Years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the Employee, (3) any deemed distribution under the provisions of IRC § 72(p), (4) the portion of any distribution that is not includable in gross income, (5) any distribution of excess deferrals or (6) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under IRC § 401(a)(9). In addition, an eligible retirement plan means an individual retirement Account described in IRC § 408(a), an individual retirement annuity described in IRC §408(b), a qualified trust described in IRC § 401(a), an annuity plan described in IRC §§ 403(a) or 403(b), or an eligible governmental plan described in IRC § 457(b), that accepts the eligible rollover distribution.
- 5.06.3 The Plan shall establish and maintain for the Participant a separate sub-Account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under IRC § 457(b). In addition, the Plan shall establish and maintain for the Participant a separate sub-Account for any eligible rollover distribution paid to the Plan from any eligible governmental plan under IRC § 457(b).

Any Rollover Contribution shall not be treated as Contributions subject to the limitations of Provision 5.01. However, the amount of Contributions during the Participant's taxable Year in which the Rollover Contribution occurred shall be treated as Contributions subject to the limitations of Provision 5.01. The amount of any Contributions under the plan from which the Rollover is made shall be taken into Account in computing the catch-up limitation under Provision 5.02 to the extent required by Provision 5.02.

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6. **INVESTMENTS AND ACCOUNTS**

- 6.01 **Account Assets Held in Trust.** Notwithstanding any contrary provision of the Plan, in accordance with IRC § 457(g), all amounts of Contributions pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants, Alternate Payees and Beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of Pennsylvania. All amounts of compensation deferred under the Plan shall be transferred to a trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the Accounts of Participants.
- 6.02 **Administrator to Be Trustee.** The Administrator shall be the Trustee under any trust established pursuant to Provision 6.01.
- 6.03 **Direction of Investments.** During the Participant's life, the Participant shall direct the investment of his or her Account, subject to the Plan rules. After the Participant's death or after a PADRO is effective, the Beneficiary or Alternate Payee shall direct the investment of the Account, or of his or her Segregated Account. Notwithstanding any other provision of the Plan, during any period when a Segregated Account is created and the corresponding interest in the trust fund is segregated on behalf of an Alternate Payee pursuant to a PADRO as provided in Provision 7.20, the Alternate Payee may be entitled to direct the investment of such interest in accordance with this Provision as if he or she were the Participant to the extent provided in such order. In the event that an Alternate Payee fails to specify an investment direction, such Alternate Payee's interest in the trust fund shall be invested in the same manner as the relevant Participant's Plan benefit as of the date of creation of the Segregated Account. The rights of each Participant, and where applicable each Beneficiary or Alternate Payee, with regard to the exercise of investment direction are subject to the requirements of: a) the Code; b) other applicable law; c) the Plan; and d) the administrative procedures developed by the Administrator.
- 6.04 **Liability.** The payments to be provided under the Plan are based upon the amounts deferred and the investment results achieved by the applicable investment(s). In no case shall the Employer's liability to pay Deferred Compensation to a Participant, an Alternate Payee or a Beneficiary under the Plan exceed the value of payments due under the investments acquired through the investment of the Participant's Contributions and credited to the Participant's Account (whether or not payable to a Beneficiary) or to the Alternate Payee's Segregated Account, whichever the case may be, after deducting any charges as provided by Provision 3.05 and after deducting any charges assessed according to the provisions of the applicable

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investment contract(s). Consistent with the provisions of the Enabling Statute, neither the Employer nor the Administrator shall be liable for losses arising out of the investment performance of any investments acquired under the Plan. Any action by the Employer or the Administrator in approving any investment contract shall not be construed as an endorsement of any investment contract, nor shall it be considered to attest to the financial soundness or the suitability of any investment for any purpose. Notwithstanding any other provision of the Plan, the Employer shall not be liable to any Participant or Alternate Payee or Beneficiary for any mistakes or errors in the making or retaining of any investments, nor for any loss resulting from or arising out of investing or failing to invest any Contributions.

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7. **DISTRIBUTION OF DEFERRED COMPENSATION**

A. **RETIREMENT DISTRIBUTION**

7.01 **Retirement Distribution.** Upon his/her Severance from Employment, the Participant is entitled to receive his/her Account under any Payout Option that satisfies the provisions of the Plan.

7.02 **Election of Benefit Commencement Date.** A Participant or Alternate Payee who has elected to receive payment in accordance with any Payout Option and who wishes to revoke that Payout Option, either before or after his or her Account enters distribution status, shall not be prohibited from doing so, provided such revocation complies with the requirements of the Code and the terms of the implicated Investment Accounts.

At the time prescribed for the election of his/her Payout Option, the Participant or Alternate Payee may elect whether or not to recalculate life expectancy(s) to the extent permitted by Regulations under IRC § 401(a)(9)(D).

7.03 **Required Beginning Date.** Consistent with the requirements of IRC § 401(a)(9)(C), a Retirement Distribution shall begin not later than April 1 of the Year following the Year during which the Participant attains age 70½, or following the Year during which the Participant has a Severance from Employment, whichever occurs later (or the other date required or any other date permitted or required by Regulations under IRC § 401(a)(9)).

7.04 **Payout Option Conforming to Code.** Any Retirement Distribution shall be made according to a Payout Option that conforms to the requirements of IRC § 401(a)(9).

B. **DEATH BENEFIT DISTRIBUTION**

7.05 **Death Benefit Distribution.** Upon the Participant's death, before a Distribution has begun under Provision 7.01 (or upon the "primary" Beneficiary's death, before a Distribution to him/her has begun), each Beneficiary is entitled to receive his/her/its separate Account of the Participant's Account under any Payout Option that satisfies the provisions of the Plan except as limited by Provision 7.08.

7.06 **Election of Benefit Commencement Date.** A Beneficiary who has elected to receive payment in accordance with any Payout Option and who wishes to revoke that Payout Option, either before or after the affected Participant's Account enters distribution status, shall not be

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prohibited from doing so, provided such revocation complies with the requirements of the Code and the terms of the implicated Investment Accounts.

7.07 **Required Beginning Date and Distribution Amounts.** Any Death Benefit Distribution shall satisfy the applicable requirement provided in Provisions 7.07.1 and 7.07.2.

7.07.1 If the Beneficiary is the surviving spouse, the Distribution shall begin not later than the last day of the Year after the Year in which the Participant would have attained age 70½ (or any later date that may be permitted by Regulations under IRC § 401(a)(9)), and the entire Account shall be distributed - in accordance with Regulations under IRC § 401(a)(9) - over the life or over a period not extending beyond the life expectancy of the spouse.

7.07.2 If the Beneficiary is not the surviving spouse, either:

- a) the entire Account shall be distributed - in accordance with Regulations under IRC § 401(a)(9) - over a period not to exceed 5 years beyond the date of Participant's death and not extending beyond the life expectancy of the Beneficiary; or
- b) if the Beneficiary begins receiving distributions not later than one year after the date of Participant's death, the Beneficiary may receive distributions over the entire life expectancy of such Beneficiary.

7.08 **Death or Absence of Beneficiary.** If the Beneficiary designated by the Participant should predecease him or die within thirty days of his death, or if a valid nomination of a Beneficiary is not in effect at his death, any money payable to a beneficiary shall be payable to the estate of the Participant.

C. **UNFORESEEABLE EMERGENCY DISTRIBUTION**

7.09 **Unforeseeable Emergency Distribution Conditions.** If the Participant, Participant's spouse, Participant's dependent, Participant's Beneficiary, or a spouse or dependent of Participant's Beneficiary, is faced before Participant's Severance from Employment with an Unforeseeable Emergency, the Participant is entitled to receive a Distribution (as a cash lump sum) of the amount determined by the Administrator to be the amount that is reasonably needed to satisfy the Unforeseeable Emergency, subject to the restrictions of Provision 7.10. For purposes of this definition, any such Beneficiary designated in a valid change of beneficiary form must be so designated by the Participant as the Participant's Beneficiary no less than 30 days prior to when the Unforeseeable Emergency first arises for this definition to apply to the Participant's Beneficiary, or a spouse or dependent of participant's Beneficiary.

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- 7.10 **Denial of Unforeseeable Emergency Distribution.** An Unforeseeable Emergency Distribution shall not be paid to the extent that the financial hardship is or may be relieved through reimbursement or compensation by insurance or otherwise, by borrowing from commercial sources on reasonable commercial terms to the extent that this borrowing would not itself cause a severe financial hardship, by cessation of deferrals under the Plan, or by liquidation of the Participant's other assets (including the assets of the Participant's Spouse and minor children that are reasonably available to the Participant) to the extent that this liquidation would not itself cause severe financial hardship.

D. ROLLOVER AND TRANSFER

- 7.11 **Rollover of Deferred Compensation to Another Permitted Plan.** Consistent with IRC § 457(e)(16), a Participant or Beneficiary may elect, in the form prescribed by the Administrator, to roll over his/her entire Account to another Permitted Plan, provided that the Administrator is satisfied that the other plan will accept the transferred amount. If a Participant elects to roll over his or her entire Account in accordance with this Provision, the Participant shall have no further rights in the Plan.
- 7.12 **In-Plan Rollover to Roth Account.** Subject to the delivery of a written receipt and release as described below, at any time, a Participant, a Beneficiary who is a Participant's Surviving Spouse or a spousal Alternate Payee may elect to have any amount not otherwise distributable under the plan transferred to a Designated Roth Account. No such transfer shall be subject to voluntary withholding. Any amounts transferred will be included in gross income as if the transfer had been made to such Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee (together "Recipients") provided, however, that the Administrative Service Agency has first received a written receipt and release, as provided for in Section 8.08, from said Recipients that such transferred amounts will be included in gross income. After a Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee has made an in-Plan rollover into a Roth Account, such Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee may elect to take distributions from such Account in accordance with any of the distribution options set forth in Provision 7. Such provisions shall be administered in accordance with procedures established by the Administrative Service Agency and shall be interpreted and administered in accordance with and subject to Section 402A(c)(4)(E) of the Code and any rules, regulations or other guidance issued by the Internal Revenue Service in relation thereto.

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- 7.13 **Transfer of Deferred Compensation to purchase service credit in State Employees' Retirement System.** A Participant may elect to transfer a portion of his or her Account, but not including any amount contained in any Roth Account, sufficient to make a lump sum purchase of service credits in the State Employees' Retirement System. Prior to the transfer, the Participant must present evidence to the Plan Administrator that such credits have been certified as available for purchase.

E. **VOLUNTARY IN-SERVICE DISTRIBUTION**

- 7.14 **Voluntary In-Service Distribution.** A Participant who is an active Employee shall receive a distribution of the total amount payable to the Participant under the Plan if the following requirements are met:
- a) the total amount payable to the Participant under the Plan does not exceed \$5,000 (or the dollar limit under IRC § 411(a)(11), if greater);
 - b) the Participant has not previously received a distribution under this Provision;
 - c) no amount has been deferred under the Plan with respect to the Participant during the two-Year period ending on the date of the in-service distribution; and
 - d) the Participant elects to receive such distribution.

F. **ADMINISTRATION OF DISTRIBUTION PROVISIONS**

- 7.15 **Life Expectancy.** Any determination of life expectancy for the purposes of the Plan shall be made by using the unisex tables specified in Regulations under IRC § 401(a)(9) and IRC § 72.
- 7.16 **Distribution to Minor or Incompetent Beneficiary.** If a Distribution is to be made to a minor Beneficiary or to a Beneficiary that the Administrator finds to be unable to care for his/her affairs, the Administrator, in its sole discretion, may direct (if no claim has been made by a duly appointed representative) that any payment(s) be made to the legal guardian of the Beneficiary, or if none, to a parent of the Beneficiary or a responsible adult with whom the Beneficiary maintains his/her residence, or to the custodian for the Beneficiary under the Pennsylvania Uniform Transfers to Minors Act, 20 Pa.C.S. § 5301 *et seq.*, or to any person determined by the Administrator to be a proper recipient for the Beneficiary. If the amount to be paid is over \$10,000, then a court order must be presented certifying legal guardianship. The legal guardian must also sign a form certifying that the funds to be distributed will be used solely for the minor Beneficiary's benefit as stated in the Pennsylvania Uniform Transfers to

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Minors Act. This payment(s) shall fully release and discharge the liability of the Employer, the Plan and the Administrator as against the adverse claim of any other person.

- 7.17 **Dispute as to Proper Payee.** If a dispute arises as to the proper payee of any payment(s) upon the death of the Participant, the Administrator may, pursuant to 20 Pa.C.S. § 8704, make such payment(s) to the Beneficiary entitled thereto under the Plan or under a designation by the Participant pursuant to the Plan and by making such payment, the Administrator shall be released from all claims by third parties.
- 7.18 **Ambiguity as to Interest of any Beneficiary.** To the extent there is ambiguity and the Administrator is in doubt as to the proper construction of the Plan with respect to the interest of any Beneficiary, the Administrator shall construe the Plan to state provisions consistent with 20 Pa.C.S. § 101 *et seq.*, to the extent that such construction is not inconsistent with any requirement of IRC § 457(b).

G. **ALTERNATE PAYEES**

- 7.19 The establishment and maintenance of, or allocations and credits to, the Segregated Account of any Alternate Payee shall not vest in such Alternate Payee any right, title or interest in and to any trust fund assets or Plan benefits except at the time or times and upon the terms and conditions and to the extent expressly set forth in the PADRO, the Plan and the Participation Agreement.
- 7.20 Payments with respect to the Segregated Account may be made by the Administrator from the trust fund to an Alternate Payee pursuant to the terms of a PADRO; *provided, however*, that no PADRO shall create any rights greater than the Participant's rights under the Plan and IRC § 457. Upon the designation of the Domestic Relations Order as a PADRO by the Administrator or Administrative Service Agency, a portion of the Participant's Account, which portion shall be determined in accordance with the PADRO, shall be separated into a Segregated Account maintained on behalf of the Alternate Payee designated under such PADRO until payment is made to the Alternate Payee in accordance with this Provision and the terms of the Plan. The Employer, Administrator or Administrative Service Agency shall incur no liability solely by reason of any action taken in accordance with this Provision pursuant to the terms of a PADRO.
- 7.20.1 To the extent required by a PADRO, the Administrator or Administrative Service Agency shall maintain a Segregated Account for the Alternate Payee.

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- 7.20.2 If a PADRO applies with respect to a Participant prior to the distribution of the Alternate Payee's interest, the Administrator or Administrative Service Agency shall establish a Segregated Account for the interest of the Alternate Payee, within a reasonable time after the next Valuation Date available after the Domestic Relations Order is determined by the Plan Administrator or Administrative Service Agency to be a PADRO.
- 7.20.3 A Participant's Account shall be reduced to the extent that any portion of the Participant's Account has been paid or set aside for payment to an Alternate Payee. The Participant shall be deemed to have released the Employer, the Administrator or Administrative Service Agency from any claim with respect to such amounts in any case where the Participant fails to obtain an order of the court that relieves the Employer, Administrator or Administrative Service Agency from any obligation to comply with a domestic relations order.
- 7.20.4 An order shall not be a PADRO unless the Administrator or Administrative Service Agency determines that the court order on its face and without reference to any other document states all of the following:
- a) The court order expressly states that it relates to the provision of support, alimony, equitable distribution, or any other marital property rights to a spouse or former spouse of a Participant and is made pursuant to State domestic relations law.
 - b) The court order clearly and unambiguously specifies that it refers to this Plan.
 - c) The court order clearly and unambiguously specifies the name of the Participant's Employer.
 - d) The court order clearly specifies: the name, mailing address, and Taxpayer Identifying Number of the Participant; and the name, mailing address, and Taxpayer Identifying Number of the Alternate Payee.
 - e) The court order clearly specifies the amount or percentage, or the manner in which the amount or percentage is to be determined, of the Participant's Account to be paid to the Segregated Account of the Alternate Payee.
 - f) The court order expressly states that the Alternate Payee's Segregated Account shall bear all fees and expenses as though the Alternate Payee were a Participant.
 - g) The court order expressly states the allocation of the charge for the Administrator's or Administrative Service Agency's expense in processing a domestic relations order between the Alternate Payee's Segregated Account and the Participant's Segregated Account.
 - h) The court order clearly specifies that any Distribution to the Alternate Payee becomes payable only upon the Alternate Payee's written claim made to the Plan Administrator or Administrative Service Agency.

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- i) The court order clearly specifies that any Distribution to the Alternate Payee may be made in any manner that the Participant could receive a Distribution, except for Provision 7C (Unforeseeable Emergency Distribution), or Provision 7E (Voluntary In-Service Distribution).
- j) The court order states that it does not require this Plan to provide any type or form of benefit or any option not otherwise provided under this Plan.
- k) The court order expressly states that the order does not require this Plan to provide increased Deferred Compensation.
- l) The court order expressly states that any provision of it that would have the effect of requiring any Distribution to an Alternate Payee of Deferred Compensation that is required to be paid to another natural or artificial person under any court order is void.
- m) The court order expressly states that nothing in the order shall have any effect concerning any party's tax treatment, and that nothing in the order shall direct any person's tax reporting or withholding.
- n) The court order expressly states that nothing in the order shall permit the Alternate Payee to make any contributions to the Plan.

7.20.5 An order shall not be a PADRO if it includes any provision that does not relate to this Plan. Without limiting the comprehensive effect of the preceding sentence, an order shall not be a PADRO if the order includes any provision relating to any pension plan, retirement plan, deferred compensation plan, health plan, welfare benefit plan, or employee benefit plan other than this Plan.

7.20.6 An order shall not be a PADRO unless the order provides for only one Alternate Payee.

7.20.7 An order shall not be a PADRO if the order includes any provision that would require the Plan Administrator or Administrative Service Agency to calculate the amount to be segregated to the Alternate Payee's Segregated Account in a manner not readily calculable by the Plan Administrator or Administrative Service Agency according to its currently available records.

7.20.8 An order shall not be a PADRO if the order includes any provision that would permit the Alternate Payee to designate any beneficiary for any purpose. However, an order does not fail to qualify as a PADRO because it provides that any rights not paid before the Alternate Payee's death shall be payable to the duly appointed and then-currently serving Personal Representative of the Alternate Payee's estate or other person duly authorized by appropriate state law concerning decedents and their estates.

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- 7.20.9 The Plan Administrator or Administrative Service Agency may assume without liability that the Alternate Payee named by the court order is a proper payee and need not inquire into whether the person named is a spouse or former spouse of the Participant.
- 7.21 **PADRO Procedures.** The Administrator or Administrative Service Agency may (but is not required to) establish written procedures for determining whether an order directed to the Plan is a PADRO.
- 7.22 **Determination as to Order's Status.** The Plan Administrator or Administrative Service Agency shall make a determination within a reasonable time as to whether the order is a PADRO. The Plan Administrator or Administrative Service Agency may delay the commencement of its consideration of any order until the later of the date that is 30 days after the date of the order or the date that the Plan Administrator or Administrative Service Agency is satisfied that all rehearing and appeal rights with respect to the order have expired.
- 7.23 **Investment Direction During Domestic Relations Matter.** Notwithstanding any notice to the Plan Administrator or Administrative Service Agency (or to any other person dealing with or performing services regarding the Plan) that a domestic relations order is or may be presented to be determined as a PADRO, the Participant shall continue to exercise his or her duty of investment direction as required by the Plan unless a court order expressly provides otherwise and the Plan Administrator determines that the court order is a PADRO. If a PADRO provides for an Alternate Payee to have a right of investment direction under the Plan, the Plan Administrator or Administrative Service Agency shall give effect to that court order to the extent permitted by the Plan.
- 7.24 **Giving Effect to a PADRO.** If the Plan Administrator or Administrative Service Agency determines that an order is a PADRO, the Plan Administrator or Administrative Service Agency shall cause the payment of amounts to the Alternate Payee or to a Segregated Account as provided by (and to prevent any payment or act which might be inconsistent with) the PADRO.
- 7.25 **Domestic Relations Proceeding.** Each of the Employer and Plan Administrator and Administrative Service Agency and any person serving under contract or otherwise with respect to the Plan shall not be obligated to incur any cost to defend against or set aside any judgment, decree or order relating to the division, attachment, garnishment, or execution of or levy upon an Account, sub-Account, Segregated Account or any Distribution, including (but not limited to) any domestic relations proceeding. Notwithstanding the foregoing, if any such person is joined in any proceeding, the party may take such action as it considers necessary or

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appropriate to protect any and all of its legal rights, and the Participant (or Alternate Payee or Beneficiary) shall reimburse all actual fees of lawyers and legal assistants and expenses reasonably incurred by such party through the respective Accounts or otherwise.

H. MISCELLANEOUS DISTRIBUTION RULES

- 7.26 **Exclusion of Distributions for Public Safety Officers.** Retired or disabled public safety officers (i.e., law enforcement officers, firefighters, or rescue squad or ambulance crew) may exclude up to \$3,000 of distributions for the direct payment of premiums for coverage for the public safety officer, his or her spouse, and his or her dependents under an accident or health insurance plan or qualified long-term care insurance contract.

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8. GENERAL PROVISIONS

- 8.01 **Non-assignability.** The Participant or Beneficiary shall not have any right to commute, sell, assign, pledge, transfer, or otherwise convey, use or encumber any right to receive any payments under the Plan, which payments and rights are expressly declared to be non-assignable and non-transferable. Deferred Compensation shall not be subject to attachment, garnishment, or execution, or be transferable by operation of law in the event of a divorce or marital separation or of a bankruptcy or insolvency, except to the extent otherwise required by law or by Provision 7G of this Plan.
- 8.02 **Relationship to Other Plans.** This Plan is in addition to any other retirement, pension, or benefit plan presently in existence or later established (if any), and participation under the Plan shall not affect benefits receivable under any other plan, unless the plan is a deferred compensation plan subject to IRC § 457.
- 8.03 **Plan Binding on Successors.** The Plan, as duly amended from time to time, shall be binding on each Employer and each Participant, and his/her Beneficiary, surviving spouse, heirs, executors and administrators.
- 8.04 **Amendment or Termination.** The Commonwealth of Pennsylvania or the State Employees' Retirement Board (the Administrator but not the Administrative Service Agency) may, at any time, amend or terminate this Plan. Any amendment or termination shall not reduce the amount of Deferred Compensation credited to any Account as of the date of the amendment or termination, and shall not impair the rights of any person to any Deferred Compensation, except to the extent required by law. The Administrator shall give each Participant notice of any amendment or termination before its effective date, except for an amendment conforming any Provision to the Code or regulations then in effect.
- 8.05 **Governing Law.** This Plan is established with the intent that the Plan shall satisfy the requirements of an "eligible deferred compensation plan" pursuant to IRC § 457(b). The provisions of the Plan shall be interpreted whenever possible in conformity with the requirements of that section and other relevant sections of the Code.

It is also intended that this Plan shall satisfy the requirements of the Enabling Statute and any rules or regulations under the Enabling Statute, and any other applicable State law. This Plan shall be construed and enforced under the internal laws of the Commonwealth of Pennsylvania without regard to the principles of conflicts of laws.

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- 8.06 **Captions.** The captions preceding the parts and provisions of the Plan have been inserted solely as a matter of convenience and in no way define or limit the scope or intent of any provisions of the Plan, and are to be ignored in any construction of the provisions of the Plan.
- 8.07 **Information to be Provided by the Participant or Beneficiary.** Each Employee who enrolls in the Plan shall provide to the Administrator, at the time of initial enrollment, and later if there are any changes, any information reasonably required by the Administrator. If an Employee fails to provide any information deemed necessary by the Administrator, the Employee may be denied (in the sole discretion of the Administrator) the right to participate in the Plan. Each person having any interest in the Plan shall file with the Administrator any information concerning himself/herself and his/her Beneficiary as may be reasonably required by the Administrator. A Participant or Beneficiary or other person shall not have any rights to or otherwise be entitled to the payment of any Deferred Compensation under the Plan unless such information has been filed.
- 8.08 **Receipt and Release.** Any payment(s) or any agreement to make payment(s) shall, to the extent of the payment(s) or agreement, be in full satisfaction of all claims. The Administrator may (in its sole discretion), as a condition precedent to making or causing to be made any payment(s), or agreement to make payment(s), or rollover (under Provision 7.11), require any person or entity to execute a receipt and release.
- 8.09 **Severability.** If any provision of the Plan is held invalid for any reason, the remaining provisions of the Plan shall be construed and enforced as if the invalid provision had not been included in the Plan, unless such a construction of the Plan would be clearly contrary to the intent of the Plan.

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IN WITNESS WHEREOF, the Commonwealth of Pennsylvania State Employees' Retirement Board has caused this Fifth Amended and Restated Plan to be executed, in accordance with its powers under the Enabling Statute, on the date written below, to be effective as of December 1, 2014.

COMMONWEALTH OF PENNSYLVANIA
STATE EMPLOYEES' RETIREMENT BOARD
an agency of the
COMMONWEALTH OF PENNSYLVANIA



Glenn E. Becker Chairman

October 29, 2014

Seal:



ATTACHMENT E

EXECUTIVE SESSION AGENDA

Meeting: October 29, 2014

Executive Session

1. Notational Ballot

Account of Joseph A. Greene

Docket No. 2010-14

Claim of Joseph A. Greene

2. Fund Update

3. Preliminary Fund Performance and Risk Statistics

4. Manager Update

5. Litigation Update

