



OHIO DEFERRED COMPENSATION

OHIO PUBLIC EMPLOYEES DEFERRED COMPENSATION PROGRAM

AMENDED PLAN DOCUMENT AS OF MARCH 1, 2020

DEFERRED COMPENSATION PLAN

The Ohio Public Employees Deferred Compensation Plan (the "Plan") is established by the Board pursuant to Ohio Revised Code Chapter 148 and will at all times comply with Section 457(b) of the Internal Revenue Code of 1986, as amended (IRC) and applicable Internal Revenue Service (IRS) regulations. The Plan is intended to provide Eligible Employees of the Employer a program for deferral of compensation. The Plan consists of the provisions set forth in this document, the adoption agreement signed by the Employer electing to offer the Plan, and the Participation Agreements as applicable to Eligible Employees.

Employer adopts the Plan on the Effective Date.

I. Definitions

- 1.01 **Account** shall mean the Account(s) maintained by the Plan Administrator reflecting the activity in the Pre-Tax Deferrals Account(s), Roth Contributions Account(s), and any rollover account(s) maintained on behalf of a Participant or Beneficiary under the Plan.
- 1.02 **Active Participant** shall mean an Eligible Employee who (a) is making Deferrals to the Plan pursuant to a Participation Agreement, (b) has been automatically enrolled in the Plan and has not opted-out of the Automatic Enrollment Arrangement, or (c) has received a deferral pursuant to Section 2.03 in the Plan Year. Active Participants shall include any Participating Employee as defined in Section 148.01(A)(3) of the Ohio Revised Code.
- 1.03 **Automatic Enrollment** shall mean an arrangement under which, in the absence of an affirmative election by an Eligible Employee, a certain amount of Compensation may be automatically withheld from the Eligible Employee's pay and contributed to the Plan as a Pre-Tax Deferral.
- 1.04 **Beneficiary** shall mean the person or entity designated on the Beneficiary Form by a Participant or spousal Beneficiary to receive Plan benefits in the event of death. An alternate payee pursuant to Section 1.19 is also a Beneficiary for purposes of the Plan.
- 1.05 **Compensation** shall mean all payments made to a Participant by the Employer as remuneration for services rendered which would be includible in income for federal tax purposes, subject to the provisions of the IRC.
- 1.06 **Board** shall mean the Ohio Public Employees Deferred Compensation Board.
- 1.07 **Default Deferrals** shall mean Pre-Tax Deferrals contributed to the Plan under the Automatic Enrollment arrangement on behalf of Eligible Employees who do not have an affirmative election in effect regarding deferrals.
- 1.08 **Deferral** shall mean the aggregate Pre-Tax Deferrals and Roth Contributions made from a Participant's Compensation, which a Participant agrees to contribute to an Account in accordance with the provisions of the Plan. A Default Deferral shall also be a Deferral for purposes of the Plan.
- 1.09 **Effective Date** shall mean the date this Plan is effective upon adoption by the Employer.
- 1.10 **Eligible Employee** shall mean all individuals who perform services for the Employer who are eligible to participate under Section 148.01(A)(1) of the Ohio Revised Code. Individuals who do not perform services for the Employer and are not so eligible may not defer compensation under the Plan.

- 1.11 **Employer** shall mean an employer of Eligible Employees. An Employer that establishes the Plan on behalf of its Eligible Employees shall determine whether its Eligible Employees will be permitted to make (i) Pre-Tax Deferrals or (ii) Pre-Tax Deferrals and Roth Contributions.
- 1.12 **Inactive Participant** shall mean any former Active Participant who is not currently having compensation deferred, and shall include any continuing member as defined in Ohio Revised Code Section 148.01 (A)(4) who is not a Beneficiary.
- 1.13 **Includible Compensation** shall mean the amount of Eligible Employee's Compensation from the Employer for the taxable year that is attributable to services rendered for the Employer. Includible Compensation is reduced for employer pick-up contributions under IRC Section 414(h).
- 1.14 **Investment Exchange** shall mean the movement of existing funds between Investment Options in a single day. Investment exchanges do not change the designated Investment Options for future Deferrals.
- 1.15 **Investment Option** shall mean any investment, financial instrument or financial product approved for Participant-directed investments under the Plan.
- 1.16 **Normal Retirement Age** shall mean (a) any age elected by the Participant for purposes of making a catch-up contribution and beginning no earlier than the earliest age at which a Participant has the right to retire under the Employer's applicable pension plan, if any, without the Employer's consent and to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later age specified in such pension plan or (b) if no such election is made, age 70½ (or such other age as required under IRC section 401(a)(9)). In the case of a Participant who does not participate in a pension plan, Normal Retirement Age shall be any age elected by the Participant which shall be no earlier than age 65 and no later than age 70½ (or such other age as required under IRC section 401(a)(9)).
- 1.17 **Participant** shall include any Active Participant or Inactive Participant.
- 1.18 **Participation Agreement** shall mean an agreement in the form determined by the Plan Administrator, entered into between an Eligible Employee and the Employer pursuant to which an Eligible Employee elects to become an Active Participant by electing to make Pre-Tax Deferrals and/or Roth Contributions.
- 1.19 **Plan Administrator** shall mean the Board, which may designate others to perform the duties of Plan Administration.
- 1.20 **Pre-Tax Deferrals** shall mean deferrals (a) that are made pursuant to the Participant's Participation Agreement that the Participant irrevocably designates at the time of the deferral election as Pre-Tax Deferrals or that are Default Deferrals, and that are being made from Compensation on a pre-tax basis and/or (b) that are credited to an Eligible Employee's Account by an Employer pursuant to Section 2.03. Pre-Tax Deferrals are excluded from gross income in the year deferred.
- 1.21 **Pre-Tax Deferrals Account** shall mean the Account maintained for each Participant (or Beneficiary) that is credited with the Participant's Pre-Tax Deferrals, and any earnings, losses, and other account transactions credited thereon.
- 1.22 **Qualified Domestic Relations Order** or QDRO shall mean a court order, judgment, or decree that creates or recognizes the existence of the rights of someone other than the Participant to an interest in the Participant's Account. The other person is referred to as an alternate payee and must be the Participant's spouse or former spouse or child.
- 1.23 **Roth Contributions** shall mean the amount of Compensation which a Participant agrees to contribute pursuant to the Participant's Participation Agreement that (a) the Participant irrevocably designates at the time of contribution election as post-tax Roth Contributions that are being made from Compensation on an after-tax basis; and (b) the Employer treats as includible in the Participant's gross income in the year deferred. Roth Contributions shall be allowed following agreement by the Employer on or after a date determined by the Plan Administrator.

- 1.24 **Roth Contributions Account** shall mean the Account maintained for each Participant (or Beneficiary) that is credited with the Participant's Roth Contributions, and any earnings, losses and other account transactions credited thereon.
- 1.25 **Severance from Employment** shall mean the employee ceases to be employed by an Employer who maintains the Plan, or the employee is considered severed from employment pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (Heart Act), as determined by each Employer in accordance with guidance issued under the IRC.
- 1.26 **Unforeseeable Emergency** shall mean unforeseeable emergency as set forth under the applicable IRS regulations. An Unforeseeable Emergency shall include severe financial hardship of the Participant or Beneficiary resulting from a sudden and unexpected illness or accident of a Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in IRC Section 152(a)), loss of the Participant's or Beneficiary's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, which hardship cannot be relieved by reimbursement or compensation (by insurance or otherwise), liquidation of the Participant's assets (to the extent the liquidation would not itself cause severe financial hardship), or cessation of Deferrals under the Plan. Except as otherwise provided in this section, an Unforeseeable Emergency under the IRS regulations applicable to this type of plan does not include money for college tuition or purchase of a home.
- 1.27 **Withdrawal Date** shall mean that date upon which withdrawal payments begin from an Account.
- 1.28 **Withdrawal Option** shall mean the withdrawal payment method selected by the Participant or Beneficiary from an Account.

II. Participation

- 2.01 **Election to Enroll.** Each Eligible Employee shall be permitted to participate under this Plan in accordance with the terms agreed to by the Employer. An Eligible Employee may elect to participate and become an Active Participant by signing a Participation Agreement and filing such agreement with the Plan Administrator. The Participation Agreement shall specify:
- (a) The amount of the Active Participant's Compensation which the Employer and the Active Participant agree to contribute to the Plan as Pre-Tax Deferrals and/or Roth Contributions, subject to the limitations of Section 2.04 and Section 2.05;
 - (b) The date as of which the Deferral shall begin, which date shall be as early as administratively practicable but not earlier than permitted by the Code and applicable regulations following the execution of the Participation Agreement; and
 - (c) The Investment Options selected by the Participant.
- 2.02 **Automatic Enrollment.** Employers may voluntarily adopt an Automatic Enrollment arrangement. If the Employer elects to offer an Automatic Enrollment arrangement, the provisions of this Article shall apply and, to the extent that any other provision of the Plan is inconsistent with the provision of this Article, the provisions of this Article shall govern.
- (a) Default Deferrals will be made on behalf of newly hired Eligible Employees in accordance with Plan procedures and not earlier than 90 days after an Eligible Employee's receipt of an Automatic Enrollment notice. The amount of the Default Deferral made for an Eligible Employee each pay period is equal to the amount specified by the Plan Administrator and shall only be made as Pre-Tax Deferrals.
 - (b) The Employer may elect to impose an annual automatic increase of each Eligible Employee's Deferral amount.
 - (c) An Eligible Employee will have 90 days from the date of the Automatic Enrollment notice to make an affirmative election to opt-out of the Automatic Enrollment arrangement before Default Deferrals are made on the Eligible Employee's behalf. Once Automatic Enrollment begins, Eligible Employees can opt-out of Automatic Enrollment, change their Deferral amount or their annual Deferral increase amount at any time except any change shall not be effective earlier than is permitted under Section 2.01(b).
- 2.03 **Employer Contributions.** Employers may credit an Eligible Employee's Account with a contribution made by the Employer. For plan administration purposes, such contributions shall be treated as increasing the employee's gross salary or wage by the amount of the employer's contribution with a corresponding increase in the amount of Pre-Tax Deferrals. Such contributions will be treated as Pre-Tax Deferrals for all purposes under this Plan.

2.04 Deferral Limits.

- (a) **Maximum Deferrals.** Except as provided in subsections (b) and (c), the maximum amount that may be deferred by an Active Participant in the Plan in any calendar year shall be the maximum allowed by the IRC.
- (b) **Age 50-Plus Deferrals.** In addition to the Deferral provided in subsection (a), an Active Participant who has attained age 50 during the calendar year may defer an additional amount as allowed by the IRC. This Section shall not be applicable for any taxable year in which subsection (c) is used.
- (c) **Catch-Up Deferrals.** In any of an Active Participant's last three calendar years ending before the Participant attains Normal Retirement Age, the Active Participant may defer an amount not exceeding the lesser of (i) two times the maximum Deferral limit in subsection (a), or (ii) the sum of the maximum amount eligible to be deferred under subsection (a) for the calendar year plus so much of the maximum amount eligible to be deferred under IRC limitations for prior years on account of compensation from any Employer who maintained a Plan described in IRC Section 457 for any portion of the calendar year and has not previously been used under subsection (a) or (b) or the equivalent provisions of any plan described in IRC Section 457 of any such Employer. A prior calendar year shall be taken into account for purposes of this subsection only if (A) it begins after December 31, 1978, (B) the Participant was eligible to participate in a Plan during all or a portion of the prior year, and (C) compensation deferred, if any, under a Plan during such prior year was limited to the applicable percentage of Includible Compensation during each year, less (ii) all amounts excluded from the Participant's Compensation from the Employer under IRC Section 457, 401(k), or 403(b) in the years before 2002.
- (d) The maximum amount of Deferral in subsections (b) and (c) shall be reduced by any amount excluded from the Participant's gross income for the calendar year under IRC Section 457 under any plan maintained by the Employer or any Employer.

2.05 **Minimum Deferrals and Allocation.** The Plan Administrator may establish a minimum Deferral amount or minimum allocation to any Investment Option.

2.06 **Amendments of Participation Agreements.** The election of an Eligible Employee to participate under the Plan is irrevocable as to all amounts actually deferred under the Participation Agreement. The Participant may, by amendment of the Participation Agreement or by any manner as the Plan Administrator may prescribe, do any of the following: (i) change the Investment Option allocation of amounts to be deferred in the future; (ii) terminate the election to be an Active Participant; or (iii) change the amount of Deferrals. An amendment or termination shall be effective as early as administratively practicable, except an amendment to change the Deferral amount or terminate active participation shall not be effective earlier than is permitted under Section 2.01(b).

III. Maintenance of Accounts

3.01 **Maintenance and Crediting of Accounts.** The Plan Administrator shall establish separate Pre-Tax Deferrals Account(s), Roth Contributions Account(s), and rollover account(s) for each Participant, as applicable, to which shall be credited or charged, as the case may be, with Deferrals, either Pre-Tax Deferrals and Roth Contributions, and with rollovers, upon receipt by the Plan Administrator.

3.02 **Investment of Accounts.** The Plan shall invest each Account among the Investment Options as authorized and specified in the Participant's Participation Agreement or as designated by the Board for Default Deferrals until otherwise amended, revoked, or modified pursuant to the terms of the Plan or directed by the Plan Administrator. The Plan Administrator may permit a Participant (or Beneficiary) to have separate investment directions for their Pre-Tax Deferrals Account, Roth Contributions Account, and/or rollover account. Each Account may increase or decrease based on the value of the Investment Options specified in the Participation Agreement or any amendment thereto. All Investment Options offered under this Plan must be offered by persons, companies, or entities authorized and duly licensed by the State of Ohio, and appropriate federal agencies regulating such investments to do business in the State of Ohio, as applicable. The Employer shall not be responsible for any decrease in value of an Account resulting from capital or market changes or any other changes occurring in the Investment Option or the Account. The Plan Administrator may from time to time assess reasonable fees against all or any portion of the Accounts to defray costs associated with the implementation and administration of the Plan. Each Account shall be maintained until all amounts credited to such Account have been distributed or otherwise debited therefrom.

- 3.03 **Investment Exchanges.** Each Participant (or Beneficiary) may make Investment Exchanges among Investment Options in any manner prescribed by the Plan Administrator. Any such Exchange shall be effective at the value next computed for the Plan's Investment Options following receipt of the Exchange request on a day the stock market and Plan Administrator is open for business and shall be subject to such restrictions or fees as are established by the Plan Administrator, or any other limitations or fees that may be required by investment providers, government regulators, or industry practices.
- 3.04 **Default Investment.** The Board may designate one or more Investment Options as default investments, which shall hold amounts for Default Deferrals or for which no investment preference is otherwise specified (or is otherwise not properly provided) by a Participant (or Beneficiary).
- 3.05 **Statements.** A statement showing the transactions and value of each Investment Option in an Account, in such form as the Plan Administrator determines shall be furnished to the Participant or Beneficiary after the end of each calendar quarter to the extent such values are available to the Plan Administrator.
- 3.06 **Assets Held In Trust.** All Plan assets and earnings shall be held by the Board in trust on behalf of the Employer for the exclusive benefit of Eligible Employees and their Beneficiaries. All assets, whenever contributed to the Plan, are assigned to the trust established by the Board.
- 3.07 **Rollovers.**
- (a) Any Participant, spousal Beneficiary, or spousal alternate payee who may take an eligible rollover distribution from an eligible retirement plan may, upon proper written request, rollover the account value from that plan to an Account in the Plan. Any such amounts rolled into the Plan, will be separately accounted for and may be subject to the same tax treatment as applicable in the original plan. Amounts rolled into the Plan will be allocated to Investment Options and will otherwise be subject to the same rules applicable to other Accounts. A Participant may elect to receive distributions of all or any portion of the amount held in the rollover account.
 - (b) Any Participant who has had a Severance from Employment, a spousal or non-spousal Beneficiary, or spousal alternate payee may, upon proper written request, rollover any portion of an eligible rollover distribution from an Account if paid directly to an eligible retirement plan. Requests for amounts to be rolled out of the Plan must satisfy the requirements of the Plan Administrator as to the eligibility of the receiving plan and acknowledgment of the plan's provision to accept such rollover.
 - (c) For purposes of this Section 3.07, an eligible retirement plan and an eligible retirement distribution are as defined by the IRC and applicable IRS regulations and shall include a Roth IRA and rollovers to a Roth IRA. Roth rollovers into and out of the Plan shall be allowed on or after the date(s) determined by the Plan Administrator.
- 3.08 **Service Credit Purchase.** A Participant may use all or a portion of an Account balance as a direct trustee-to-trustee transfer to a governmental defined benefit system that permits the purchase of permissive service credit or the repayment of service credits. Forms provided by the Plan Administrator and the defined benefit system that document the exact amount of transfer required must be used.
- 3.09 **In-Service Transfers.**
- (a) If an Employer has adopted multiple IRC Section 457(b) deferred compensation plans, a Participant who has not had a Severance from Employment may, upon proper written request, transfer any portion of another eligible IRC Section 457(b) deferred compensation plan into their Account. Requests for amounts to be transferred into the Plan will be allocated to Investment Options and will otherwise be subject to the same rules applicable to other accounts.
 - (b) If an Employer has adopted multiple IRC Section 457(b) deferred compensation plans, a Participant who has not had a Severance from Employment may, upon proper written request, transfer any portion of an Account to another eligible IRC Section 457(b) deferred compensation plan with the same employer. Requests for amounts to be transferred out of the Plan must satisfy the requirements of the Plan Administrator, including acknowledgment of the receiving plan as to eligibility and authority to accept such a transfer.

IV. Distribution of Benefits

- 4.01 **General Requirements.** All distributions are subject to the requirements of IRC Sections 457(d) and 401(a)(9) and the regulations thereunder. Initial benefit payment elections and subsequent changes will be effective only if made on forms provided or in the manner prescribed by the Plan Administrator and received by the date determined by the Plan Administrator. No Withdrawal Option shall be available that is not provided for under Section 4.09 of this Plan Document. The Plan Administrator will annually determine if the Participant's or Beneficiary's annual distributions meet the minimum distribution requirement of 401(a)(9) and adjust the distribution amount if necessary to comply with those provisions. Loans are not permitted under the Plan.
- 4.02 **Participant Election of a Withdrawal Date and Option.** Upon Severance from Employment, a Participant may elect a date to begin receiving withdrawals from the Plan. A Participant may elect whether withdrawals should be paid from the Pre-Tax Deferrals Account, Roth Contributions Account, or rollover account. Withdrawals may begin after the Plan Administrator's receipt of the Employer's verification of severance, the final Deferral, and the Withdrawal Election form. Withdrawals must begin no later than December 31 of the year in which the Participant attains age 70½ (or such other age as required under IRC section 401(a)(9)) or, if the Participant has not had a Severance from Employment as of such date, then no later than December 31 of the year in which the Participant has a Severance from Employment. A Participant may elect a Withdrawal Option or prospectively change any such election previously made, except for a purchased annuity option.
- 4.03 **Beneficiary Election of a Withdrawal Date and Option.** If the Participant or spousal Beneficiary dies before the Account(s) has been exhausted, the remaining Account value(s) shall be paid to the designated Beneficiary(ies) and each Beneficiary shall be entitled to the same rights under the Plan. The Beneficiary shall have the right to elect the time and method of withdrawals, subject to the limitations set forth by this Plan. The following will determine the Beneficiary's election requirements:
- (a) If a Participant dies on or after the required minimum distribution date, withdrawals shall continue to be paid to the Beneficiary at least as rapidly as under the method of distribution in effect at the time of the Participant's death. If the Beneficiary is not a person, such as a trust or an estate, the entire Account value will be distributed by the end of the calendar year that contains the fifth anniversary of the Participant's death.
 - (b) If a Participant dies before the required minimum distribution date, payments to a Beneficiary may begin after the Plan Administrator's receipt of the notice of the Participant's death, the death certificate, final Deferral, and the Withdrawal Election form. The Beneficiary must follow the requirement that applies:
 - (1) If the Beneficiary is the Participant's surviving spouse, distribution of the Account may be delayed until December 31 of the year in which the Participant would have attained age 70½ (or such other age as required under IRC section 401(a)(9)). The entire Account must then be withdrawn over a period not extending beyond the life expectancy of the spousal Beneficiary; or
 - (2) If the Beneficiary is a person other than the Participant's spouse, distribution of the Account must begin on or before December 31 of the year following the Participant's death, and the entire Account must be withdrawn over a period not extending beyond the life expectancy of the Beneficiary; or
 - (3) If the Beneficiary is not a person, such as a trust or an estate, the entire Account value must be distributed by the end of the calendar year that contains the fifth anniversary of the Participant's death.
 - (c) If a spousal Beneficiary dies after the Participant but before the full Account value is withdrawn, any remaining Account value will be paid to the spousal Beneficiary's designee(s) in a lump sum payment(s).
 - (d) If a non-spousal Beneficiary dies after the Participant but before the full Account value is withdrawn, any remaining Account value will be paid to the non-spousal Beneficiary's estate in a lump sum payment.
 - (e) Whenever distribution is made to a minor or person under legal disability, such distribution shall be made only pursuant to the order of the court having jurisdiction over the distributee, and in such case all costs, including court costs and attorneys' fees incurred by the Plan in securing the order of the court, shall be paid from the amounts available for distribution.
 - (f) The Beneficiary may elect whether withdrawals should be paid from the Participant's Pre-Tax Deferrals Account, Roth Contributions Account, or rollover account.

(g) Required minimum distribution date shall have the meaning prescribed to required beginning date under Code section 401(a)(9).

- 4.04 **Participant Required to Elect a Withdrawal Date and Option.** If a Participant does not elect a Withdrawal Date in the manner provided for by Section 4.02, withdrawals to the Participant shall begin by the later of December 31 of the year the participant attains age 70½ (or such other age as required under IRC section 401(a)(9)) or, if the Participant has not had a Severance from Employment as of such date, then no later than December 31 of the year in which the Participant has a Severance from Employment. The withdrawals shall be for a fixed time period for the maximum number of years allowed by the IRC required minimum distribution tables.
- 4.05 **Beneficiary Required to Elect a Withdrawal Date and Option.** If a spousal Beneficiary of a Participant, who dies before the required minimum distribution date, does not elect a Withdrawal Date, withdrawals to the spousal Beneficiary shall begin by December 31 of the year in which the Participant would have attained age 70½ (or such other age as required under IRC section 401(a)(9)). If a non-spousal Beneficiary does not elect a Withdrawal Date, withdrawals to the non-spousal Beneficiary, shall begin no later than December 31 of the year following the participant's death. Withdrawals shall be for a fixed time period for the maximum number of years allowed by the IRC required minimum distribution tables.
- 4.06 **Unforeseeable Emergency Withdrawals.** A Participant may request an Unforeseeable Emergency withdrawal from his or her Account. The Participant may specify the Account from which the Participant seeks to take an Unforeseeable Emergency withdrawal; if no Account is specified, the Unforeseeable Emergency withdrawal shall be from the Participant's Pre-Tax Deferrals Account, until it is exhausted. The Participant shall submit a request in writing on the approved form to the Plan Administrator's staff, who will review the request. If the request is denied by the staff, a request for review of the staff determination may be made in writing. If the review of the staff determination fails to confirm a claim of Unforeseeable Emergency, a written appeal may be made to the Board. The Board shall review each appeal and notify the appellant if a hearing will be held. The decision regarding what constitutes an Unforeseeable Emergency shall rest with the Board, is final, and shall not be subject to further appeal. The Executive Director of the Board shall notify the appellant in writing of the Board's decision. If at any time a request of an Unforeseeable Emergency withdrawal is approved, the Plan Administrator may thereupon distribute so much of the Account as is necessary to provide the amount approved to meet the Unforeseeable Emergency, as determined by the Plan Administrator.
- 4.07 **Acceleration.** If upon a Participant's Severance from Employment, the Board's receipt of the last Deferral, and the Participant's Account value is less than \$1,000, the Plan Administrator may accelerate withdrawals otherwise due in the future and pay to such Participant (or Beneficiary, if the Participant has died) the full Account value in a lump sum unless the Participant (or Beneficiary) timely elects to rollover the Account.
- 4.08 **Small Balance Distribution.** Upon proper written request, a Participant may elect to receive a small balance distribution, payable in a lump sum, if all of the following conditions are met (i) the Participant's Account value is \$5,000 or less, (ii) the full value of the Account is to be distributed, (iii) the Participant has not deferred into the Plan for a period of two years prior to distribution, (iv) the Participant agrees not to recommence Deferrals to the Plan for a one-year period after the distribution, and (v) there has been no prior distribution under this provision.
- 4.09 **Withdrawal Options.** The following Withdrawal Options are available under the Plan. Definitions of each are provided on the Withdrawal Election form. Withdrawals will be pro-rated among all Investment Options held unless a single investment is chosen for the withdrawal.
- Option: 1. Fixed Annual Percent
 - 2. Fixed Dollar Amount
 - 3. Fixed Time Period
 - 4. Partial Lump Sum
 - 5. Lump Sum Payment
- 4.10 **Withdrawal While on Active Duty.** Pursuant to the Heart Act, the Plan will permit distributions to individuals in the uniformed services or qualified reservists who are deemed to have had a Severance from Employment while on active military duty. If the Participant makes such request, then he or she agrees that any Deferrals will be suspended for six (6) months beginning on the date of the distribution

and Deferral elections in effect before the suspension period shall resume, unless, prior to such resumption, the Participant elects to change the rate of, or suspend such contributions in accordance with Section 2.06.

V. Beneficiaries

- 5.01 **Election of Beneficiaries.** A Participant may elect a Beneficiary for any benefits that the Participant is entitled to receive under the Plan and that are unpaid at the time of death, on a form filed with and accepted by the Plan Administrator. If a Participant dies without having a proper Beneficiary Form completed and on file, the amount payable on or after the Participant's death shall be paid to the fiduciary of the Participant's probate estate; provided, however, that if the Plan Administrator does not receive notice that a fiduciary has been appointed and qualified after the death of the Participant, payment shall be made to those persons making claims to receive the Participant's property consistent with the intestacy laws of Ohio. If a Beneficiary dies while receiving withdrawals from a Participant's Account, any remaining Account value that the Beneficiary is entitled to receive under the Plan and that are unpaid at the time of death shall be paid in a lump sum amount to the fiduciary of the Beneficiary's probate estate; provided, however, that if the Plan Administrator does not receive notice that a fiduciary has been appointed and qualified after the death of the Beneficiary, payment shall be made to those persons making claims to receive the Beneficiary's property consistent with the intestacy laws of Ohio. After the death of the Participant, a spousal Beneficiary will have all rights given to a Participant within Section 5.01.
- 5.02 **Beneficiary Form.** A Participant or spousal Beneficiary may elect or change a Beneficiary at any time by filing with the Plan Administrator a signed and dated Beneficiary Form. All Beneficiary elections shall be on forms provided by the Plan Administrator and shall be effective on the date filed with and accepted by the Plan Administrator.
- 5.03 **Election of Trust as Beneficiary.** The Plan will be fully discharged of liability for any action taken by the trustee and for all amounts paid to, or at the direction of, the trustee and will have no obligation as to the use of the amounts. In all dealings with the trust, the Plan will be fully protected against the claims of every other person. The Plan will not be charged with notice of a change of trust as Beneficiary unless written evidence of the change is made on a signed and dated Beneficiary Form provided by the Plan Administrator and shall be effective on the date filed with and accepted by the Plan Administrator.

VI. Pre-1979 Accounts

- 6.01 **Pre-1979 Accounts.** Any amounts held by the Employer as a result of Deferrals made by a Participant prior to January 1, 1979 shall be held under this Plan from and after the latest of (a) the Effective Date; (b) the date on which the Participant elects to have this Plan apply to such amount; or (c) the date on which such Participant exercises any right or power available under this Plan but not under the Plan agreement pursuant to which such Deferral was made. All such persons who were Participants in any prior plan, who exercise any such right or privilege and who have not yet received a distribution of the amounts to which they are entitled under such prior plan shall be deemed to be Participants under this Plan for all purposes.

VII. Administration of the Plan

- 7.01 **Amendment or Termination.**
- (a) The Board may at any time alter, amend, or terminate this Plan with or without the consent of any Employer, Participant, or Beneficiary. No Plan amendment shall divest any Participant of any portion of the balance then held in an Account subject to the provisions of Section 3.01.
 - (b) If the Plan is curtailed or terminated, or the acceptance of additional deferred amounts is suspended permanently, the Employer shall continue to be responsible for the supervision and payment of benefits in accordance with Article IV hereof.
- 7.02 **Distribution on Taxability.** In the event the IRS ever determines that the Plan has been administered in a manner inconsistent with IRC Section 457, the Plan Administrator shall correct such inconsistency in accordance with rules applicable to IRC Section 457(b) plans. In the event the Plan is ruled as an ineligible plan, the deferred amounts shall be distributed to a Participant upon written request.

- 7.03 **Questions of Fact.** The Plan Administrator is authorized to decide or to resolve any questions of fact regarding an Account necessary to decide the rights under this Plan. Any person may appeal a final determination of the staff of the Plan or the Plan Administrator by filing a written statement detailing the cause for grievance with the Plan Administrator. The Executive Director of the Board shall report each appeal to the Board. The Plan Administrator shall review each appeal and notify the appellant if a hearing will be held. When approved by the Plan Administrator, the decision of the Plan Administrator shall be final and shall not be subject to further appeal. The Executive Director of the Board shall notify the appellant in writing of the Plan Administrator's decision. This Section is not applicable to determinations made pursuant to Section 4.06 regarding claims of unforeseeable emergency withdrawals.
- 7.04 **Construction of Plan.** The Plan Administrator is authorized to construe the Plan and to resolve by its decision any ambiguity in the Plan; provided, that all such decisions are applied thereafter uniformly to all other Participants until the Plan is subsequently amended or unless the facts and circumstances applicable to another Participant are different. The Plan Administrator has the sole, absolute and discretionary authority to interpret the meaning of Plan provisions and determine all questions arising under the Plan, including questions arising under Section 7.03.
- 7.05 **Suspension of Withdrawals in Event of Dispute.** The Plan Administrator or its agents, if in doubt concerning the correctness of their action in making a withdrawal, may suspend the continuation of any such withdrawals until satisfied as to the correctness of the amount of withdrawal or the payee, or allow the filing in any court of competent jurisdiction of a suit in such form as the Plan Administrator deems appropriate, including an interpleader action, for a legal determination of the amounts to be paid and/or the payee. The Plan Administrator shall comply with the final orders of the court in any such suit, subject to any appellate review, and the Participant and any Beneficiaries consent to be similarly bound thereby.
- 7.06 **Delegation by Employer.** The Employer may delegate its powers, duties, and responsibilities under this Plan to any agent or administrator, including any public or private agency or company. Such agent or administrator shall thereupon, and subject to the terms of any agreement with the Employer, be deemed to be, and have all of the powers, duties, and responsibilities of, the Employer under this Plan for purposes of administering the Plan.
- 7.07 **Review of Employer Actions.** Any decision, determination, or other action, or non-action, of the Employer shall be final and binding on all persons having or claiming any interest under the Plan, and may be reviewed only for arbitrary and capricious abuse of the wide discretion granted to the Employer by the Plan.
- 7.08 **Account Corrections.** Participants and Beneficiaries are responsible for checking the accuracy of their quarterly statements. If an incorrect investment, exchange, or transfer is made, the Participant or Beneficiary must notify the Plan Administrator within 90 days of the closing date of the statement that reported the incorrect transaction. Incorrect investments, exchanges, and transfers will not be adjusted if the request is not received by the Plan Administrator within 90 days of the closing date of the statement.

VIII. Miscellaneous

- 8.01 **Agencies Not Parties.** No person or entity issuing any policy, contract, or other Investment Options used by the Employer or any other employee, contractee, or agent utilized by the Employer shall be deemed to be a party to the Plan, and no such person or entity or any other person having an administrative or investment position relative to this Plan, shall have any responsibility or accountability to any Participant or Beneficiary with regard to the operation of this Plan.
- 8.02 **No Contract of Employment.** This Plan and any Participation Agreement between the Employer and the Participant shall not be construed as a contract of employment, as an amendment to an existing employment contract of the Participant, if in fact one exists, or as affording to the Participant any right to, or representation or guarantee regarding, continued employment.
- 8.03 **Tax Effects.** Neither the Board, the Employer, the Plan Administrator, the State of Ohio, or any agency thereof, nor any firm, person or corporation, represents or guarantees that any particular federal, state or local tax consequences will occur as a result of any Participant's initial or continued participation in this Plan. Each Participant or Beneficiary shall consult with his own advisors regarding the tax consequences of participation in this Plan.

- 8.04 **Governing Law.** The laws of the State of Ohio shall apply in determining the construction and validity of the Plan and all rights and obligations under it.
- 8.05 **Non-Alienation.** Except as otherwise required by law, the rights of any Participant or Beneficiary, including any Compensation deferred or withdrawn under this Plan, shall not be subject to the rights of creditors of the Participant or Beneficiary, and shall be exempt from execution, attachment, garnishment, prior assignment, transfer by operation of law in the event of the bankruptcy or insolvency, or any other judicial relief or order for creditors or other third persons. The Participant or Beneficiary agrees that in the event of the Participant's or Beneficiary's bankruptcy or insolvency, application will be timely made to secure exemption for all funds maintained in the Account. No Participant or Beneficiary shall have any right to commute, sell, assign, encumber, hypothecate, transfer, or otherwise convey the right to receive any withdrawals hereunder, which withdrawals and the right thereto are expressly declared to be non-assignable and nontransferable, and any such attempted assignment or transfer shall not be recognized by the Employer. Except as required by law, the right to exercise any power of any Participant or Beneficiary shall be personal and shall not be exercisable by any trustee in bankruptcy, court of law, or other person or entity seeking to act in the name of or by the right of the Participant or Beneficiary except as follows:
- (a) When a guardian has been appointed by a probate court of competent jurisdiction for a Participant or Beneficiary;
 - (b) When the designee of a Participant or Beneficiary has a lawfully executed and currently valid power of attorney in circumstances where the Participant or Beneficiary is documented to be incapacitated by reason of illness, injury, age, or military service; or
 - (c) When a guardian has been appointed by a probate court of competent jurisdiction for a Beneficiary who has not reached their majority.
- 8.06 **Qualified Domestic Relations Order.** Notwithstanding the provisions of Section 8.05, the Plan Administrator shall comply with the provisions of a domestic relations order which the Plan Administrator determines to constitute a Qualified Domestic Relations Order, as defined in IRC Section 414(p). Nothing contained in this Plan prevents the Plan Administrator from complying with the provision of a Qualified Domestic Relations Order (as defined in IRC Section 414(p)). The Plan Administrator shall establish procedures to determine the status of a judgment, decree, or order as a Qualified Domestic Relations Order and to administer Plan distributions in accordance with Qualified Domestic Relations Orders.
- 8.07 **Distributions under Qualified Domestic Relations Orders.** This Plan specifically permits distribution at any time to an alternate payee under a Qualified Domestic Relations Order, irrespective of whether the Participant has attained his earliest retirement age (as defined in IRC Section 414(p)). A distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if: (1) the order specifies distribution at that time; and (2) the order specifies the form and manner in which the distribution is to occur. Nothing in this Section permits a Participant a right to receive a distribution at a time otherwise not permitted under the Plan nor does it permit the alternate payee to receive a form of payment not permitted under the Plan.
- 8.08 **Entire Agreement; Successors.** This Plan, including the Participation Agreement and any subsequently adopted amendments, shall constitute the entire agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant. This Plan and any amendment shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assignees, and on all designated Beneficiaries of the Participant. If any provision of this agreement is found by a court of law to be invalid, the remaining provisions shall survive and continue to be of full force and effect.
- 8.09 **Intent of Plan.** This Plan is intended to be a Plan as described in IRC Section 457(b). This Plan shall be construed in accordance with such intent, and no provision hereof that is inconsistent with IRC Section 457 shall be valid.
- 8.10 **Participant Investment Direction.** The Participant's Account will be charged with any investment loss or other loss arising from investment in the Investment Options and that such loss will reduce the amounts available for withdrawal to the Participant under this Plan. The Participant's choice of Investment Options may have collateral effect, such as limiting the amount, time, and manner of withdrawals.

8.11 **Remedies; Standard of Care.** To the extent permitted by law, the Participant specifically agrees not to seek recovery against the Employer, the Plan Administrator, or any other person for any loss sustained by the Participant as a result of an error, negligence or any other misconduct other than fraud or wrongful taking.

IN WITNESS THEREOF, the undersigned, being an authorized member of the Board, has duly executed this Plan this _____ day of _____, 2020.

**OHIO PUBLIC EMPLOYEES DEFERRED COMPENSATION BOARD
PLAN ADMINISTRATOR**

BY: _____

NAME: _____

TITLE: _____