STATE OF NEBRASKA

DEFERRED COMPENSATION PLAN

Revised October 21, 2013

Constituted pursuant to IRC § 457 and
NEB. REV. STAT. §§ 84-1504 to 84-1506.01

STATE OF NEBRASKA
DEFERRED COMPENSATION PLAN

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CERTIFICATE OF ADOPTION

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER)

I, Phyllis G. Chambers, Director of Nebraska Public Employees Retirement Systems, on behalf of and with the authority of the Public Employees Retirement Board and as Secretary of said Board, hereby certify that the following Restatement of the Plan document for the Deferred Compensation Plan of the State of Nebraska was adopted by the Public Employees Retirement Board at its October 21, 2013, meeting, and represents the most recent restatement of the provisions of the Plan.

In witness whereof, I have signed this certificate at the direction of the Board and as Director as of the 21st day of October, 2013.

Phyllis G. Chambers

Phyllis G. Chambers, Director
Nebraska Public Employees Retirement Systems
Secretary, Public Employees Retirement Board
State of Nebraska

1. Purpose.

The State of Nebraska Deferred Compensation Plan is an eligible deferred compensation plan created and administered pursuant to Internal Revenue Code § 457 and Neb. Rev. Stat. §§ 84-1504, et seq. The primary purpose of this Plan is to attract and hold certain individuals for purposes of employment with the State of Nebraska by permitting them to enter into agreements with the State of Nebraska to defer a portion of their compensation as allowed by IRC § 457.

According to Neb. Rev. Stat. § 84-1504:

(a) The Public Employees Retirement Board, on behalf of the State, may contract with any individual to defer a portion of such individual's compensation pursuant to § 457 of the Internal Revenue Code.

(b) The compensation to be deferred shall not exceed the total compensation to be received by the individual from the employer or exceed the limits established by the Internal Revenue Code for such an eligible § 457(b) plan.

(c) The Plan shall serve in addition to but not be a part of any existing retirement or pension system provided for state or county employees or any other benefit program.

(d) Any compensation deferred under the Plan shall continue to be included as regular compensation for the purpose of computing the retirement, pension, or social security contributions made or benefits earned by any employee.

(e) Any sum so deferred shall not be included in the computation of any federal or state taxes withheld on behalf of any such individual.

(f) The State, the Board, the State Investment Officer, the Nebraska Public Employees Retirement Systems, or the county shall not be responsible for any investment results entered into by the individual in the deferred compensation agreement.

(g) Nothing in this section shall in any way limit, restrict, alter, amend, invalidate, or nullify any deferred compensation plan previously instituted by any instrumentality or agency of the State of Nebraska.

2. Definitions.

For purposes of this Plan, the following words or phrases shall mean:

(a) "Amount(s) deferred" means the total annual deferrals under the Plan in the current and prior years, adjusted for gain or loss. Except as otherwise specifically indicated, amount(s) deferred includes any rollover amount held by the Plan.

(b) "Annual deferral(s)" means, with respect to a taxable year, the amount of compensation deferred under the Plan by salary reduction, which is taken into account as an annual deferral in the taxable year of the participant in which deferred.

(c) "Beneficiary" means a beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant.

(d) "Board" means the Public Employees Retirement Board.

(e) "Catch-up" means a catch-up amount or catch-up limitation for a participant for a taxable year per the annual deferral permitted under § 414(v) or § 457(b)(3) of the Internal Revenue Code to the extent the amount of the annual deferral for the participant for the taxable year is permitted to exceed the plan ceiling applicable under § 457(b)(2), and as permitted pursuant to section 5 of this Plan document.

(f) "Compensation" means the participant's compensation from the State for the taxable year, which also includes certain tax-deferred amounts including:

(i) any elective deferral as defined in § 402(g)(3);

(ii) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of Internal Revenue Code §§ 125, 132(f)(4) or 457; and

(iii) any deferral to a 403(b) that is compensation within the meaning of Internal Revenue Code § 403(b)(3).

(g) "Includible Compensation" means with respect to a specific taxable year, the participant's compensation for services performed for State during that taxable year.

(h) "Normal Retirement" means:

(i) A date or age designated by the participant, but no earlier than age 55 and no later than age 70½,

(ii) Or if the participant continues to work past age 70½, then the age at which the participant separates from service with the State of Nebraska.

(i) "Retirement" means a separation from service with the State that occurs on or after the participant's "Normal Retirement" date.

(j) "Participant" means any employee of the State who fulfills the eligibility and enrollment requirements set forth in section 4 of this Plan document and who is currently deferring compensation or who has previously deferred compensation under the Plan and who has not received a distribution of his or her entire benefit in the Plan.

(k) "Plan" means the State of Nebraska Deferred Compensation Plan.

(l) "Plan Year" means the twelve-month period beginning on January 1st and ending on December 31st.

(m)"Termination of Services" shall mean a separation from service prior to the participant's "Normal Retirement" date.

(n) "Separation from Service" occurs on the date on which the participant experiences a bona fide dissolution of the employment relationship with the participant's current employer, the date of which dissolution is determined by the employer. The employer shall notify the Board within two weeks after the date such a separation has occurred. Separation from service does not include ceasing employment if the participant enters another employment relationship with the State of Nebraska within 120 calendar days after ceasing employment or if it is determined that a purported separation was not bona fide. If the Board determines that a separation from service has not occurred and a termination benefit has been paid, the Board shall require the participant who has received such benefit to repay the benefit to the Plan.

(o) "State" means the State of Nebraska and any counties that are political subdivisions of the State of Nebraska that participate in the Plan.

3. Administration.

(a) The Plan shall be administered by the Board. The Board shall have full power to adopt policies, make agreements and issue rules and regulations for the administration of the Plan, and to interpret, alter, amend, or revoke any policies, agreements or rules and regulations so adopted.

(b) All amounts deferred pursuant to this Plan are held in trust for the benefit of participants and beneficiaries of the Deferred Compensation Plan, and shall be invested by the

State Investment Officer pursuant to the Nebraska Capital Expansion Act, the Nebraska State Funds Investment Act, and in accordance with each participant's directions made pursuant to section 6 of this Plan document ("Investment Options").

(c) The State Treasurer shall be the custodian of the funds and securities of the Plan and may deposit the funds and securities in any financial institution approved by the Nebraska Investment Council. The State Treasurer shall ensure that all disbursements therefrom shall be paid only upon vouchers duly authorized by the Board. Payment to a participant or beneficiary may be made by the State Treasurer or by the third-party administrator(s) at the direction of the State Treasurer. The State Treasurer shall furnish annually to the retirement board a sworn statement of the amount of the funds in his or her custody belonging to the deferred compensation plan, which statement shall be as of the calendar year ending December 31st of each year.

(d) The Board may delegate its duties of administration to the Director of the Nebraska Public Employees Retirement Systems. The Board may also engage one or more third-party administrator(s) as it deems necessary and prudent for purposes of the administration of the Plan.

(e) If the Board or its designees find that this Plan document is in any way ambiguous, they shall use the provisions of the State Employees Retirement Act for guidance in administering the Plan, if such provisions are consistent with IRC § 457 or the rules and regulations issued thereunder.

(f) One or more third party administrator(s) may perform those duties of administration as assigned by the Board and/or the State Treasurer. Such duties shall include, but are not limited to, receiving monthly deferrals and allocating them to participant's accounts, maintaining the daily valuation of the participant's accounts, and paying out participant accounts to duly-authorized participants and beneficiaries.

(g) All expenses necessary in connection with the administration and operation of the Plan shall be paid from the Deferred Compensation Expense Fund. The fund shall be credited with the proportionate share of the administration expenses from the Plan assets and income as directed by the Board for the proper administration of the Plan.

4. Participation in the plan.

(a) Eligibility:

(i) Only the following individuals who provide services as employees of the State of Nebraska or its counties shall be eligible to initiate deferrals to the Plan:

(A) Any State employee, whether employed on a permanent or temporary basis, full-time or part-time;

(B) Any county employee designated as a permanent part-time or full-time employee or elected official whose employer does not offer a deferred compensation plan and who has entered into an agreement pursuant to Neb. Rev. Stat. § 48-1401;

(ii) Excluded from initiating deferrals in the plan are State employees who are employed by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, any community college area board, the Nebraska Technical Community College, or employees of the Coordinating Commission for Postsecondary Education who are eligible for and have elected to become participants of a qualified retirement program approved by the commission which is commensurate with retirement programs at the University of Nebraska.

(iii) On and after July 1, 2010, no employee of the state or any political subdivision of the State shall be authorized to participate in a deferred compensation plan unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(b) Enrollment in the Plan:

(i) Participants may initially enroll in the Plan at any age.

(ii) All participants may initiate deferrals by submitting an application to the Director, of the Nebraska Public Employees Retirement Systems. The Application shall refer to this Plan document, shall incorporate this Plan document by reference, and shall constitute an agreement for deferring compensation for purposes of IRC § 457.

(c) Deferral of Compensation:

(i) Deferrals shall begin the calendar month after an agreement to defer compensation is signed, and such compensation may be deferred in any calendar month only if an agreement providing for such deferral has been entered into before the first day of such month. This rule applies even if a participant is paid on a biweekly rather than monthly basis.

(ii) However, with respect to a new employee, compensation may be deferred for the calendar month during which the participant first becomes an employee if an agreement providing for such deferral is entered into on or before the first day on which the participant becomes an employee. Employees electing to utilize the catch-up funding provision in section 5(b) of this Plan document must notify the Board of such intent in writing.

(iii) At the time of any agreement hereunder, a participant must agree to defer a minimum of twenty-five dollars ($25.00) per month. The State shall reduce the participant's total annual compensation, on a pay period basis, by the amount indicated on the participant's application.

(d) Discontinuing deferrals. A participant may revoke any or all agreements deferring compensation by notifying the Director, of the Nebraska Public Employees Retirement System in writing. Deferrals will cease effective the first pay period after participant has indicated that deferrals should cease. The participant may enter a new agreement to defer compensation at any time.

5. Deferral limits.

(a) Maximum annual deferral – general rule. The maximum annual deferral in the Plan for the taxable year in which the participant can not initiate a catch-up shall be the lesser of:

(i) $11,000 for 2002, $12,000 for 2003, $13,000 for 2004, $14,000 for 2005, $15,000 for 2006 , and after 2006, the limit will be the amount to which it is adjusted pursuant to subsection (f) of this section, or

(ii) 100% of the participant's includible compensation.

(b) Special Section 457 catch up: For any one or more of the participant's last three taxable years ending before the participant attains normal retirement age as defined in section 2(h) of this Plan document, the limitation set forth in subsection (a) of this section shall be the lesser of:

(i) Twice the dollar amount in effect under subsection (a) of this section, or

(ii) The sum of:

(A) the Plan ceiling established under subsection (a) of this section for the taxable year, plus,

(B) the Plan ceiling established under § 457(b) of the Internal Revenue Code any prior taxable year or years, less the amount of annual deferrals under the plan for such prior taxable year or years (disregarding any annual deferrals under the Plan permitted under the age fifty (50) catch-up provided for in subsection (c) of this section.

(C) The normal retirement age that may be designated by a participant for purposes of the last three-years catch-up cannot be later than age 70½.

(iii) Determining underutilized limitations under subsection (b)(ii)(B) of this section:

(A) In determining the includible compensation of a participant under the Plan for purposes of calculating the amount described in subsection (b)(ii)(A) of this section, includible compensation is not reduced by contributions of amounts described in subsection (b)(ii)(B) of this section. In addition, a prior taxable year is taken into account under subsection (b)(ii)(B) of this section only if it is a year beginning after December 31, 1978, in which the participant was eligible to participate in the Plan, and in which compensation deferred (if any) under the plan during the year was subject to a plan ceiling established under § 457 of the Internal Revenue Code.

(B) Special rules concerning application of the coordination limit for years prior to 2002 for purposes of determining the underutilized limitation:

(1) General rule. For purposes of determining the underutilized limitation for years prior to 2002, participants remain subject to the rules in effect prior to the repeal of the coordination limitation under § 457(c)(2). Thus, the applicable basic annual limitation under subsection (a) of this section and the special § 457 catch-up under this subsection (b) for years in effect prior to 2002 are reduced, for purposes of determining a participant's underutilized amount under a plan, by amounts excluded from the participant's income for any prior taxable year by reason of a salary reduction or elective contribution under any other eligible § 457(b) plan, § 401(k) qualified cash or deferred arrangement, § 402(h)(1)(B) simplified employee pension (SARSEP), § 403(b) annuity contract, and § 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in § 501(c)(18) (pre-2002 coordination plans). Similarly, in applying the § 457(b)(2)(B) limitation for includible compensation for years prior to 2002, the limitation is 33 1/3 percent of the participant's compensation includible in gross income.

(2) Coordination limitation applied to participant. For purposes of determining the underutilized limitation for years prior to 2002, the coordination limitation applies to pre-2002 coordination plans of all employers for whom a participant has performed services, not only to those of the eligible employer. Thus, for purposes of determining the amount excluded from a participant's gross income in any prior taxable year under subsection (b)(ii)(B) of this section, the participant's annual deferral under an eligible plan, and salary reduction or elective deferrals under all other pre-2002 coordination plans, must be determined on an aggregate basis. To the extent that the combined deferral for years prior to 2002 exceeded the maximum deferral limitations, the amount is treated as an excess for those prior years.

(C) Special rule when no annual deferrals occur under the eligible plan. A participant who, although eligible, did not defer any compensation under the eligible plan in any given year before 2002 is not subject to the coordinated deferral limit, even though the participant may have deferred compensation under one of the other pre-2002 coordination plans. An individual is treated as not having deferred compensation under an eligible plan for a prior taxable year if all annual deferrals under the plan are distributed in accordance with this section. Thus, to the extent that a participant participated solely in one or more of the other pre-2002 coordination plans

during a prior taxable year (and not the eligible plan), the participant is not subject to the coordinated limitation for that prior taxable year. However, the participant is treated as having deferred amounts in a prior taxable year for purposes of determining the underutilized limitation for that prior taxable year under this subsection (b), but only to the extent that the participant's salary reduction contributions or elective deferrals under all pre-2002 coordination plans have not exceeded the maximum deferral limitations in effect under § 457(b) for that prior taxable year. To the extent the State or a county did not offer an eligible plan to an individual in a prior given year, no underutilized limitation is available to the individual for that prior year, even if the employee subsequently becomes eligible to participate in an eligible plan of the employer.

(D) To utilize the catch-up funding provision as outlined in this subsection (b), the participant must notify the Board of such intent three (3) years or less from the year the participant designates as his or her "Normal Retirement." This provision may be utilized one time only. If a participant continues to work beyond the age at which he or she has designated as his retirement age, he or she can continue in the Plan, but may not again invoke the limits of this subsection (b) and is subject to the limit of subsection (a) of this section.

(c) Age 50 catch-up: For any participant who will attain the age of fifty (50) during a calendar year, the limitation set forth in subsection (a) of this section shall be the greater of:

(i) The plan ceiling established under subsection (a) of this section for the taxable year, plus an amount equal to $1,000 for year 2002, $2,000 for year 2003, $3,000 for year 2004, $4,000 for year 2005, and $5,000 for year 2006 and thereafter, or

(ii) The limit found in subsection (b) for any calendar year in which such limit applies.

(d) A participant may elect to defer accumulated sick pay, accumulated vacation pay, or back pay under the Plan, but only if he/she signs an agreement with the Board to defer such amounts prior to the calendar month in which the participant would otherwise receive such amounts. In order to utilize the Plan for the deferral of sick pay, accumulated vacation pay, or back pay, an employee must have established an account by enrolling in the plan prior to the month of termination. Such deferrals are subject to the limits found in subsections (a) through (c) of this section.

(e) The Board shall ensure that if the Plan has more than one administrative service provider, that the limits, as set forth in this section are not violated when aggregating amounts deferred to the several administrative service providers.

(f) Beginning in 2006 or thereafter, the limits for amounts deferred under a § 457 plan may be adjusted by the United States Secretary of the Treasury from time to time to reflect increases in the cost of living, such adjustments being rounded to the next lowest $500 increment by the Secretary. The Director may amend the limitation on deferrals found in this Plan document by issuing a notification to all participants that the deferral limitations will be increased in accordance with the Secretary's adjustments.

(g) For contributions made to the Plan in excess of the limits of IRC §§457(b)(2) and (3) and 414(v), those would be taxable in the year of the contribution, and they must be returned to the employee with allocable net income, as soon as administratively practicable after the plan determines that the amount is an excess deferral. Interest will not be paid on returned excess contributions.

6. <u>Investment options.</u>

(a) Each participant in the Plan shall be allowed to allocate the amounts deferred to various investment options in increments of one whole percent (1%) in any proportion, including full allocation to any one option. Such investment options shall include, but not be limited to, the following:

(i) A stable return account which shall be invested by or under the direction of the State Investment Officer in one or more guaranteed investment contracts;

(ii) An equities account which shall be invested by or under the direction of the State Investment Officer in equities;

(iii) A balanced account which shall be invested by or under the direction of the State Investment Officer in equities and fixed income instruments;

(iv)An index fund account which shall be invested by or under the direction of the State Investment Officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's 500 Index;

(v) A fixed income account which shall be invested by or under the direction of the State Investment Officer in fixed income instruments;

(vi) A money market account which shall be invested by or under the direction of the State Investment Officer in short-term fixed income securities;

(vii) An aggressive growth fund which shall be invested by or under the direction of the State Investment Officer in the stocks of relatively small U.S. companies;

(viii) An international stock fund which shall be invested by or under the direction of the State Investment Officer in the stocks of foreign companies;

(ix) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(x) An age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches; and,

(xi) Other funds, as designated from time to time by the Board, and offered to participants in conjunction with those offered to participants of the State Employees Retirement System of the State of Nebraska.

(b) The participant may change the percentage of amounts deferred allocated to the various investment options via telephone call to the Board's administrative service provider's voice response unit, via written request on forms prescribed by the Nebraska Public Employees Retirement Systems, or via the administrative service provider's Internet-based technology.

(c) Change requests received on a business day shall be processed within three (3) business days of receipt. The Board and the administrative service provider(s) reserve the right to extend these deadlines if, in reasonable good faith or for reasons beyond the control of the Board and/or administrative service provider, the change requests can not be processed in accordance

with such deadlines: all extensions of the deadlines in this subsection are subject to the limitation on liability found in Neb. Rev. Stat. § 84-1513.

(d) Except as provided in subsections (e)(i) and (e)(ii) of this section, participants may transfer any portion of their deferred compensation among the investment options available under the plan via telephone call to the Board's administrative service provider's voice response unit, via written request on forms prescribed by the Nebraska Public Employees Retirement Systems, or via the administrative service provider's Internet-based technology.

(e) Transfer requests received on a business day shall be processed within three (3) business days of receipt. The Board and the administrative service provider(s) reserve the right to extend these deadlines if, in reasonable good faith or for reasons beyond the control of the Board and/or administrative service provider, the transfer requests can not be processed in accordance with such deadlines: all extensions of the deadlines in this subsection are subject to the limitation on liability found in Neb. Rev. Stat. § 84-1513:

(i) Funds invested in the stable return account shall be subject to restrictions on transfers depending upon the availability of liquid funds in such account. The Public Employees Retirement Board shall establish a percentage available for transfer each calendar quarter based upon information, advice and recommendations provided by the state investment officer. The percentage established by the Board shall be an amount which will permit the greatest amount of flexibility for all participants of the plan whose contributions were invested in the stable return account to transfer funds out of the stable return account. Such percentage shall be limited as necessary to prevent participants from incurring any surrender charges or other penalties for early termination of the guaranteed investment contracts into which such funds were invested.

(ii) Participants shall not make direct transfers from the stable return account to the money market account or any comparable investment option established by the Board. Participants wishing to move their funds between these accounts shall first pass them through one of the non-competing equity investment account options, i.e. the equities account, the balanced account, the index fund account, or any other comparable equity investment option established by the Board. The transferred funds must remain in a non-competing equity investment account for a minimum of three months.

(f) If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subsection (a)(i) of this section.

7. <u>Elective withdrawals and payment options.</u>

(a) Amounts deferred under the Plan shall be paid or made available to a participant or the participant's beneficiary only after the participant has experienced one of these scenarios:

(i) If a participant has experienced a separation from service in the following contexts:

(A) Termination of the participant's employment prior to age fifty-five (55), or

(B) Retirement of participant after age fifty-five (55);

(ii) If the participant incurs an unforeseeable emergency, as described in section 9 of this document, but only under the terms set forth in section 9 of this Plan document;

(iii) If it is determined that the conditions for a "de minimus" withdrawal exist as described in section 10 of this Plan document; or

(iv) If the participant dies and a death benefit is paid as described in section 8 of this Plan document;

(v) If the participant has attained the age of 70 ½ years.

(b) Upon separation from service, the participant may elect one of the following options with respect to his or her amounts deferred:

(i) The participant may elect to leave the amounts deferred invested with the Plan, except that the Plan shall begin lifetime distributions to a participant no later than April 1st of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires, as required by IRC § 401(a)(9) except that no distribution is required to be made for the plan year commencing January 1, 2009 through December 31, 2009;

(ii) The participant may elect to have money paid to him or her at the frequency and dollar amounts selected by the participant, with payment being made on a monthly, quarterly, semiannually or annual basis and with a minimum withdrawal of $100.00;

(iii) The participant may elect to rollover or transfer all or a portion of his or her amounts deferred pursuant to section 16 of this document;

(iv) The participant may purchase a monthly annuity benefit through the Nebraska Public Employees Retirement Systems with the money in his or her account; or,

(v) The participant may elect a combination of any of the above listed options.

8. <u>Death benefits under the plan.</u>

(a) A participant may designate one or more beneficiaries and may name contingent beneficiaries to whom the benefits will be payable if the designated beneficiary predeceases the participant. The participant will also have the right to change his designation of beneficiaries. Payment to beneficiaries must comply with IRC §§ 457 and 401(a)(9):

(i) In the event of death of a participant prior to the commencement of benefits as called for under the Plan, the designated beneficiary shall have the right to elect that payments to such beneficiary shall be in accordance with one of the available options provided under the Plan and in accordance with IRC § 457.

(A) If such an election is made within 120 days of the later of the participant's date of death or the appointment of an executor or administrator, the participant's designated beneficiary or beneficiaries may utilize any of the options outlined in section 7(b) of this Plan document, subject to the required minimum distribution rules set forth in IRC §§ 401(a)(9) and 457(d) and any regulations promulgated thereunder.

(B) If the designated beneficiary or beneficiaries fail to make an election within the time period specified in subsection (a)(i)(A) of this section, payment shall be made to the participant's designated beneficiary or beneficiaries in a lump sum.

(C) In the event that a participant's beneficiary dies before all monthly benefit payments become payable to such beneficiary, then the Board will pay the commuted value of such monthly benefits to the estate of the beneficiary.

(ii) In the event of a participant's death without a designated beneficiary, or if the designated beneficiary and contingent beneficiary, if any, have predeceased the participant, payment will be made to the participant's estate in a lump sum.

(iii) If a participant dies while benefits are being paid under any option available under the Plan, any remaining benefits will be paid to the participant's designated beneficiary or the participant's estate, as the case may be and in accordance with IRC §§ 457 and 401(a)(9).

(b) The Board and the participant or beneficiary shall execute an agreement in writing confirming the distribution option chosen, and assuring that payments of amounts deferred shall

commence not later than the required beginning date as provided in IRC § 401(a)(9), and shall comply with the minimum distribution rules set forth in IRC §§ 401(a)(9) and 457(d) and any regulations promulgated thereunder.

(c) If the Board or Director has engaged more than one administrative service provider and the participant has deferred compensation with more than one administrative service provider, then payments made by all administrative service providers must be coordinated, so that the total distribution of payments to the participant shall comply with the provisions of IRC § 457. The Board or Director shall ensure that compliance with IRC § 457 is complete and shall enter agreements with all administrative service providers to assure compliance.

(d) Payments of amounts deferred by participants and beneficiaries shall commence not later than the required beginning date as provided in IRC § 401(a)(9), and shall comply with the minimum distribution rules set forth in IRC §§ 401(a)(9) and 457(d) and any regulations promulgated thereunder.

(e) For any participant who dies on or after January 1, 2007, while performing qualified military service as defined in IRC § 414(u), the participant's beneficiary shall be entitled to any additional death benefit that would have been provided by the Plan (other than the accrual of benefit relating to the period of qualified military service) determined as if the participant had returned to employment with the State and then terminated employment on account of death.

(f) A participant's beneficiary, other than the participant's estate, who is to receive a lump sum death benefit from the Plan that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

9. Emergency withdrawals.

(a) A participant may obtain a distribution when faced with an unforeseeable emergency. Such an emergency distribution must satisfy the requirement of subsection (b) of this section.

(b) An unforeseeable emergency means a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse or the participant's or beneficiary's dependent (as defined in § 152(a) of the Internal Revenue Code); 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 or the beneficiary:

(i) Examples of an unforeseeable emergency may include (but are not limited to):

(A) Imminent foreclosure of or eviction from the participant's or beneficiary's primary residence;

(B) The need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication;

(C) The need to repair the principal residence because of significant water damage that is not covered by insurance arising as a result of events beyond the control of the participant; and,

(D) The need to pay for the funeral expenses of a non-dependent adult child; however,

(E) Except in extraordinary circumstances, the purchase of a home, pay credit card debt, and the payment of college tuition are not unforeseeable emergencies under the plan.

(ii) Whether a participant or beneficiary is faced with an unforeseeable emergency permitting a distribution under subsection (b) of this section is to be determined based on the relevant facts and circumstances of each case.

(iii) In all cases, a distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved:

(A) Through reimbursement or compensation from insurance or otherwise; by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or,

(B) By cessation of deferrals under the plan.

(c) Distributions because of an unforeseeable emergency shall be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution) for an unforeseeable emergency resulting in a financial hardship.

(d) Applications for emergency withdrawals shall be made on forms prescribed by the Board and shall be accompanied by sufficient documentation to substantiate the hardship claimed. The decision of the Board concerning unforeseeable emergencies shall be final as to all participants.

(e) Additional amounts deferred to the plan will be restricted for a six month period following a distribution under this section.

10. <u>De minimus withdrawals (voluntary & involuntary).</u>

(a) A participant may apply to the Board to withdraw the total amount payable to the participant under the plan if:

(i) The total amount deferred by the participant under the plan does not exceed the dollar limit of IRC § 401(a)(11)(A), or $5,000, whichever is lesser;

(ii) The participant has not deferred any amounts under the plan during the two year period ending on the date of the distribution from the plan; and

(iii) There has been no prior distribution under the plan to the participant under this subsection (a).

(b) When the Board deems it necessary for plan administration, the Board shall distribute without the participant's consent any amounts payable to the participant under the plan if:

(i) The total amount deferred by the participant under the plan does not exceed $1,000;

(ii) The participant has not deferred any amounts under the plan during the two year period ending on the date of the distribution from the plan; and,

(iii) There has been no prior distribution under the plan to the participant under this subsection (b).

11. <u>Leave of absence.</u>

(a) If a participant is on an approved leave of absence from the State for a period of not more than one year, his or her participation in the plan shall not be discontinued solely on account of such a leave of absence, nor will his or her account be the subject of a non-elective "de minimus" distribution under section 10(b) of this Plan document.

(b) If a participant is on an approved leave of absence and does not return to State employment upon termination of such approved leave of absence, he or she shall experience a termination of service for purposes of the plan, and such termination shall be deemed to begin on the date such leave is terminated and the employee has not returned to employment.

12. Post-Termination Pay.

Compensation paid after termination of employment can be made the subject of elective deferral if, consistent with Treas. Reg. §1.415(c)-2(e)(3)(ii) and (iii), it is regular compensation for services that, absent the severance from service, would have been paid to the former employee if he or she had continued in employment with the employer (the last paycheck, for example), or payment for accrued but unused bona fide sick, vacation, or other leave that the former employee would have been able to use if employment had continued, to the extent such payments would have been included in compensation if paid before severance, and provided that the payment is made within the later of 2 and ½ months after the employee's severance from service date or the end of the calendar year that includes the severance from service date. In order to utilize the Plan for the deferral of sick pay, accumulated vacation pay, or other leave, an employee must have established an account by enrolling in the plan prior to the month of termination.

13. Amendment or termination of the Plan.

(a) The Board may at any time terminate this Plan with respect to the entire enrollment. Upon such termination, the participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination. If the Plan is terminated, all amounts deferred under the Plan shall be distributed to all plan participants and beneficiaries as soon as administratively practicable after termination of the Plan.

(b) The Board may amend the provisions of the Plan at any time, provided however, that no amendment shall affect the rights of participants or their beneficiaries to the receipt of a payment of benefits or to all other amounts deferred at the time of the amendment.

14. Non-assignability clause.

(a) All compensation deferred under the plan, all property and rights purchased with the deferred compensation, and all investment income attributable to the deferred compensation, property, or rights shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable, except to the extent provided in Neb. Rev. Stat. § 84-1505.

(b) Neither the participant, nor his beneficiary nor any other designee, shall have any right to commute, sell, assign, transfer, or otherwise convey the rights to receive any payments hereunder. The payments and right thereto are expressly declared to be nonassignable and nontransferable; and in the event of any attempted assignment or transfer, the State and the Board shall have no further liability to any person or entity based on such a purported assignment or transfer.

15. Right of the participant to receive payments.

The participant shall have at all times a nonforfeitable right to receive the payments pursuant to the distribution provisions of this Plan, and at no time shall the participant or the State work a voluntary forfeiture of such right.

16. Financial responsibility of the state.

The State shall not be responsible for any loss due to the investment or failure of investment of funds and assets in said deferred compensation account, nor shall the State be required to replace any loss whatsoever which may result from said investments.

17. Transfers between plans, transfers to purchase service credit, and rollovers.

(a) Transfer by plan-to-plan transfers of Plan assets to another Nebraska § 457 Plan. A participant who has experienced a separation of employment from the State may transfer amounts he or she deferred in this Plan to another eligible § 457 governmental plan, if the conditions of this section are met:

(i) The receiving plan must provide for the receipt of transfers;

(ii) The participant whose amounts deferred are being transferred from this Plan will have an amount deferred in the receiving plan immediately after the transfer at least equal to the amount deferred with respect to that participant in this Plan immediately before the transfer; and,

(iii) The participant whose amounts deferred are being transferred has had a severance from employment with State and is performing services for the entity maintaining the receiving plan.

(iv)However, subsection (a)(iii) of this section is not required to be satisfied if:

(A) All of the assets held by the Plan are transferred to the receiving plan;

(B) The transfer is to another eligible governmental plan maintained by an eligible employer that is a State entity within the State of Nebraska; and

(C) The participant whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless he or she is performing services for the entity maintaining the receiving plan.

(b) Acceptance of deferred amounts via a plan-to-plan transfers from another Nebraska § 457 Plan. If the transferring plan is another eligible Nebraska governmental § 457 Plan, a participant in the Plan may transfer amounts he or she deferred in that plan to this Plan, if the conditions of this section are met:

(i) The transferring plan must provide for such a transfer out of the plan;

(ii) The participant whose amounts deferred are being transferred to this Plan will have an amount deferred in this Plan immediately after the transfer at least equal to the amount deferred with respect to that participant in the transferring plan immediately before the transfer; and,

(iii) The participant whose amounts deferred are being transferred has had a severance of employment with the entity that maintains the transferring plan and is performing services for the State of Nebraska.

(iv) However, subsection (b)(iii) of this section is not required to be satisfied if:

(A) All of the assets held by the transferring plan are transferred to this Plan;

(B) The transfer is from another eligible governmental plan, including a deferred compensation plan authorized in Neb. Rev. Stat. § 84-1504 or existing prior to this Plan and described in Neb. Rev. Stat. §84-1504(7), maintained by an eligible employer that is a state entity within the State of Nebraska; and,

(C) The participant whose deferred amounts are being transferred is not eligible for additional annual deferrals in this Plan unless he or she is performing services for the State of Nebraska.

(v) For a transfer from a deferred compensation plan existing prior to this Plan and described in Neb. Rev. Stat. §84-1504(7), a participant may include a former employee of the State. If at the time of transfer, the participant does not have an existing deferred compensation account then a new deferred compensation account will be created for the receipt of the funds by the Plan.

(c) Permissive Past Service Credit Purchase via Plan-to-Plan Transfer. A participant may transfer amounts he or she deferred to a defined benefit governmental plan (as defined in IRC § 414(d)) located in Nebraska, and the amount shall not be includible in gross income by reason of the transfer, if the conditions in this subsection are met. A transfer under this subsection (c) is not a distribution for purposes of this Plan or IRC § 457 and does not require a severance from employment to be completed. A transfer may be made under this subsection (c) only if the transfer is either:

(i) For the purchase of permissive past service credit (as defined in IRC § 415(n)(3)(A)) under the receiving defined benefit governmental plan; or,

(ii) A repayment to which § 415 does not apply by reason of IRC § 415(k)(3).

(d) Rollovers from another eligible retirement plan. A participant may roll into the Plan contributions that are eligible rollover distributions within the meaning of IRC § 402(c)(4) from another eligible retirement plan, as defined in subsection (d)(i) of this section, if the conditions in subsection (d)(ii) of this section are met:

(i) For purposes of this subsection, an "eligible retirement plan" means:

(A) An IRC § 401(a) qualified retirement plan which is exempt from tax under IRC § 501(a);

(B) An IRC § 403(a) annuity plan;

(C) An IRC § 403(b) annuity contract;

(D) An IRC § 408(a) individual retirement account containing only monies from another qualified retirement plan; and,

(E) An IRC § 408(b) individual retirement annuity, other than an endowment contract.

(ii) Any amounts that constitute eligible rollover distributions that are rolled into this plan from another eligible retirement plan, as listed in subsection (d)(i) of this section shall be accounted for separately from the amounts deferred under the plan or transferred into the plan pursuant to subsection (b) of this section:

(A) The eligible rollover amounts will be segregated for accounting purposes and will remain distinct and traceable within the Plan;

(B) For recordkeeping purposes, the earnings and losses on the participant's eligible rollover amounts will be accounted for separately; and

(C) Disbursements and payments made to the rollover account shall be separate from disbursements from payments made to other accounts held under the Plan.

(iii) Any amounts contributed to the Plan as eligible rollover distributions under this subsection shall not be taken into account for purposes of the annual limit on annual deferrals by a participant found in section 5 of this Plan document, but are otherwise treated in the same manner as amounts deferred under § 457 for other purposes of the Plan, however such amounts continue to be subject to a ten percent (10%) federal tax penalty if distributed prior to normal retirement age under the Plan.

(e) Rollovers to another eligible retirement plan: A participant, the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in IRC § 414(p)), or the beneficiary of a Participant, who is entitled to an eligible rollover distribution under sections 7 and 8 of this Plan document, may elect (at the time and in the manner prescribed by the Board) to have all or any portion of the distribution paid directly to another eligible retirement plan specified by the participant in a direct rollover:

(i) For purposes of this subsection, an "eligible retirement plan" means an individual retirement account described in IRC § 408(a), an individual retirement annuity described in IRC § 408(b), a Roth individual retirement account described in IRC § 408A, 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.

(ii) For purposes of this subsection, an "eligible rollover distribution" means any distribution of all or any portion of a participant's account balance, except that an eligible rollover distribution does not include (a) any distribution made under section 9 of this Plan document as a result of an unforeseeable emergency, or (b) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under IRC § 401(a)(9).

(iii)An eligible rollover distribution on behalf of a designated beneficiary of the participant who is not a spouse or former spouse of the participant may be transferred to an individual retirement account or annuity described in IRC §§ 408(a) or 408(b) that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity as described in IRC § 408(d)(3)(c).

(f) In order to take advantage of any of the transfer and rollover options found in subsections (a) through (e) of this section, a participant must:

(i) Notifying the Board in writing of the intended transfer or rollover, and,

(ii) Complete the enrollment or other paperwork necessary to affect the transfer or rollover at both the transferring and receiving plans.

18. <u>Uniformed Services Employment and Reemployment Rights Act (USERRA).</u>

(a) To the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law No. 103-353), codified at 38 U.S.C. §§ 4301 et seq., and IRC § 414(u), when a participant is reemployed with the State 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 uniformed services) in the total amount that would have been permitted under section 5 of this Plan document if the participant had been steadily employed in the position previously held with the State. No such payment shall exceed the amount the reemployed person would have been permitted to contribute had the person remained continuously employed by the State throughout his/her service in the uniformed services.

(b) Consistent with IRC § 414(u)(2)(A)(i), any such payment to the plan may be made during the period beginning with the date of reemployment and whose duration is the lesser of five years or three times the period of the reemployed person's service in the uniformed services.

(c) This section shall apply to reemployments on or after December 12, 1994.

19. Assets held in trust.

All amounts of compensation deferred under 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 and their beneficiaries by the State of Nebraska until such time as payments shall be paid under the terms of the deferred compensation plan. See Neb. Rev. Stat. § 84-1505 and IRC § 457(g).

20. Effective date.

This restatement of the State of Nebraska Deferred Compensation Plan shall become effective on October 21, 2013.

Revised and adopted by the Board at its October 21, 2013 Board meeting. This version of the Nebraska Deferred Compensation Plan replaces the version last revised and adopted on September 24, 2012.