

STATE OF NEBRASKA
DEFERRED COMPENSATION PLAN
Revised May 18, 2020

Constituted pursuant to Internal Revenue Code § 457 and
Neb. Rev. Stat. §§ 84-1504, et seq.

**STATE OF NEBRASKA
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CERTIFICATE OF ADOPTION

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER)

I, Randy Gerke, Director of the 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 May 18, 2020, 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 __19__ day of May, 2020.



Randy Gerke,
Director, Nebraska Public Employees Retirement Systems
Secretary, Nebraska Public Employees Retirement Board
State of Nebraska

1. Purpose.

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

2. Definition of Terms.

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

2.1 **“Administrator”**: The Public Employees Retirement Board or the Nebraska Public Employees Retirement Systems acting on the Public Employee Retirement Board’s behalf.

2.2 **“Account Balance”**: The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant’s Annual Deferrals, the earnings or loss of the fund (net of fund expenses) allocable to the Participant, any transfers for the Participant’s benefit, and any distribution made to the Participant or a Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant’s death, then a separate Account Balance will be maintained for each Beneficiary. The Account Balance includes any account established under Section 8 for rollover contributions and plan-to-plan transfers made for a Participant, and the account established for a Beneficiary after a Participant’s death.

2.3 **“Annual Deferral”**: The amount of Compensation deferred in any year by salary reduction.

2.4 **“Beneficiary”**: The designated person, or, if none, the Participant’s estate, who is entitled to receive benefits under the Plan after the death of a Participant.

2.5 **“Board”**: The Public Employees Retirement Board.

2.6 **“Code”**: The Internal Revenue Code. All citations to sections of the Code are to such sections as they may from time to time be renumbered.

2.7 **“Compensation”**: All cash compensation for services to the Employer, including salary, wages, and overtime pay, that is includible in the Employee’s gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee’s gross income for the calendar year but for a compensation reduction election under Code §§ 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Section 4).

2.8 **“Employee”**: Each natural person who is a United States citizen or 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, and is employed by the Employer as follows:

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

2.8.2 Any person under contract providing services to the state who is not employed by the University of Nebraska or any of the state colleges or community colleges and who has entered into a contract with the state to have compensation deferred prior to August 28, 1999; and

2.8.3 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 agreement pursuant to section 48-1401.

2.9 **“Employer”**: The State of Nebraska and any counties that are political subdivisions of the State of Nebraska that participate in the Plan.

2.10 **“Includible Compensation”**: An Employee’s actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under Code § 401(a)(17)) and increased (up to the dollar maximum) by any compensation reduction election under Code §§ 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer Compensation under Section 4).

2.11 **“NPERS”**: The Nebraska Public Employees Retirement Systems.

2.12 **“Normal Retirement Age”**:

2.12.1 A date or age designated by the Participant, but no earlier than age fifty-five (55) and no later than the required beginning date under Code § 401(a)(9) and (457(d)), or

2.12.2 If the Participant continues to work past the required beginning date under Code § 401(a)(9) and (457(d)), then the age at which the Participant separates from service with the State.

2.13 **“Participant”**: An Employee who satisfies the eligibility and enrollment requirements set forth in the Plan and who is currently deferring Compensation, or who has previously deferred Compensation under the Plan, by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan.

2.14 **“Plan”**: The State of Nebraska Deferred Compensation Plan.

2.15 **“Plan Year”**: The twelve-month period beginning on January 1st and ending on December 31st.

2.16 **“Severance from Employment”** or **“Separation from Service”**: The date on which a 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 will notify NPERS within 20 calendar days after the date such separation has occurred. Separation from service does not include ceasing employment if the Participant enters another employment relationship with the State within one hundred twenty (120) calendar days after ceasing employment or if it is determined by the Board 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 will require the Participant who received a termination benefit to repay the benefit to the Plan with any interest that may be required by the Code.

2.17 **“State”**: The State of Nebraska and any counties that are political subdivisions of the State of Nebraska that participate in the Plan.

2.18 **“Termination of Services”**: A Participant’s Separation from Service prior to the Normal Retirement Age.

2.19 **“Valuation Date”**: The last day of the Plan Year.

3. Administration.

3.1 The Plan is administered by the Board pursuant to Neb. Rev. Stat. §§ 84-1503(1)(d) and 84-1504 to 84-1506.01. The Board has full power to adopt, make, issue, amend, or revoke any policies, agreements, and rules and regulations for the administration of the Plan.

3.2 The Board may delegate its duties of administration to the Director of NPERS.

4. Participation in the Plan.

4.1 Eligibility. Each Employee will be eligible to participate in the Plan and defer Compensation immediately upon becoming employed by the Employer.

4.2 Election Required for Participation. An Employee may elect to become a Participant by executing an election to defer a portion of the Employee's Compensation (and have that amount contributed as an Annual Deferral on the Employee's behalf) and filing it with NPERS. This participation election will be made on the forms prescribed by NPERS under which the Employee agrees to be bound by all the terms and conditions of the Plan. NPERS may establish a minimum deferral amount, and may change such minimums from time to time. The participation election will also include designation of investment funds and an option for the Participant to designate Beneficiaries. Any such election will remain in effect until a new election is filed.

4.3 Commencement of Participation. An Employee will become a Participant as soon as administratively practicable following the date NPERS receives the Employee's participation election. Such election will become effective no earlier than the first day of the calendar month following the month in which the election is received by NPERS. This rule applies even if a Participant is paid on a biweekly basis. A new Employee may defer Compensation during the calendar month in which the Participant first becomes an Employee if the Employee completes a participation election and submits it to NPERS on or before the first day on which the Employee performs services for the Employer. At the time of initial election a Participant must agree to defer a minimum of twenty-five dollars (\$25.00) per month. The Participant's total annual compensation will be reduced on a pay period basis by the amount indicated on the Participant's election.

4.4 Information Provided by the Participant. An Employee enrolling in the Plan will provide to NPERS at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for NPERS to administer the Plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code § 457(b).

4.5 Contributions Made Promptly. Annual Deferrals by a Participant will be transferred to the fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals will be treated as contributed within a period that is not longer than is reasonable for the proper administration of the Plan if the contribution is made to the fund within fifteen (15) business days following the end of the month in which the amount would have otherwise been paid to the Participant.

4.6 Amendment of Annual Deferrals Election. Subject to other provisions of the Plan, a Participant may revise the Participant's participation election, including a change of the amount of the Participant's Annual Deferrals, the Participant's investment direction, and Beneficiary designation at any time. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals will take effect as of the first day of the calendar month following NPERS' receipt of the election. A change in the investment direction will take effect as of the date provided by NPERS for all Employees. A change in the Beneficiary designation will take effect when the election is received by NPERS.

4.7 Leave of Absence. Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan will continue to the extent that Compensation continues.

4.7.1 If a Participant is on an approved leave of absence from the State for a period of not more than one year, the Participant's participation in the Plan will not be discontinued solely on account of such a leave of absence, nor will the Participant's account be the subject of a non-elective "de minimus" distribution under Section 7.7 of the Plan.

4.7.2 If a Participant is on an approved leave of absence and does not return to State employment, upon termination of the approved leave of absence the Participant will experience a termination for Plan purposes, and such termination will be deemed to begin on the date the leave of absence is terminated and the Participant has not returned to employment.

4.8 Disability. A disabled Participant may elect Annual Deferrals during any portion of the period of the Participant's disability to the extent that the Participant has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

5. Limitations on Amounts Deferred.

5.1 Basic Annual Limitation. The maximum amount of the Annual Deferral under the Plan for any calendar year will not exceed the lesser of (i) the Applicable Dollar Amount or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under Code § 457(e)(15) and its implementing regulations, notices, and publications, as applicable.

5.2 Age 50 Catch-up Annual Deferral Contributions. A Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals for the year. The maximum age 50 catch-up Annual Deferrals is the amount established under Code § 457(e)(15) and its implementing regulations, notices, and publications.

5.3 Special Section 457 Catch-up Limitation. If a Participant is in one of a Participant's last three (3) calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 5.3 exceeds the amount computed under Sections 5.1 and 5.2, then the Annual Deferral limit under this Section 5 will be the lesser of:

5.3.1 An amount equal to 2 times the Section 5.1 for such year; or

5.3.2 The sum of:

5.3.2.1 An amount equal to (a) the aggregate Section 5.1 limit for the current year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (b) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

5.3.2.2 An amount equal to (a) the aggregate limit referred to in Code § 457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to Sections 5.2 and 5.3), minus (b) the aggregate contributions to Pre-2002 Coordination Plans (as defined in the Code) for such years.

5.3.3 In no event can the amount deferred be more than the Participant's Compensation for the year.

5.3.4 The Participant is responsible for calculating the allowable Annual Deferrals, and to submit the calculation with supporting documentation to NPERS.

5.3.5 A qualifying Participant must enroll in the Special Section 457 Catch-up described in this Section 5.3 prior to January 1, 2018. No Participant may enroll in the Special Section 457 Catch-up described in this Section 5.3 on or after January 1, 2018. Those Participants who timely enroll in the Special Section 457 Catch-up described in this Section 5.3 may continue their participation in a manner consistent with the governing federal and state laws and regulations and this plan document until December 31, 2020. The Special Section 457 Catch-up described in this Section 5.3 will terminate effective January 1, 2021. No Participant may continue to participation in the Special Section 457 Catch-up described in this Section 5.3 after its termination.

5.4 Special Rules. For purposes of this Section 5, the following rules will apply:

5.4.1 Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code § 457(b), then this Plan and all such other plans will be considered as one plan for purposes of applying the foregoing limitations of this Section 5. For this purpose, the Participant and NPERS will take into account any other such eligible plan maintained by the Employer and will also take into account any other such eligible plan for which NPERS receives sufficient information from the Participant concerning the Participant's participation in another plan. The Participant must notify NPERS if the Participant has been, is currently, or becomes a participant in another 457(b) plan.

5.4.2 Pre-Participation Years. In applying Section 5.3, a year will be taken into account only if (a) the Participant was eligible to participate in the Plan during all or a portion of the year and (b) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 5.1 or any other plan ceiling required by Code § 457(b).

5.4.3 Pre-2002 Coordination Years. For purposes of Section 5.3.2.2(b), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code § 457(b) plan, or a salary reduction or elective contribution under any Code § 401(k) qualified cash or deferred arrangement, Code § 402(h)(1)(B) simplified employee pension (SARSEP), Code § 403(b) annuity contract, and Code § 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code § 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 5.3.2.2(b) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code § 457(b)(2) for that year.

5.4.4 Disregard Excess Deferral. For purposes of Sections 5.1, 5.2 and 5.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed as described in Section 5.5. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

5.5 Correction of Excess Deferrals. If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan

under Code § 457(b) for which the Participant provides information that is accepted by NPERS, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), will be distributed to the Participant.

5.6 Protection of Persons Who Serve in a Uniformed Service.

5.6.1 To the extent required by the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA), Public Law No. 103-353, codified at 38 U.S.C. § 4301 et seq., and Code § 414(u), when a Participant is reemployed with the State after uniformed service, the Participant may make deferrals to the Participant's account (if the Participant has not already done so while engaged in uniformed service) in the total amount that would have been permitted under the Plan if the Participant had been steadily employed in the position previously held with the State. No such payment will exceed the amount the reemployed Participant would have been permitted to defer had the Participant remained continuously employed by the State throughout the uniformed service.

5.6.2 Consistent with Code § 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 (5) years or three times the period of uniformed service.

5.6.3 Any terms defined by USERRA that are used within this Section 5.6 will have the same definition as prescribed by USERRA unless the context otherwise clearly dictates.

5.6.4 This section will apply to reemployments on or after December 12, 1994.

6. Investment Options.

6.1 Each Participant may 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. The investment options will be invested by or under the direction of the State Investment Officer, and will include the investment options specified in Neb. Rev. Stat. § 84-1310.01, as amended.

6.2 Except as provided herein, the Participant may change the percentage of Compensation deferred to the various investment options via written request on paper or electronic forms prescribed by NPERS or via the administrative service provider's internet-based technology.

6.2.1 Change requests received on a business day will be processed as soon as administratively practicable. However, the Board and administrative service provider(s) will endeavor to process change requests within three (3) business days of receipt.

6.2.2 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 Board's and/or administrative service provider's control, the change requests cannot be processed in accordance with these deadlines. All extensions of the deadlines in this subsection are subject to the limitation on liability found in Neb. Rev. Stat. § 84-1513.

6.3 Except as provided herein, Participants may transfer any portion of their Account Balance (specific dollar amount or percentage) among the investment options available under the Plan via written request on forms prescribed by NPERS or via the administrative service provider's internet-based technology.

6.3.1 Transfer change requests received on a business day will be processed as soon as administratively practicable. However, the Board and administrative service provider(s) will endeavor to process change requests within three (3) business days of receipt.

6.3.2 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 Board's and/or administrative service provider's control, the transfer change requests cannot be processed in accordance with these deadlines. All extensions of the deadlines in this subsection are subject to the limitation on liability found in Neb. Rev. Stat. § 84-1513.

6.3.3 Funds invested in the stable value return account will be subject to restrictions on transfers depending upon the availability of liquid funds in the account. The Board will establish a percentage available for such transfer each calendar quarter based upon information, advice and recommendations provided by the State Investment Officer. The percentage established by the Board will be an amount which will permit the greatest amount of flexibility for all Plan Participants whose deferrals were invested in the stable return account to transfer funds out of the stable return account. Such percentage will 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.

6.3.4 Participants will not make direct transfers from the stable value 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 will 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 (3) months.

6.4 If a Participant fails to select an option or combination of options, all of the Participant's deferrals will be placed in the default account specified in Neb. Rev. Stat. § 84-1310.01, as applicable.

7. Benefit Distributions.

7.1 Availability of Account Balances. Account Balances will be made available to a Participant or Beneficiary if:

7.1.1 A Participant terminates employment prior to age fifty-five (55) and experiences a Separation from Service;

7.1.2 A Participant retires after age fifty-five (55) and experiences a Separation from Service;

7.1.3 A Participant incurs an unforeseeable emergency as described in Section 7.6, and the terms and conditions outlined in Section 7.6 are satisfied;

7.1.4 A Participant dies and a death benefit is paid pursuant to Section 7.3;

7.1.5 A Participant attains the age of seventy and one-half (70½) while still employed and elects to withdraw funds; or

7.1.6 The conditions for a "de minimus" withdrawal exist pursuant to Section 7.7.

7.2 Participant's Elections for Account Distribution. The Participant may elect to:

7.2.1 Leave the Account Balance invested with the Plan, except that the Participant must begin lifetime distributions no later than the date specified in Section 7.5, or the Plan will send the Participant's funds to Unclaimed Property;

7.2.2 Have the Account Balance paid to the Participant in one lump sum;

7.2.3 Have the Account Balance paid to the Participant 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 one hundred dollars (\$100.00);

7.2.4 Rollover or transfer all or a portion of the Participant's Account Balance pursuant to Sections 7.8 and 8; or

7.2.5 A combination of any of the options listed above.

7.3 Death Benefit Distributions.

7.3.1 A Participant may designate one or more primary Beneficiaries and one or more contingent Beneficiaries to whom benefits will be paid if the primary Beneficiaries predecease the Participant. The Plan will not pay death benefits per stirpes or with rights of representation.

7.3.1.1 In the event a Participant dies prior to the commencement of benefits, the Beneficiary may select a payment option available under the Plan and in accordance with Code § 457.

7.3.1.1.1 If the Beneficiary makes an election within one-hundred twenty (120) days of the later of the Participant's date of death or the appointment of an executor, administrator, or personal representative, and subject to the provisions of Section 7.4, and:

7.3.1.1.1.1 If the Beneficiary is the Participant's surviving spouse, the Beneficiary may utilize any of the options outlined in Section 7.2, subject to Code §§ 401(a)(9) and 457(d), except that the Beneficiary cannot delay deferral for more than ten (10) years; or

7.3.1.1.1.2 If the Beneficiary is not the Participant's surviving spouse or the Participant's estate, the Beneficiary may only elect distribution in the form of a lump sum under Section 7.2.2, a systematic withdrawal under Section 7.2.3, or a rollover under Section 7.2.4., except that the Beneficiary cannot delay deferral for more than five (5) years.

7.3.1.1.2 If the Beneficiary fails to make an election within one-hundred twenty (120) days of the later of the Participant's date of death or the appointment of an executor, administrator, or personal representative, the Beneficiary will receive a lump sum payment of the Account Balance.

7.3.1.1.3 In the event that a Participant's Beneficiary dies before all monthly benefit payments become payable, the Board will pay the remaining commuted value of the monthly benefits to the Beneficiary's estate in a lump sum.

7.3.1.2 In the event of a Participant's death without a designated Beneficiary, or if the designated primary and contingent Beneficiaries predeceased the Participant, the death benefit (defaults as a lump sum) shall be paid to the following in order of priority:

7.3.1.2.1 To the spouse married to the Participant on the Participant's date of death pursuant to sections 7.3.1.1.1.2, 7.3.1.1.2, and/or 7.3.1.1.3, as applicable; or

7.3.1.2.2 To the Participant's estate in a lump sum payment.

7.3.1.3 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, the spouse married to the Participant on the Participant's date of death, or the

Participant's estate, in order of priority, as the case may be, and in accordance with Code §§ 401(a)(9) and 457.

7.3.2 The Board and Participant or Beneficiary will execute an agreement in writing confirming the distribution option chosen, and assuring that payment of the Account Balance complies with Code §§ 401(a)(9) and 457(d).

7.3.3 If the Board 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 complies with Code §§ 401(a)(9) and 457(d). The Board will ensure complete compliance with Code § 457, and will enter agreements with all administrative service providers to assure compliance.

7.3.4 Payment of Account Balances to Participants and Beneficiaries will commence not later than the required beginning date in Code § 401(a)(9), and will comply with the minimum distribution rules in Code §§ 401(a)(9) and 457(d).

7.3.5 For any Participant who dies on or after January 1, 2007, while performing qualified military service as defined in Code § 414(u), the Participant's Beneficiary will 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.

7.4 Account Balances of \$5,000 or Less. Notwithstanding Sections 7.2 and 7.3, if the amount of a Participant's Account Balance is not in excess of \$5,000 (or the dollar limit under Code § 411(a)(11), if greater) on the date that payments commence under Section 7.3 or on the date of the Participant's death, then payment may be made to the Participant (or to the Beneficiary if the Participant is deceased) in a lump sum equal to the Participant's Account Balance as soon as practicable following the Participant's retirement, death, or other Severance from Employment. (See, also, Section 7.7.)

7.5 Latest Distribution Date. In no event will any distribution under this Section 7 begin later than the required beginning date as specified in Code §§ 401(a)(9) and 457(d), and the regulations adopted thereunder, including, but not limited to, the required minimum distribution age of age of seventy and one-half (70½) for Participants who turned age seventy and one-half (70½) prior to January 1, 2020, or the required minimum distribution age of age of seventy-two (72) for Participants who turned age seventy and one-half (70½) on or after January 1, 2020. NPERS will take reasonable steps to locate missing and/or unresponsive Participants, and any required minimum distribution waivers or holidays granted pursuant to federal law, and the regulations adopted thereunder. If NPERS is unable to locate missing and/or unresponsive Participants, NPERS will distribute the Participant's funds in accordance with the Nebraska Uniform Disposition of Unclaimed Property Act, Neb. Rev. Stat. §§ 69-1301 to 69-1332 and Section 9.6.

7.6 Unforeseeable Emergency Distribution.

7.6.1 Distribution. If the Participant has an unforeseeable emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by NPERS to be permitted to be distributed under this Section 7.6.

7.6.2 Unforeseeable Emergency Defined. An unforeseeable emergency is defined as a severe financial hardship of the Participant 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 Code § 152); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. Examples of extraordinary and unforeseeable circumstances include, but are not limited to, imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence, the need to pay for medical expenses, including non-refundable deductibles or the cost of prescription drug medication, the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code § 152); the need to pay for expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the Participant's or Beneficiary's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster. The Board may also consider other scenarios deemed immediate and heavy financial need under Treas. Reg. § 1.401(k)-1(d)(3)(ii)(B) as examples of an unforeseeable emergency except as those scenarios conflict with Treas. Reg. § 1.457-6(c) or Section 7.6. Except as specified in Treas. Reg. § 1.457-6(c)(2)(i), the purchase of a home, the payment of credit card debt, and the payment of college tuition, are not unforeseeable emergencies.

7.6.3 Unforeseeable Emergency Distribution Standard. A distribution on account of an unforeseeable emergency may not be made to the extent that such emergency is or may be relieved 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 by cessation of deferrals under the Plan.

7.6.4 Distribution Necessary To Satisfy Emergency Need. Distributions because of an unforeseeable emergency may not exceed 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).

7.6.5 Application. Applications for emergency withdrawals will be made on forms prescribed by the Board, and will be accompanied by sufficient documentation to substantiate the unforeseeable emergency and financial hardship claimed.

7.6.6 Decision. The Board will determine whether the Participant or Beneficiary is faced with an unforeseeable emergency permitting a distribution under this Section 7.6 based upon all of the relevant facts and circumstances of the case. The Board's decision concerning unforeseeable emergencies will be final as to all Participants and Beneficiaries.

7.7 Mandatory Distributions for Certain Account Balances of \$5,000 or Less ("De Minimus" Accounts).

7.7.1 At the direction of the Board, a Participant's total Account Balance will be paid in a lump sum as soon as practical following the direction if:

7.7.1.1 The total Account Balance does not exceed \$5,000 (or the dollar limit under Code § 411(a)(11), if greater);

7.7.1.2 The Participant has not previously received a distribution of the total amount payable to the Participant under this Section 7.7.1; and

7.7.1.3 No Annual Deferrals have been made by the Participant during the two-year period ending immediately before the date of the distribution.

7.7.2 A participant may apply to the Board to withdraw the total amount payable to the Participant under the Plan if:

7.7.2.1 The total Account Balance does not exceed \$5,000 (or the dollar limit under Code § 411(a)(11), if greater);

7.7.2.2 The Participant has not previously received a distribution of the total amount payable to the Participant under this Section 7.7.2; and

7.7.2.3 No Annual Deferrals have been made by the Participant during the two-year period ending immediately before the date of the distribution.

7.8 Rollover Distributions.

7.8.1 A Participant or the surviving spouse of a Participant who has been named as the Participant's sole primary Beneficiary and who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by NPERS, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Participant, or surviving spouse of a Participant, in a direct rollover.

7.8.2 For purposes of this Section 7.8, 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 installment payment under Section 7.3 for a period of 10 years or more (b) any distribution made under Section 7.6 as a result of a unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code § 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), a qualified trust described in Code § 401(a), an annuity plan described in Code §§ 403(a) or 403(b), or an eligible governmental plan described in Code § 457(b), that accepts the eligible rollover distribution.

7.8.3 NPERS may require such documentation from the other plan as it deems necessary to effectuate the rollover in accordance with Code § 457 of the Income Tax Regulations and to confirm that the other plan is an eligible plan as defined in the relevant Income Tax Regulations.

8. Rollovers to the Plan and Transfers.

8.1 Eligible Rollover Contributions to the Plan.

8.1.1 Except as described in Section 8.1.4 below, a Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. NPERS may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code § 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code § 402(c)(8)(B).

8.1.2 For purposes of Section 8.1.1, an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (a) any installment payment for a period of 10 years or more, (b) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code § 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), a

qualified trust described in Code § 401(a), an annuity plan described in Code §§ 403(a) or 403(b), or an eligible governmental plan described in Code § 457(b), that accepts the eligible rollover distribution.

8.1.3 The Plan will establish and maintain for the Participant a separate accounting for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Code § 457(b). In addition, the Plan will establish and maintain for the Participant a separate accounting for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under Code § 457(b).

8.1.4 Except as provided in federal or state law and regulation, and Section 8.1.4.1 of this document, a Participant who maintains an account balance under the Plan, and who is a member of:

The cash balance benefit of the State Employees Retirement System of the State of Nebraska established pursuant to the State Employees Retirement Act (Neb. Rev. Stat. §§ 84-1301 to 84-1333);

The cash balance benefit of the Retirement System for Nebraska Counties established pursuant to County Employees Retirement Act (Neb. Rev. Stat. §§ 23-2301 to 23-2334); or

The deferred retirement option plan (DROP) of the Nebraska State Patrol Retirement System established pursuant to the Nebraska State Patrol Retirement Act (Neb. Rev. Stat. §§ 81-2014 to 81-2041);

may rollover any portion of said retirement account to the Plan following the Participant's termination of employment with all Employers covered by the Plan after reaching eligibility for distribution from said retirement account.

8.1.4.1 A Participant may not rollover any amount pursuant to Section 8.1.4 that is prohibited from rollover under federal and/or state law and regulation, including, but not limited to:

Required minimum distributions;

Distributions of excess contributions and related earnings; or

A distribution that is one of a series of substantially equal payments.

8.2 Plan-to-Plan Transfers to the Plan. At the direction of the Board, NPERS may permit a Participant who was a participant in another eligible governmental plan under Code § 457(b) to transfer assets to the Plan as provided in this Section 8.2. Such a transfer is permitted only if the other plan provides for the direct transfer of the Participant's interest therein to the Plan. NPERS may require in its sole discretion that the transfer be in cash or other property acceptable to NPERS. NPERS may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code § 457(e)(10) and section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible governmental plan as defined in section 1.457-2(f) of the Income Tax Regulations. The amount so transferred will be credited to the Participant's Account Balance and will be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount will not be considered an Annual Deferral under the Plan in determining the maximum deferral under Section 5.

8.3 Plan-to-Plan Transfers from the Plan.

8.3.1 At the direction of the Board, NPERS may permit a Participant or Beneficiary to elect to have all or any portion of the Participant's or Beneficiary's Account Balance be transferred to another eligible governmental plan within the meaning of Code § 457(b) and section

1.457-2(f) of the Income Tax Regulations. A transfer is permitted under this Section 8.3.1 for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 8.3.1 only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participant or Beneficiary and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

8.3.2 Upon the transfer of assets under this Section 8.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan will be discharged to the extent of the amount so transferred for the Participant or Beneficiary. NPERS may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 8.3 (for example, to confirm that the receiving plan is an eligible governmental plan, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to section 1.457-10(b) of the Income Tax Regulations.

8.4 Permissive Service Credit Transfers.

8.4.1 If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code § 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 8.4.1 may be made before the Participant has had a Severance from Employment.

8.4.2 A transfer may be made under Section 8.4.1 only if the transfer is either for the purchase of permissive service credit (as defined in Code § 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code § 415 does not apply by reason of Code § 415(k)(3).

9. Miscellaneous.

9.1 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, will be held in trust for the exclusive benefit of Participants and their Beneficiaries by the State until such time as payment will be paid under the Plan. See Neb. Rev. Stat. § 84-1505 and Code § 457(g).

9.2 Non-Assignability.

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

9.2.2 Neither the Participant, Beneficiaries, nor any other designee, will 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 non-assignable and nontransferable. In the event of any attempted assignment or transfer, the State and the Board will have no liability to any person or entity based upon such purported assignment or transfer.

9.3 IRS Levy. Notwithstanding Section 9.2, the Board may pay from a Participant's or Beneficiary's Account Balance the amount that the Board finds is lawfully demanded under a levy

issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

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

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

9.6 Procedure When Distributee Cannot Be Located. NPERS will make reasonable attempts to determine the identity and address of a Participant or Beneficiary entitled to benefits under the Plan. For this purpose, reasonable attempts include, but are not limited to:

- (a) first-class mail;
- (b) electronic notification;
- (c) certified mail;
- (d) checking related plan records;
- (e) checking with the designated Plan Beneficiaries;
- (f) using a letter forwarding service;
- (g) Internet search tools;
- (h) commercial locator services;
- (i) credit reporting agencies; and
- (j) other reasonable search methods as determined by the Director.

9.6.1 NPERS is not obligated to take each of the steps listed in this Section 9.6 if one or more of the search methods are unsuccessful in locating a missing Participant. However, NPERS will, at a minimum, send a letter via certified mail to the Participant's last known address listed in NPERS' records.

9.6.2 If NPERS is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the fund will continue to hold the benefits due such person until such time as the Board finds that the assets must be distributed from the Plan and the requirements of the Nebraska Uniform Disposition of Unclaimed Property Act, Neb. Rev. Stat. §§ 69-1301 to 69-1332, are satisfied.

9.7 Post-Termination Pay.

9.7.1 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): (a) it is regular compensation for services that, absent the Separation from Service, would have been paid to the former Employee if the former Employee had continued in employment with the Employer (for example, the last paycheck), or (b) 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 Separation from Service.

9.7.2 Such compensation may be deferred only if and provided that the payment is made within the later of two and one-half (2½) months after the Employee's severance from service date or the end of the calendar year that includes the severance from service date.

9.7.3 In order to utilize the Plan for the deferral of Compensation other than accrued but unused bona fide sick, vacation, or other leave, an Employee must have established an account by enrolling in the Plan prior to the month of termination and entered into an agreement to defer such amounts prior to the month of termination in accordance with Code § 457(b)(4).

9.7.4 In order to utilize the Plan for the deferral of accrued but unused bona fide sick, vacation, or other leave an Employee must have established an account by enrolling in the Plan prior to the month of termination and entered into an agreement to defer such amounts prior to the month of termination in accordance with Code § 457(b)(4).

9.8 Right of Participants to Receive Payments. The Participant will at all times have a non-forfeitable right to receive the payments pursuant to the distribution provisions of this Plan, and at no time will the Participant or the State work a voluntary forfeiture of such right.

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

9.10 Amendment or Termination of the Plan.

9.10.1 The Board may terminate this Plan with respect to the entire enrollment at any time. The Participants 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 will be distributed to the Participants or Beneficiaries as soon as administratively practicable after Plan termination.

9.10.2 The Board may amend the provisions of the Plan at any time, provided, however, that no amendment will affect the rights of Participants or Beneficiaries to the receipt of a payment of benefits or to all other amounts deferred at the time of the amendment.

9.11 Effective Date. This restatement of the State of Nebraska Deferred Compensation Plan will become effective on May 18, 2020.