

**WASHINGTON STATE BOARD FOR COMMUNITY AND  
TECHNICAL COLLEGES**

**403(b) Voluntary Retirement Savings Program**

**Plan Document**

**Effective Date: January 1, 2009**

**Washington State Board for Community and Technical Colleges**

**1300 Quince Street,**

**P.O. Box 42495**

**Olympia, Washington 98504-2495**

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## **1. Establishment of Voluntary Retirement Savings Program**

**1.1 Establishment of Program.** The Washington State Board for Community and Technical Colleges established a tax-deferred savings program as of January 1, 1972, as allowed under State of Washington RCW 28B.10.480. This Plan Document sets forth the provisions of this Program, as in effect on January 1, 2008 and updated effective January 1, 2009. Contributions made as part of this Program, both pre- and post tax, are made under Section 403(b) of the Internal Revenue Code and are invested, at the direction of the Participant, in one or more of the Investment Vehicles available under the Program.

**1.2 Program is not Subject to ERISA.** The Program Sponsor is a governmental entity, not subject to the provisions of ERISA, and, through adoption of this Plan Document, it is not the Program Sponsor's intent to voluntarily subject the Plan to any of the ERISA or Code provision not required of a governmental plan,

## **2. Definitions**

The words and phrases defined in this Article have the following meanings throughout this Plan Document:

**2.1 "Account"** means the separate account established for each Participant with the Fund Sponsor to which Contributions have been made by the Participant. The current value of a Participant's Account with a Fund Sponsor includes all Contributions to the Fund Sponsor, less expense charges, transfers, and benefit distributions, and reflecting credited investment experience.

**2.2 "Beneficiary"** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.

**2.3 "Benefit Administrator"** means the service provider to the Plan that is responsible for maintaining the records of the Participants' Accounts and determining benefits under the Plan, and for performing certain other benefit administration and communications functions, in accordance with such contractual agreements and direction letters as may exist from time to time between such service provider and the Program Administrator or Sponsor. The Benefit Administrator is sometimes referred to as the "Record Keeper" in certain documents. As of the Effective Date of this Plan Document, the Benefit Administrator is Teachers Insurance and Annuity Association of America.

**2.4 "Code"** means the Internal Revenue Code of 1986, as amended.

**2.5 "Contributions"** means contributions by the Participant as described in Sections 4 and 5.

**2.6 "Eligible Employee"** means any Employee of a Participating Employer *except*:

- A. Students whose wages are exempt from FICA,
- B. Non-resident aliens who receive no U.S. – source earned income, or

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- C. Non-permanent employees working less than 20 hours per week who have and are expected to work less than 1000 hours in a year.

**2.7 “Employee”** means any person who is a common law employee of a Participating Employer, but excludes any person who performs services as an independent contractor. The definition of Employee includes any “leased employee” (as defined by Code Section 414(o)) of a Participating Employer.

**2.8 “Fund Sponsor”** for this Program means Teachers Insurance and Annuity Association – College Retirement Equities Fund or TIAA-CREF.

**2.9 “Investment Vehicles”** means the financial instruments issued for the purpose of investing under this Program. The list of available Investment Vehicles may, from time to time, be amended by the State Board.

**2.10 “Participant”** means any Eligible Employee of a Participating Employer who participates in the Program in accordance with Section 3.1.

**2.11 “Participating Employer”** means a community or technical college district or, for State Board employees, the State Board.

**2.12 “Plan Document”** means this instrument, including all amendments thereto.

**2.13 “Program” or “Plan”** means the State Board sponsored 403(b) Voluntary Retirement Savings Program as set forth in this Plan Document.

**2.14 “Program Administrator”** is defined in Section 9.

**2.15 “Program Year”** means January 1 through December 31.

**2.16 “Program Sponsor or Sponsor”** means Washington State Board for Community and Technical Colleges, any successor which shall sponsor this Program, and any predecessor which has sponsored this Program.

**2.17 Roth Elective Deferral.** . A Roth Elective Deferral is an Elective Deferral that is: (a) Designated irrevocably by the Participant at the time of Elective Deferral as a Roth Elective Deferral that is being made in lieu of all or a portion of the pre-tax Elective Deferrals the Participant is otherwise eligible to make; and is (b) Treated by the Institution as being includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made an Elective Deferral election.

**2.18 “Salary Reduction Agreement (SRA)”** is an agreement described in Section 3.1.

**2.19 “State Board”** means the Washington State Board for Community and Technical Colleges, as created in RCW 28B.50.050.

### **3. Eligibility and Participation**

**3.1 Eligibility and Participation.** An Employee's Participating Employer shall determine the eligibility of the Employee for participation in the Program in accordance with Section 2.6. Such determination shall be conclusive and binding upon all persons, as long as the same is made in accordance with the terms of this Plan Document. All Eligible Employees may begin participation on the first of the month following employment or the eligibility determination. To participate in this Program, an Eligible Employee must complete the necessary enrollment form(s), as well as a Salary Reduction Agreement (SRA), and return them to the Participating Employer's benefits office. An SRA is a written agreement between the Employee and the Participating Employer under which the Employee's salary is reduced by an amount equal to the contributions that the employee wishes to have made to the Program. An SRA shall be subject to such rules and restrictions as may be imposed by the Program Administrator.

**3.2 Termination of Participation.** A Participant will continue to participate in the Program until (a) he or she ceases to be an Eligible Employee, (b) the Program is terminated, or (c) his or her contributions under the Program are terminated, whichever occurs first.

### **4. Contributions**

**4.1 Contributions.** Contributions to this Program are in addition to any Contributions which may be made to the State Board Retirement Plan (SBRP), or any State of Washington retirement plan. To make Contributions, an Eligible Employee must enter into a Salary Reduction Agreement with the Participating Employer as described in Section 3.1. Under the SRA, the Eligible Employee's salary is reduced and the amount of the reduction is forwarded to the Fund Sponsor for placement in the Investment Vehicles available under this Program. Contributions made under this Program are not matched by the Employer. However, non-qualified employer Contributions may be made by a Participating Employer on behalf of a Participant.

**4.2 Salary Reduction Minimum.** A Participant shall be permitted to make Contributions under this Program only if the Salary Reduction Agreement provides for annual contributions of at least \$200.

**4.3 Directed Investment of a Participant's Account.** Each Participant shall have the right to direct the investment of all or any portion of his or her Account. Each Participant may, subject to a procedure established and applied in a uniform nondiscriminatory manner, direct the Fund Sponsor, in a form or manner satisfactory to the Fund Sponsor, to invest his or her Participant Account in specific contracts or other Investment Vehicles permitted as investments under the Program. Expenses incurred in connection with a Participant's directed investment of the Participant's Account shall be charged against the balance in such Account.

**4.4 Leave of Absence.** During a leave of absence with pay, Contributions will continue to be made in accordance with the Salary Reduction Agreement. Contributions will continue during a partial leave of absence without pay to the extent that sufficient funds are available to make the contribution specified in the SRA.

**4.5 Limitations on Contributions.** The total Contributions transmitted by the Participating Employer on behalf of a Participant for any year under this Program and all other plans, contracts or arrangements of the Participating Employer will not exceed the limits imposed by Code Sections 402(g) and 415, except as permitted by Code Section 414(v). The limits imposed by Code Sections 402(g), 414(v) and 415 are herein incorporated by reference. If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Program for the purposes of Section 402(g), 414(v) or 415, then the extent to which annual contributions under this Program will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Participating Employer. If the reduction is under this Program, the Participating Employer will advise the affected Participants of any limitations on their annual contributions required by this paragraph.

**4.6 Return of Excess Contributions.** If a Participant has Contributions that exceed the limits in effect under Code Section 402(g) or 415 for the year, he or she may designate the Contributions made during a taxable year to this Program as excess Contributions by notifying the Participating Employer of the amount of the excess on or before March 15 of the year following the year in which the excess Contributions occurred. Notwithstanding any other provision of this Program, such excess Contributions, adjusted for income, gains, losses or expenses attributable to such excess Contributions, will be distributed no later than April 15 of the year following the year in which the excess Contributions occurred. In addition, the Participating Employer may, in its sole discretion, cause any Contribution in excess of the foregoing limitations, adjusted for income, gains, losses or expenses attributable to such excess Contribution, to be distributed to the Participant to the extent permitted by applicable law.

**4.7 Rollover Contributions and Transfers.** A Participant may make a rollover contribution or direct transfer to this Program from another plan described in Section 403(b) of the Code, upon a demonstration satisfactory to the Program Administrator that the amounts are eligible for rollover or direct transfer to this Program (i.e., the same or similar distribution restrictions, agreements to exchange information). The State Board may limit the Investment Vehicles to which such amounts may be contributed or transferred, or the types of rollovers or transfers that will be accepted by the Program. Employee transfers or exchanges from this Program may only occur to 403(b) providers approved by the Program Administrator and in which an Information Sharing Agreement has been signed. An exception to this provision is made for transfers from this Program to a qualified 401(a) plan to purchase permissive service credit or make a repayment to a defined benefit governmental plan.

**4.8 Vesting of Contributions.** Contracts and certificates issued consistent with this Program are the Participant's property and are non-forfeitable, except for Contributions based on a mistake of fact as provided for in Section 10.2.

## **5. Special Terms Applicable to After-Tax (Roth) Elective Deferrals**

**5.1 General Application.** This Section applies to contributions made after January 1, 2009. As of this effective date, this Program will accept after tax or "Roth" Contributions made by Participants. A Participant's Roth Elective Deferrals will be allocated to a separate account maintained for such deferrals as described in section 5.2. Unless specifically stated otherwise, Roth Elective Deferrals will be treated as elective deferrals for all purposes under this Program.

**5.2 Separate Accounting.** Contributions and withdrawals of Roth Elective Deferrals will be credited and debited to the Roth Elective Deferral Account maintained for each Participant. The Plan will maintain a record of the amount of Roth Elective Deferrals in each Participant's account. Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Elective Deferrals Account and the Participant's other Accounts under the Plan. No contributions other than Roth Elective Deferrals and properly attributable earnings will be credited to each Participant's Roth Elective Deferral Account.

**5.3 Direct Rollovers.** Notwithstanding any other Section of this Plan, a direct rollover of a distribution from a Roth Elective Deferral Account under this Program will only be made to another Roth Elective Deferral Account under an applicable retirement plan described in Code §402A(e) or to a Roth IRA described in Code §408A, and only to the extent the rollover is permitted under the rules of Code §402(c). Notwithstanding any other Section of this Plan, this Program will accept a rollover contribution to a Roth Elective Deferral Account only if it is a direct rollover from another Roth Elective Deferral Account under an applicable retirement plan described in Code §402A(e) and only to the extent the rollover is permitted under the rules of Code §402(c).

**5.4 Roth Distributions.** A qualified distribution of designated Roth Elective Deferrals is excludable from gross income. A qualified distribution is one that occurs at least 5 years after the year of the participant's first designated Roth Elective Deferral (counting such first year as part of the 5) and is made after the first of the following occur:

- On or after attainment of age 59 ½
- On account of the participant's disability, or
- On or after the participant's death.

A non-qualified distribution from a designated Roth elective deferral account shall be taxable under Code Section 72, with the after tax designated Roth Elective Deferral constituting investment in the Program.

## 6. Fund Sponsor/Investment Vehicles

**6.1 Fund Sponsor/Investment Vehicles.** Contributions are invested in one or more of the Investment Vehicles available to Participants under this Program through the Fund Sponsor. The Fund Sponsor available to Participants as of the date of this document's effective date is the:

Teachers Insurance and Annuity Association and College Retirement Equities Fund  
(TIAA-CREF):  
730 Third Avenue, New York, NY 10017  
[www.TIAA-CREF.org](http://www.TIAA-CREF.org)

The State Board's current selection of Fund Sponsor is not intended to limit future additions or deletions of Fund Sponsors and Investment Vehicles. In addition, State statute (RCW 28B.10.480) provides authority to college districts to provide for tax deferred annuities authorized under the provisions of 26 U.S.C., section 403(b), for their employees. This Plan Document is not intended to restrict that authority or address the locally authorized fund sponsors.

**6.2 Allocation of Contributions.** A Participant may allocate Contributions among Investment Vehicles in any whole number percentages that equal 100 percent. A Participant may change his or her investment elections with respect to future contributions, among one or more Investment Vehicles by giving direction in accordance with the process established by the Fund Sponsor. A Participant may re-invest existing balances of his or her Account, from one or more of the permissible investments, by giving direction in accordance with the process established by the Fund Sponsor. Elections will be implemented in accordance with the written administrative procedures of the Plan Document and of the underlying investment fund, if any, including by way of example any limitations on the frequency of trading or transferring between investment funds.

**6.3 Individual Accounts.** The Fund Sponsor shall establish and maintain an Account for each Participant that shall reflect contributions made on behalf of the Participant, and earnings, expenses, gains and losses attributable thereto, and investments made with amounts in the Participant's Account.

**6.4 Account Statements.** Each Participant shall be provided by the Fund Sponsor with a statement of his or her Account under the Plan showing the values of each investment fund or contract, and the aggregate value, at least quarterly. Account statements may be delivered in hard copy or electronically as determined by the Program Administrator.

**6.5 Investment of Contributions.** Each Participant may direct the investment of his or her Account among the permissible investment funds and contracts. An investment direction shall remain effective with regard to all subsequent amounts credited to a Participant's Accounts, until changed in accordance with the provisions of this Plan Document. This Program is intended to constitute a plan described in ERISA

section 404(c) with respect to Participant directed investments. The Fund Sponsor shall make available to Participants information concerning the portfolio characteristics of each investment, its historic earnings performance, and other information to assist the Participants in exercising their investment discretion, as contemplated in ERISA section 404(c).

**6.6 Changing Future Contributions.** A Participant may change his or her investment elections with respect to future contributions, among one or more investment funds or Contracts, by giving direction in the manner, and in accordance with deadlines and limitations, established by the Program Administrator and managed by the Benefit Administrator. The Participant's election shall specify a percentage in increments of one percent (1%), which percentage may not exceed one hundred percent (100%).

**6.7 Reinvesting Existing Account Balances.** A Participant may re-invest existing balances of his or her Account, from one or more of the permissible investments, by giving direction in the manner, and in accordance with deadlines and limitations, established by the Program Administrator and managed by the Benefit Administrator. Elections will be implemented in accordance with the written administrative procedures of the Plan and of the underlying investment fund, if any, including by way of example any limitations on the frequency of trading or transferring between investment funds. The Participant's transfer election shall specify either (i) a percentage in increments of one percent (1%), which aggregate percentage may not exceed one hundred percent (100%), or (ii) a dollar amount in whole dollars that is to be transferred.

**6.8 Fund Transfers.** At any time before retirement benefits begin, a Participant may transfer funds accumulated under this Program among the Investment Vehicles. All transfers are subject to the procedures and any restrictions of the Fund Sponsor. Following termination of all employment with a Participating Employer in the Community and Technical College system, transfers may also be made to other Code Section 403(b) retirement plans, subject to any limitations imposed by the Fund Sponsor.

## **7. Benefits**

**7.1 Benefits in General.** The Participant is entitled to receive benefits under any of the Investment Vehicles at any time and in any form offered by the Fund Sponsor, subject to the written consent of the Participant's spouse, if any, in accordance with Section 7.5. However, distributions attributable to amounts accrued in an annuity contract after December 31, 1988 and amounts accrued in a mutual fund custodial account regardless of date may be paid only after a Participant attains age 59 1/2, severs employment, dies or becomes disabled, or in the case of hardship. Hardship distributions are subject to the rules and restrictions set forth in Section 7.3. Distributions to a Participant made prior to attaining age 59 1/2 may be subject to early withdrawal penalties under the Internal Revenue Code.

**7.2 Death Benefits.** The entire value of each Account is payable to the

Beneficiary or Beneficiaries named by the Participant under one of the options offered by the Fund Sponsor. However, to the extent such Account has been applied to purchase an annuity, payments shall be made only if and to the extent provided by the form of annuity. The designation of a Beneficiary other than the Participant's spouse, if any, requires the written consent of the spouse in accordance with Section 7.5.

**7.3 Hardship Distributions.** Hardship distributions under Section 7.1 shall be approved only if the Fund Sponsor determines that the Participant has an immediate and heavy financial need and the distribution is necessary to satisfy the need. In such cases, there shall be paid to such Participant out of his or her Account only such portion of the amount requested as is necessary to prevent or alleviate the hardship. The Fund Sponsor determination shall be final and binding. No amount attributable to income credited after December 31, 1988, on Contributions shall be available for distribution on account of hardship. The following are deemed to be immediate and heavy financial needs of the Participant:

- (A) Medical expenses described in Code Section 213(d) incurred by the Participant or his or her spouse or dependents;
- (B) Purchase (excluding mortgage payments) of a principal residence for the Participant;
- (C) Payment of tuition, room and board for the next 12 months of post-secondary education for the Participant, his or her spouse, his or her children or his or her dependents;
- (D) The payment of amounts necessary to prevent the eviction of the Participant from his or her principal residence or the foreclosure on the mortgage of his or her principal residence;
- (E) Funeral/Burial Expenses; or
- (F) Principle residence casualty repair.

Hardship Distributions will be deemed to be necessary to satisfy an immediate and heavy financial need of the Participant if all of the following are satisfied: (a) the distribution does not exceed the amount of the applicable need under the A through F above increased by taxes resulting from the distribution; (b) the Participant has obtained all distributions, other than Hardship Distributions, and all nontaxable loans currently available under the Program and any other plan maintained by the Participating Employer; (c) the Participant's Contributions under the Program and his or her elective and employee contributions under any other deferred compensation plan maintained by the Participating Employer are suspended for six (6) months after receipt of the Hardship Distribution.

**7.4 Minimum Distribution Requirements.** All distributions under this Plan will be made in accordance with Code sections 403(b)(10) and 401(a)(9), as each is amended and in effect from time to time, and regulations thereunder. The entire Account of each Participant will be distributed over a period not to exceed the life (or life expectancy) of the Participant or over the lives (or life expectancies) of the Participant and a designated Beneficiary. Minimum distributions must begin no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2, or, if later, April 1

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following the calendar year in which the Participant retires from the UW. Notwithstanding the above, the Account of each Participant as of December 31, 1986 will be distributed in accordance with IRS Regulation 1.403(b)-6(e)(6). The Participant (or Beneficiary, after the Participant's death) may elect whether to use the permissive recalculation rule for life expectancies under Code Section 401(a)(9)(D). Upon the Participant's death after the time benefits are required to begin hereunder, any remaining benefits will be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(a) If the Participant dies before benefit payments are required to begin under the preceding paragraph, any benefits payable to (or for the benefit of) a designated Beneficiary will be paid by the end of the fifth full calendar year after the Participant's death, or will be paid beginning no later than the end of the first full calendar year after the Participant's death over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary. If the designated Beneficiary is the surviving spouse, payment may be delayed until the date the Participant would have attained age 70 1/2.

(b) In applying the foregoing rules, each Annuity Contract or Custodial Account shall be treated as an individual retirement account (IRA) and distribution shall be made in accordance with the provisions of Section 1.408-8 of the IRS regulations, except as provided in Section 1.403(b)-6(e) of the Regulations.

**7.5 Application for Benefits; Spousal Consent.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary by the Fund Sponsor. In any case in which Section 7.1 or 7.2 requires the consent of the Participant's spouse, the consent must be in writing, must acknowledge the effect of the election or action to which the consent applies, and must be witnessed by a notary public. Unless the consent expressly provides that the Participant may make further elections without further consent of the spouse, the consent will be effective only with respect to the specific election or form of benefit, or Beneficiary, or both, to which the consent relates. Spousal consent will be effective only with respect to that spouse. Spousal consent will not be required if it is established to the satisfaction of the Participating Employer representative that there is no spouse, or that the spouse cannot be located.

**7.6 Loans.** Subject to the Internal Revenue Code and terms of the Investment Vehicles, loans are available to Participants before the commencement of benefit payments.

a. **Information Coordination Concerning Loans.** The Fund Sponsor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans.

b. **Maximum Loan Amount.** No loan to a Participant under the Program may exceed the lesser of:

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- (1) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Program to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Program to the Participant during the one-year period ending on the day before the date the loan is approved by the Program Administrator (not taking into account any payments made during such one-year period); or
- (2) One half of the value of the Participant's Accounts (as of the valuation date immediately preceding the date on which such loan is approved by the Fund Sponsor.

For purposes of this Section, any loan from any other plan maintained by the State Board and any Participating Employer shall be treated as if it were a loan made from the Program, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Program; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

**7.7 Direct Rollover of Eligible Rollover Distributions.** Notwithstanding any provision of the Program to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Program Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover. For the purposes of this Section, the following definitions apply:

- A. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; any minimum required distribution under Section 401(a)(9) of the Code; and (except as permitted by the Code) any distribution that is not includible in gross income.
- B. Distributee: The term "Distributee" means a Participant or former Participant. In addition, the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. "Distributee" also includes non-spouse Beneficiaries.
- C. Direct rollover: A Direct Rollover is a payment by the Program to an Eligible Retirement Plan.

- D. Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account or annuity described in Section 408(a) or (b) of the Code (IRA), a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, or an eligible governmental plan described in Section 457(b) of the Code, that accepts the eligible rollover distribution.

## **8. General Provisions and Limitations Regarding Benefits**

**8.1 Non-Alienation of Retirement Rights or Benefits.** To the fullest extent permitted by law, no benefit under the Program may at any time be subject in any manner to alienation, encumbrance, the claims of creditors or legal process. Except as provided in section 8.2, no person will have the power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Program, or any part thereof, and any attempt to do so will be void and of no effect.

**8.2 Qualified Domestic Relations Order (QDRO).** This Program will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Program to the extent that it is a qualified domestic relations order (e.g., a divorce settlement) under Code Section 414(p).

## **9. Program Sponsor and Administration**

**9.1 Authority of the Program Sponsor.** In addition to the authority to amend, merge or terminate the Program, and in addition to the authority and responsibilities otherwise provided for in this Plan Document, the Sponsor, by action of the State Board, shall be empowered to appoint and remove a Program Administrator. The Sponsor shall have the authority and responsibility to appoint and replace the Benefit Administrator. The Benefit Administrator shall have such duties as may be stated in the contracts between that service provider and either the State Board or the Program Administrator.

**9.2 Program Administrator.** The State Board, as Sponsor of this Program, designates the State Board Human Resource Director to be the Program Administrator responsible for the day-to-day administration of the Program.

**9.3 Authority of the Program Administrator.** The Program Administrator has all the powers and authority conferred upon the position herein and further shall have final authority to determine, in his or her discretion, all questions concerning eligibility and contributions under the Program, to interpret all terms of the Program, including any uncertain terms, and to decide any disputes arising under and all questions concerning administration of the Program. Additionally, the Program Administrator may make technical updates and/or corrections to this Plan Document to the extent that those revisions do not materially alter the nature of or benefits offered through participation in this program. Any determination made by the Program Administrator shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary and capricious. In exercising these powers and authority, the Program Administrator will

at all times exercise good faith, apply standards of uniform application, and refrain from arbitrary action.

**9.4 Delegation of Authority.** The Program Administrator may delegate any power or powers to any agent or independent contractor of the State Board. Any such delegation shall be in writing, and may be obtained from the Program Administrator.

## **10. Amendment and Termination**

**10.1 Amendment and Termination.** While it is expected that this Program will continue indefinitely, the Sponsor reserves the right at any time to amend or terminate the Program, or to discontinue any further Contributions under the Program, by resolution of the State Board. If the Program is terminated or if contributions are discontinued, the State Board will notify all Participants, and any agreements for salary reduction that have been entered into will become void with respect to salary amounts yet to be earned.

**10.2 Limitation on Amendments.** Notwithstanding the provisions of Section 10.1, the State Board shall not make any amendment to the Program that operates to recapture for the State Board or any Participating Employer any contributions previously made under this Program. However, Contributions which were made based on a mistake of fact may be returned to the Participating Employer for appropriate disposition within one year of the date on which the contribution was made. Further, no amendment will deprive, take away, or alter any accrued right of any Participant with regard to any Contribution previously made under the Program.

## **11. Miscellaneous**

**11.1 Program Does Not Affect Employment.** Nothing contained in this Program may be construed as a commitment or agreement on the part of any person to continue his or her employment with a Participating Employer, and nothing contained in this Program may be construed as a commitment on the part of a Participating Employer to continue the employment or the rate of compensation of any person for any period. All employees of Participating Employers will remain subject to discharge to the same extent as if the Program had never been put into effect.

**11.2 Claims of Other Persons.** No provisions in this Program will be construed as giving any Participant or any other person, firm, or corporation any legal or equitable right against the State Board or its officers, employees, or Board Members, except for the rights that are specifically provided for in this Plan Document or created in accordance with the terms and provisions of this Program.

**11.3 Contracts and Certificates.** In the event there is any inconsistency or ambiguity between the terms of the Program and the terms of the contracts between the Fund Sponsor and the State Board, Participating Employers and/or the Participants and any certificates issued to a Participant under the Program, the terms of the Program control.

**11.4 Third Party Trading.** The Participant is responsible for directing the investment of all funds invested through this Program. The Program Sponsor, Program Administrator and/or a Participating Employer shall not be responsible in any way for the action or lack of action of a third party selected by a Participant to manage his or her Account. Any fees paid by the Participant for this service are the responsibility of the Participant and shall not be paid by the Program Sponsor, Program Administrator, Participating Employer or the Fund Sponsor.

**11.5 Persons Serving in a Uniformed Service** An Eligible Employee whose employment is interrupted or who is on a leave of absence for qualified military service under Section 414(u) of the Code may elect to make additional Contributions upon resumption of employment with a Participating Employer equal to the maximum Contributions the employee could have made during that period if the Employee had continued employment at the same level of compensation. Except to the extent provided under the Section 414(u) of the Code, this right applies for five years following the resumption of employment or for a period equal to three times the period of the interruption or leave.

**11.6 Requests for Information.** Any request for information concerning eligibility, participation, contributions, or other aspects of the operation of the Program should be in writing and directed to the Program Administrator. Requests for information concerning the Fund Sponsor and their Funding Vehicle(s), their terms, conditions and interpretations thereof, claims thereunder, any requests for review of such claims, may be directed in writing to:

TIAA-CREF  
730 Third Avenue  
New York, NY 10017  
[www.tiaa-cref.org](http://www.tiaa-cref.org)