

**State of Maine Deferred Compensation Plan  
(Restated and Amended December 30, 2003  
Effective as of January 1, 2004)**

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**State of Maine Deferred Compensation Plan  
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**PREAMBLE**

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The State of Maine established the State of Maine Deferred Compensation Plan (the "Plan") for its employees on January 1, 1975. The State of Maine hereby amends and restates the Plan in its entirety effective as of January 1, 2004.

The primary purpose of the Plan is to attract and retain qualified personnel by providing a convenient way to save on a pre-tax and long-term basis.

Except as may otherwise be expressly provided herein, the rights and benefits of any Participant who retires or whose employment with the State is terminated prior to the effective date of this restatement shall be determined solely in accordance with the provisions of the Plan as in effect on the date of such retirement or termination, and without regard to this restatement.

The Plan is intended to satisfy the requirements for an "eligible deferred compensation plan" under Section 457 of the Internal Revenue Code of 1986, as amended from time to time, and all other applicable provisions of law and the regulations issued thereunder.

**State of Maine Deferred Compensation Plan  
(Restated and Amended December 30, 2003  
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**Article 1. Definitions**

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- 1.01** "**Account**" means the account established and maintained for each Participant pursuant to Section 4.01, reflecting a Participant's Deferral Contributions, Transfer Contributions if any, and earnings or losses thereon, any transfers for the Participant's benefit and any distributions to or on behalf of a Participant or his Beneficiary.
- 1.02** "**Administrator**" means the Commissioner of Administrative and Financial Services and any person, persons or entity to whom authority to administer and supervise the Plan has been delegated as provided in Section 8.01.
- 1.03** "**Beneficiary**" means any person, persons or entity designated by a Participant to receive the Participant's Account in the event of the Participant's death. Nothing shall prevent the Participant from designating more than one Beneficiary or primary or secondary Beneficiaries or from revoking or changing the designation of a Beneficiary without the consent of any Beneficiary. If two or more designated Beneficiaries survive the Participant, payment shall be made equally to all such Beneficiaries unless the Participant provides otherwise. If no Beneficiary designation is in effect at the Participant's death or if no person, persons or entity so designated survives the Participant, the Beneficiary shall be the Participant's estate.
- 1.04** "**Code**" means the Internal Revenue Code of 1986, as amended from time to time.
- 1.05** "**Compensation**" means a Participant's W-2 earnings for services performed for the State which are actually paid to the Participant during the Plan Year. Except for purposes of determining amounts under Section 3.03(b) for Plan Years beginning prior to January 1, 1998, Compensation shall be determined prior to any reduction pursuant to Section 3.01, an elective deferral under Section 402(g)(3) of the Code, a cafeteria plan under Section 125 of the Code or a qualified transportation fringe under Section 132(f) of the Code. Solely for purposes of Section 3.01 of the Plan, a Participant's Compensation shall include any accumulated sick pay, vacation pay or back pay payable to the Participant.
- 1.06** "**Deferral Agreement**" means an agreement executed by an Employee to defer a portion of his Compensation and have such amount credited to an Account under the Plan.

- 1.07 "Deferral Contributions"** mean the portion of an Employee's Compensation that is deferred pursuant to a Deferral Agreement and credited to an Account under the Plan.
- 1.08 "Effective Date"** means January 1, 2004 for this restated Plan. The original effective date of the Plan was January 1, 1975.
- 1.09 "Employee"** means any full-time or part-time employee or elected official of the State who receives Compensation. Leased Employees as defined in Section 414(n) of the Code and any persons performing services for the State as a bona fide independent contractor shall not be employees.
- 1.10 "Fund"** means the Accounts of all Participants in the Plan. The Fund shall be held in a trust or in a custodial account or custodial contract described in Code Section 401(f) which shall be treated as a trust under rules similar to the rules under Code Section 401(f).
- 1.11 "Funding Agent"** means any trustee, insurance company or other financial services company appointed by the Administrator as provided in Article 4.
- 1.12 "Funding Agreement"** means the trust agreement with the trustee, the insurance contract with the insurance company or the contract with the financial services company approved by the Administrator for the purpose of the investment and management of the Fund.
- 1.13 "Investment Funds"** means the separate funds selected by the Administrator in which contributions to the Plan are invested in accordance with Article 4.
- 1.14 "Normal Retirement Age"** means the date the Participant attains age 70½, unless the Participant has elected an alternate Normal Retirement Date as provided in Sections 1.14(a), (b), (c) and (d).
- (a) At any time prior to the Participant's Severance from Employment or, if earlier, prior to the use of the catch-up limitation provision described at Section 3.03, the Participant may elect, by submitting written notice to the Administrator, as an alternate Normal Retirement Age any age which is (i) on or after the earliest age at which the Participant has the right to retire and receive unreduced retirement benefits from the State's basic pension plan covering such Participant (or age 55 if the Participant does not participate in such plan or will not be eligible to receive benefits under such plan) and (ii) on or before the date the Participant attains age 70½.
  - (b) If a Participant continues to provide services for the State after the alternate Normal Retirement Age elected by the Participant pursuant to Section 1.14(a), such later age as elected by the Participant; provided however, such

age may not be later than the later of (A) the Participant's actual date of Severance from Employment with the State and (B) the date the Participant attains age 70½."

- (c) Notwithstanding anything in this Section 1.14 to the contrary, if the Participant elects a normal retirement age under another plan, contract or arrangement subject to the provisions of Section 457(b) of the Code which is maintained by the State, in accordance with the provisions of such other plan, contract or arrangement, such alternate age shall be the Participant's Normal Retirement Age for purposes of this Plan.
  - (d) Notwithstanding anything in this Section 1.14 to the contrary, a Participant may not change an alternate Normal Retirement Age once the Participant has used the catch-up limitation provided in Section 3.03.
- 1.15** "**Participant**" means an Employee who has elected to make Deferral Contributions under the Plan.
- 1.16** "**Plan**" means the State of Maine Deferred Compensation Plan as set forth in this document or as amended from time to time.
- 1.17** "**Plan Year**" means the 12-consecutive month period beginning on any January 1.
- 1.18** "**Severance from Employment**" means the severance of a Participant's employment with the State which constitutes a "severance from employment" within the meaning of Code Section 401(k)(2)(B)(i)(I). Except as may otherwise be provided under Code Section 401(k)(2)(B)(i)(I), a Participant shall be deemed to have severed employment with the State when, in accordance with the established practice of the State, the employment relationship is considered to have terminated.
- 1.19** "**State**" means the State of Maine, with respect to its employees.
- 1.20** "**Transfer Contributions**" means the amounts transferred to the Participant's Account as provided in Sections 3.07 and 3.08.

## **Article 2. Eligibility and Membership**

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### **2.01 Eligibility**

Each Employee, including a new Employee or a rehired Employee, shall be eligible to become a Participant as of the first day of any pay period, provided he is then an Employee.

### **2.02 Membership**

- (a) An Employee shall become a Participant on the first day of the first pay period beginning in the first month after the Employee submits an executed Deferral Agreement to the Administrator. However, a new Employee may also become a Participant on the first day of the first pay period following the date the Employee first performs services for the State if the Employee submits an executed Deferral Agreement to the Administrator on or before that date.
- (b) A Participant shall direct, in such manner as the Administrator shall prescribe, the investment of the Participant's Account in the Plan.

### **2.03 Termination of Membership**

A Participant's membership shall terminate on the date on which the Participant's Account has been distributed.

## **Article 3. Deferral Contributions and Transfer Contributions**

### **3.01 Deferral Contribution Elections**

- (a) A Participant may elect as of the first day of any pay period to defer a portion of his or her Compensation not yet earned, subject to the limitations of Sections 3.01(d), 3.02, 3.03, 3.04, 3.05 and 3.06 by executing a Deferral Agreement and submitting it to the Administrator prior to the first day of the month in which it is to be effective or, in the case of a new Employee, on or before the date the Participant first performs services for the State.
- (b) Notwithstanding anything to the contrary in this Plan, a Participant may elect to defer the portion of the Participant's Compensation consisting of any accumulated sick pay, vacation pay or back pay that may be payable to the Participant before the Participant has a Severance from Employment so long as the Participant executes a Deferral Agreement to defer such amount and submits it to the Administrator prior to the date such amounts would otherwise be payable to the Participant.
- (c) A Participant may revise a Deferral Agreement to increase, subject to the limitations in Sections 3.02, 3.03, 3.04, 3.05 and 3.06 or decrease, subject to the limitation in Section 3.01(e), the amount of Deferral Contributions or to suspend Deferral Contributions as of the first day of any pay period by executing and submitting a revised Deferral Agreement to the Administrator prior to the first day of such pay period and within the time period prescribed by the Administrator.
- (d) The Deferral Contributions of a Participant on a paid leave of absence who has executed a Deferral Agreement shall continue in accordance with the terms of the Deferral Agreement during the Participant's paid leave unless the Participant revises his Deferral Agreement in accordance with Section 3.01(c). The Deferral Contributions of a Participant on an unpaid leave of absence who has executed a Deferral Agreement shall cease during the period of the Participant's unpaid leave and shall automatically recommence in accordance with the terms of the Deferral Agreement when the Participant again receives Compensation as an Employee unless the Participant revises his Deferral Agreement in accordance with Section 3.01(c).
- (e) Notwithstanding anything in the Plan to the contrary, the minimum amount a Participant may defer under the Plan is \$20 per bi-weekly payroll. The \$20 shall be adjusted to the appropriate equivalent amount for Participants paid other than on a bi-weekly basis.

### **3.02 Normal Limit on Deferral Contributions**

Except as provided in Sections 3.03, 3.04, and 3.05, a Participant's Deferral Contributions for a Plan Year shall not exceed:

- (a) for Plan Years beginning prior to January 1, 2002, the lesser of:
  - (i) \$7,500 (as indexed for cost of living adjustments under Section 457(e)(15) of the Code); or
  - (ii) 33<sup>1</sup>/<sub>3</sub>% of the Participant's Compensation for the Plan Year; and
- (b) for Plan Years beginning on or after January 1, 2002, the lesser of:
  - (i) \$11,000 (as adjusted under Section 457(e)(15) of the Code); or
  - (ii) 100% of the Participant's Compensation for the Plan Year.

### **3.03 Catch-up Limit on Deferral Contributions for Last Three Years Preceding Normal Retirement Age**

Notwithstanding the limit provided in Section 3.02, and except as provided in Section 3.05, for each of the last three Plan Years ending before the date on which a Participant attains Normal Retirement Age, a Participant's Deferral Contributions shall not exceed the lesser of:

- (a) \$15,000 for Plan Year beginning before January 1, 2002 and twice the limit under Section 3.02(b)(i) for Plan Years beginning on or after such date; or
- (b) the sum of (i) the amount determined under Section 3.02 for the current year plus (ii) the excess of (A) the aggregate limitation amounts under Section 3.02 for all prior Plan Years in which the Participant was eligible to participate in the Plan over (B) the aggregate amounts deferred by the Participant for all such prior Plan Years.

Excess deferrals returned to a Participant in accordance with Section 3.06 shall be disregarded for purposes of determining the amounts deferred in a prior Plan Year by the Participant for purposes of this Section.

### **3.04 Catch-up Contributions for Participants Age 50 or Over**

Notwithstanding the limit provided in Section 3.02, for any Plan Year beginning on after January 1, 2002, and except as provided in Section 3.05, a Participant who (a) would be at least age 50 by the end of the Plan Year; and (b) has deferred the maximum amount permitted under Section 3.02, may defer an additional amount

under the Plan if the Participant is not eligible to defer amounts under Section 3.03 or, if the Participant is eligible to defer amounts under Section 3.03, the additional amount deferred under this Section would exceed the additional amount deferred under Section 3.03. The amount of any additional deferral made under this Section 3.04 shall not exceed the lesser of:

- (a) \$1,000 as adjusted under Sections 414(v)(2)(B) and (C) of the Code; or
- (b) the excess of his Compensation for the Plan Year over the amounts the Participant deferred for the Plan Year under Section 3.02.

### **3.05 Coordination of Catch-up Contributions**

Notwithstanding anything in this Plan to the contrary, a Participant who is eligible to make deferrals under Sections 3.03 and 3.04 of this Plan may make deferrals for each of the last three Plan Years ending before the date on which the Participant attains Normal Retirement Age under whichever of Section 3.03 or Section 3.04 would permit the greater deferral. Under no circumstances may a Participant make additional deferrals under both Sections 3.03 and 3.04.

### **3.06 Coordination with Other Deferrals**

- (a) For Plan Years beginning before January 1, 2002, amounts deferred by a Participant and excluded from a Participant's gross income for the Plan Year pursuant to Code Section 402(e)(3), 402(h)(1)(B) or 403(b) or under another plan that satisfies the requirements of Code Section 457(b) shall be aggregated with the Participant's Deferral Contributions for the Plan Year for purposes of applying the limits in Sections 3.02 and 3.03.
- (b) In no event shall the sum of a Participant's Deferral Contributions and similar contributions made on his behalf by the State or any other employer to all plans, contracts, or arrangements subject to the provisions of Section 457(b) of the Code in any calendar year exceed the dollar limit on elective deferrals under Section 457(b) of the Code as in effect for such calendar year, except as permitted under Section 414(v) of the Code. If a Participant's Deferral Contributions in a calendar year reach the dollar limit, his election of Deferral Contributions for the remainder of the calendar year will be canceled. As of the first pay period of the calendar year following such cancellation, the Participant's election of Deferral Contributions shall again become effective in accordance with his previous election, unless the Participant elects otherwise in accordance with Section 3.01(c).
- (c) In the event that the sum of a Participant's Deferral Contributions and similar contributions to any other plan, contract or arrangement subject to the provisions of Section 457(b) of the Code maintained by the State or any

other employer exceeds the dollar limit on elective deferrals under Section 457(b) of the Code for any calendar year as in effect for such calendar year, except as permitted by Section 414(v) of the Code, the Participant shall be deemed to have elected a return of the Deferral Contributions in excess of the limit under Section 457(b) of the Code ("excess deferrals") from this Plan. The excess deferrals, together with Earnings, shall be returned to the Participant as soon as administratively practicable after the Administrator determines the excess deferrals were made. The amount of excess deferrals to be returned for any calendar year shall be reduced by any Deferral Contributions previously returned to the Participant for that calendar year.

- (d) If a Participant makes tax-deferred contributions under another plan, contract or arrangement subject to Section 457(b) of the Code maintained by an employer other than the State for any calendar year, and those contributions when added to his Deferral Contributions exceed the dollar limit on elective deferrals under Section 457(b) of the Code for that calendar year, except as permitted by Section 414(v) of the Code, the Participant may allocate all or a portion of such excess deferrals to this Plan. In that event, such excess deferrals, together with Earnings, shall be returned to the Participant as soon as administratively practicable after the Administrator determines such excess deferrals were made. However, the Plan shall not be required to return excess deferrals unless the Participant notifies the Administrator, in writing, by March 1 of that following calendar year of the amount of the excess deferrals allocated to this Plan. The amount of any excess deferrals to be returned for any calendar year shall be reduced by any Deferral Contributions previously returned to the Participant for that calendar year.
- (e) Amounts deferred by a Participant under any plans, contracts or arrangements subject to the provisions of Section 457(b) of the Code and maintained by an employer other than the State shall only be included for purposes of this Section 3.06 to the extent the Administrator receives sufficient information from the Participant concerning the Participant's deferrals under such plan, contract or arrangement.

### **3.07 Rollovers to the Plan**

An eligible Employee who has elected to become a Participant by making Deferral Contributions may request that amounts payable to the Participant as an "eligible rollover distribution" as defined in Section 7.10(a) be transferred to the Participant's Account in the Plan if the eligible rollover distribution (a) is under an eligible deferred compensation plan that satisfies the provisions of Code Section 457(b) or, on and after January 1, 2002, under an "eligible retirement plan" as defined in Section 7.10(b), and (b) the eligible deferred compensation plan or eligible

retirement plan is maintained by an employer other than the State. The Administrator shall have the sole discretion to approve a Transfer Contribution and shall approve a Transfer Contribution only if the Participant has terminated employment with the prior employer, the prior employer's eligible deferred compensation plan or eligible retirement plan permits such a transfer and the appropriate separate accounting for such transferred amounts is maintained by the Plan in accordance with Section 8.03. The Administrator may require such documentation from the distributing plan as it deems necessary to determine the transfer meets the requirements of this Section 3.07. The Administrator may require that a Transfer Contribution be made in the form of cash. The portion of any Transfer Contribution that is attributable to deferral contributions made in a prior Plan Year shall not be considered a Deferral Contribution for purposes of applying the limits of Sections 3.02, 3.03 and 3.04 for the Plan Year in which the Transfer Contribution is made to the Plan. The portion, if any, of a Transfer Contribution that is attributable to deferrals made in the Plan Year in which the Transfer Contribution is made shall be taken into account in applying the limits of Sections 3.02 and 3.03 and, if applicable, Section 3.04. The Administrator may require such documentation as it considers necessary to confirm that the prior employer's plan satisfies the requirements of Code Section 457(b) or is an eligible retirement plan, to confirm that the plan permits transfers and to determine whether any portion of the Transfer Contribution shall be taken into account in applying the limits of Sections 3.02, 3.03 and, if applicable, Section 3.04.

### **3.08 Plan-to-Plan Transfers to the Plan**

At the State's discretion, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under Section 457(b) of the Code to transfer assets to the Plan as provided in this Section 3.08. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code 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 shall be credited to the Participant's Account and shall be held, accounted for, administered and otherwise treated in the same manner as an annual Deferral Contribution by the Participant under the Plan, except that the transferred amount shall not be considered an annual Deferral Contribution under the Plan in determining the maximum deferral under Sections 3.02, 3.03 and, if applicable, Section 3.04.

### **3.09 Contributions for Military Service**

An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) of the Code may elect to make additional Deferral Contributions upon resumption of employment with the State equal to the maximum Deferral Contributions that the Employee could have elected during that period if the Employee's employment with the State had continued (at the same level of Compensation) without the interruption or leave, reduced by the Deferral Contributions, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the Employee's resumption of employment or, if sooner, for a period equal to three times the period of the Employee's interruption or leave.

## **Article 4. Maintenance and Investment of Accounts**

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### **4.01 Maintenance of Accounts**

An Account shall be established and maintained in the Fund with respect to each Participant. Such Account shall be credited with the Participant's Deferral Contributions and Transfer Contributions, if any, shall be debited with any distributions to or on behalf of the Participant or the Participant's Beneficiary, and shall reflect earnings and losses on the Participant's Deferral Contributions and Transfer Contributions. The establishment and maintenance of an Account on behalf of a Participant shall not vest in that Participant or the Participant's Beneficiary any right, title, or interest in or to any specific assets of the State or in or to any benefits except at the time or times and upon the terms and conditions expressly set forth in the Plan.

### **4.02 Appointment of Funding Agent**

The Administrator shall appoint one or more trustees, insurance companies or other financial services companies as the Funding Agent to invest and hold the assets of the Fund. The Funding Agent shall serve at the pleasure of the Administrator and shall have such rights, powers and duties as are provided to it under the Funding Agreement.

### **4.03 Responsibility of Funding Agent**

All contributions under this Plan shall be paid to the Funding Agent as soon as practicable but in no event later than the 15<sup>th</sup> business day following the end of the month in which the amount would otherwise have been paid to the Participant and shall be held, invested and reinvested by the Funding Agent in accordance with the provisions of Section 4.04.

### **4.04 Investment of Participant's Accounts**

A Participant's Account shall be invested in the Investment Funds in accordance with the investment elections specified by the Participant in the manner prescribed by the Administrator. A Participant may change the investment of his Deferred Contributions and may reallocate amounts in his Account among the Investment Funds in a time and manner determined by the Administrator and subject to such provisions as the Administrator may adopt. Each Participant is solely responsible for the selection of his or her investment options from among the Investment Funds. Any contributions invested in an Investment Fund which is a guaranteed investment or annuity contract shall be subject to any and all terms of such contract, including any limitations placed on the exercise of any rights otherwise granted to a Participant under any other provisions of this Plan with respect to such contributions. The fact that an Investment Fund is available to Participants for

investment under the Plan shall not be construed as a recommendation for investment in that Investment Fund.

#### **4.05 Exclusive Benefit Rule**

Except as otherwise provided in the Plan, no part of the corpus or income of the Fund shall be used for, or divested to, purposes other than the exclusive benefit of Participants and other persons entitled to benefits under the Plan and paying the expenses of the Plan not paid directly by the State. No person shall have any interest in, or right to, any part of the assets or earnings of the Fund, except as and to the extent expressly provided in the Plan.

## **Article 5. Valuation of the Accounts**

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### **5.01 Valuation of Participant Accounts**

The Funding Agent shall value the Fund at least annually. On each Valuation Date, the Account of a Participant in the Fund shall equal:

- (a) the Participant's balance as of the immediately preceding Valuation Date; less
- (b) any distributions from the Participant's Account since the immediately preceding Valuation Date; plus
- (c) the amount of contributions, if any, allocated on behalf of the Participant to the Fund since the immediately preceding Valuation Date; plus
- (d) the net earnings or losses, after adjusting for expenses, if any, since the immediately preceding Valuation Date.

### **5.02 Right to Change Procedures**

The Administrator reserves the right to change from time to time the procedures used in valuing the Accounts or crediting (or debiting) the Accounts if it determines, after due deliberation and upon the advice of counsel and/or the then current recordkeeper, that such an action is justified in that it results in a more accurate reflection of the fair market value of assets. In the event of a conflict between the provisions of this Article and such new administrative procedures, those new administrative procedures shall prevail.

### **5.03 Quarterly Statements**

Each Participant shall be furnished with a statement setting forth the value of the Participant's Account as soon as practicable following the end of each calendar quarter and at such other times as the Administrator may determine.

## **Article 6. Withdrawals**

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### **6.01 Withdrawals**

A Participant shall not be entitled to withdraw funds from the Participant's Account prior to Severance from Employment except as provided in this Article 6.

### **6.02 Unforeseen Emergencies**

- (a) Subject to the provisions of Section 6.02(c) and 6.6, in the event a Participant experiences a financial hardship due to an unforeseeable emergency the Administrator, in its sole discretion, may permit the Participant to withdraw from the Participant's Account an amount that does not exceed the amount reasonably needed to meet the financial hardship. The amount reasonably needed to meet the financial hardship shall be reduced by any amounts that are reimbursable through insurance or any other means, amounts that may be obtained by the Participant's cessation of Deferral Contributions or amounts that may be obtained by the Participant's liquidation of other assets to the extent that such liquidation would not itself cause severe financial hardship. A Participant shall submit such evidence of the financial hardship as the Administrator may require.
- (b) For purposes of this Section, a financial hardship due to an unforeseeable emergency shall mean a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant, the Participant's spouse or of a dependent of the Participant (as defined in Section 152(a) of the Code), 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 insurance), funeral expenses for the Participant's spouse or dependent (as defined in Section 152(a) of the Code), home repairs not covered by insurance, the prevention of the imminent foreclosure on, or eviction from, the Participant's primary residence, medical expenses, including the cost of nonprescription drugs, to the extent not covered by insurance or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Amounts may be withdrawn to cover any taxes or penalties incurred by the Participant as a result of a withdrawal under this Section. The payment of college tuition and the purchase of a home shall not constitute financial hardship.
- (c) If a Participant receives a withdrawal under this Section 6.02,
  - (i) he may not receive another withdrawal under this Section 6.02 within the 12-month period commencing on the date his withdrawal under this Section 6.02 is approved by the Administrator;

- (ii) his Deferred Contributions, if any, shall cease and
- (iii) he shall be prohibited from making Deferred Contributions for a period of six months commencing with the first payroll period commencing after the date the Administrator approves his withdrawal under this Section 6.02. A Participant must make a new election under Section 3.01 to make Deferred Contributions after the end of the six-month period.”

### **6.03 In-Service Transfers to Purchase Past Service Credit**

A Participant who meets the requirements of Section 7.11 may elect to make a transfer of all or a portion of his Account pursuant to the provisions of Section 7.11 prior to having a Severance from Employment.

### **6.04 In-Service Withdrawals of Rollover Contributions**

Effective on and after February 17, 2004, a Participant may elect to withdraw any amount of any “eligible rollover distributions” transferred to his Account under Section 3.07.

### **6.05 Other In-Service Withdrawals**

A Participant whose Account does not exceed \$5,000 and who has not made any Deferral Contributions for the two-year period ending on the date of the withdrawal may withdraw the total amount in his Account for any reason, provided the Participant has not previously received a distribution under this Section.

### **6.06 Procedures**

A Participant shall apply for a withdrawal under this Article 6 in accordance with the procedures established by the Administrator and amounts approved to be withdrawn shall be distributed as soon as administratively possible.

## **Article 7. Distribution of Accounts Following Severance from Employment**

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### **7.01 Benefits on Severance from Employment**

Unless the Participant elects an optional form of payment under Section 7.03 or qualifies for an automatic cash distribution under Section 7.12, the Participant shall receive his Account in monthly installments for a period of 120 months. If the Participant dies prior to receiving the 120<sup>th</sup> monthly payment, any remaining payments shall be paid monthly to the Participant's Beneficiary. The Participant shall commence receiving payment of his Account as soon as administratively possible following the end of the 60 day period commencing on his Severance of Employment unless the Participant elects a deferred benefit commencement date under Section 7.02 or elects, in a time and manner determined by the Administrator, to waive the 60 day period and have his benefit payment commence as soon as administratively feasible following the Administrator's receipt of the waiver.

### **7.02 Deferred Benefit Commencement Date**

Within the 60 day period ending on his Severance from Employment, a Participant who has not yet received any portion of his Account may elect to have his Account distributed beginning on the first day of any month following the date his benefit would otherwise commence under Section 7.01, but in no event later than April 1 of the calendar year following the calendar year in which the Participant attains age 70½. Except as may be otherwise provided under Section 7.05, a Participant may make only one election under this Section 7.02

### **7.03 Forms of Payment**

Within the 60-day period ending on the later of the Participant's Severance from Employment or the date he elects to have his benefit commence under Section 7.02, a Participant may elect to have his Account distributed in accordance with one of the following payment options:

- (a) monthly, quarterly, semi-annual, or annual installment payments for a period chosen by the Participant which extends no longer than the life expectancy of the Participant or the joint life expectancies of the Participant and his Beneficiary;
- (b) a partial lump sum payment of a designated amount, with the balance payable in substantially equal installment payments for a period of years as described in paragraph (a);

- (c) annuity payments (payable on an annual, quarterly or monthly basis) for the Participant's lifetime, or for the lifetime of the Participant and the Participant's Beneficiary; or
- (d) such other form of installment or annuity payments as may be approved by the Administrator.

Except as may otherwise be provided under Section 7.05, no election of a distribution option under this Section may be made or changed after the Participant has commenced receiving distributions from his Account.

#### **7.04 Transfer of Account**

- (a) In addition to the other forms of payment provided in Section 7.03, a Participant may elect to have all or any portion of the Participant's Account transferred to another eligible governmental plan within the meaning of Section 457(b) of the Code and Section 1.457-2(f) of the Income Tax Regulations. A transfer is permitted under this Section 7.04(a) for a Participant only if the Participant has had a Severance from Employment with the State and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 7.04 only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participant and for the Participant to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.
- (b) Upon the transfer of assets under this Section 7.04, the Plan's liability to pay benefits to the Participant under this Plan shall be discharged to the extent of the amount transferred. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 7.04 (for example, to confirm that the receiving plan is an eligible governmental plan under Section 7.04(a), 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.

#### **7.05 Revocation of Elections**

A Participant who makes an election as to the time payment of benefits under the Plan will commence in accordance with Section 7.02 or as to the form in which benefits under the Plan will be paid in accordance with Section 7.03 may revoke the election and make a new election. The Administrator, in its sole discretion, may also permit a Participant who commenced receiving benefits under the Plan pursuant to an otherwise previously irrevocable election or made an otherwise previously irrevocable election as to the commencement date or form of benefit under the Plan to revoke such prior elections and make new elections. Any

revocations and new elections made under this Section 7.05 shall be made in a time and manner determined by the Administrator and shall be subject to such conditions as the Administrator may impose.

#### **7.06 Distributions on Death Before Benefits Commence**

If the Participant dies before distribution of his Account has commenced, the Participant's Beneficiary may elect, within the 60 day period following the Participant's death, any of the forms of payment available under Section 7.03 and may elect to defer commencement of the benefit to the first day of any month after the Participant's death and before the Participant's Normal Retirement Age. If the Beneficiary does not elect a form of benefit within this 60-day election period, the Account shall be paid to the Beneficiary in a single cash lump sum. If the Beneficiary does not elect to defer the commencement of the benefit within this 60 day election period, the Account shall be paid to the Beneficiary as soon as administratively practicable following the end of the 60 day period. If the Beneficiary elects to defer the commencement of the benefit but dies prior to the elected commencement date, the Account shall be paid to the Beneficiary's estate in a single cash lump sum within 60 days of the Beneficiary's death.

#### **7.07 Distributions on Death After Benefits Commence**

If the Participant dies after distribution of his Account has commenced, payments shall continue to the Beneficiary in accordance with the terms of the payment option elected by the Participant under Section 7.03.

#### **7.08 Proof of Death and Right of Beneficiary or Other Person**

The Administrator may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of the Account of a deceased Participant as the Administrator may deem proper and its determination of the right of that Beneficiary or other person to receive payment shall be final and conclusive.

#### **7.09 Minimum Distribution Requirements**

- (a) Notwithstanding anything in this Plan to the contrary, distribution of a Participant's Account will begin no later than April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70½ or has a Severance from Employment. In addition, all distributions from this Plan shall conform to the provisions of Section 401(a)(9) of the Code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Code, and the regulations issued thereunder. The provisions of Section 401(a)(9) of the Code and the regulations issued

thereunder shall override any Plan provision that is inconsistent with Section 401(a)(9) of the Code.

- (b) In addition to the requirements in Section 7.09(a), distributions commencing prior to January 1, 2002 shall also be subject to the following provisions:
  - (i) In the case of distributions beginning before the death of a Participant, such distributions must be made in a form under which the amounts payable to the Participant will be paid no later than the time determined under Section 401(a)(9)(G) of the Code and Code Regulation Section 1.401(a)(9)-2; and
  - (ii) In no event shall payments to a Beneficiary extend beyond the life of the Beneficiary if Beneficiary is the surviving spouse of the Participant or a period of 15 years if Beneficiary is not the surviving spouse of the Participant.

#### **7.10 Direct Rollover of Certain Distributions**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, on or after January 1, 2002, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. The following definitions apply to the terms used in this Section:

- (a) "Eligible rollover distribution" means 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
  - (1) 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,
  - (2) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code,
  - (3) the portion of any distribution that is not includible in gross income, unless such amount is rolled over or transferred (i.e., directly rolled) to an individual retirement account or individual retirement annuity described in Section 408(a) or Section 408(b) of the Code, respectively, or transferred to a defined contribution plan qualified under Section 401(a) of the Code that agrees to separately account

for such amount, and

- (4) any distribution made on account of an unforeseen emergency under Section 6.02 of the Plan or upon a hardship of the distributee.
  
- (b) “Eligible retirement plan” means an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) 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, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by a state, a political subdivision of a state or an agency or instrumentality of a state or political subdivision of a state as described in Section 457(e)(1)(A) of the Code, that accepts the distributee’s eligible rollover distribution.
  
- (c) “Distributee” means an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’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; and
  
- (d) “Direct rollover” means a payment by the Plan to the eligible retirement plan specified by the distributee. A direct rollover includes payments under this Section to a defined benefit governmental plan as defined in Section 414(d) of the Code if the direct rollover is used for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan or is used to repay contributions (including interest) described in Section 415(k)(3) of the Code.

Notwithstanding any provision of this Section to the contrary, effective as of October 1, 2009, a non-spouse Beneficiary of a deceased Participant may elect, at the time and in the manner prescribed by the Administrator, to directly roll over any portion of a distribution that would constitute an eligible rollover distribution if it were made to a Participant, surviving spouse, or alternate payee, provided such direct rollover is made to an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, or to a Roth IRA described in Section 408A of the Code (collectively, “IRA”) that is established on behalf of the non-spouse Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Sections 402(c)(11) and 408(d)(3)(C)(ii) of the Code.

### **7.11 Transfers to Purchase Past Service Credit**

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Section 414(d) of the Code) 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 transferred to the defined benefit governmental plan.
- (b) A transfer may be made under Section 7.11(a) only if the transfer is either for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which Section 415 of the Code does not apply by reason of Section 415(k)(3) of the Code.

### **7.12 Automatic Cash Distribution**

- (a) As of September 1, 2007, if the value of the Vested Portion of the Member's Accounts is \$1000 or less, a lump sum payment shall automatically be made as soon as administratively practicable following the Member's termination of employment. The distribution shall be made in a cash lump sum, unless the Member elects a rollover option, pursuant to section 7.10.
- (b) In the event a Terminated Vested Employee, not currently in pay status on January 1, 2007, has an Account balance of \$1000 or less, a lump sum payment shall automatically be made as soon as administratively practicable, payable as described in 7.12(a).

## **Article 8. Administration of the Plan**

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### **8.01 Appointment of Administrator**

The general administration of the Plan and the responsibility for carrying out the provisions of the Plan resides in the Commissioner of Administrative and Financial Services as the Administrator. The Commissioner of Administrative and Financial Services may delegate any or all duties as Administrator hereunder to appropriate designated parties.

### **8.02 Duties of Administrator**

The Administrator may authorize an agent to execute or deliver any instrument or make any payment on its behalf; may retain counsel, employ agents and provide for such clerical, accounting, and consulting services as it may require in carrying out the provisions of the Plan; and may delegate to other persons all or such portion of its duties under the Plan, other than those granted to the Funding Agent under the Funding Agreement adopted for use in implementing the Plan, as it, in its sole discretion, shall decide.

### **8.03 Individual Accounts, Separate Accounting**

The Administrator shall maintain, or cause to be maintained, records showing the individual balances in each Participant's Accounts. The Administrator shall also separately account for, or cause to be separately accounted for, amounts transferred or rolled over to this Plan from an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state as described in Section 457(e)(1)(A) of the Code, any other eligible deferred compensation plan described in Section 457(b) of the Code and, to the extent necessary for the proper administration of the Plan, for any other amounts transferred or rolled over to this Plan.

### **8.04 Meetings**

The Administrator shall hold meetings upon such notice, at such place or places, and at such time or times as it may from time to time determine.

### **8.05 Establishment of Rules**

Subject to the limitations of the Plan, the Administrator from time to time shall establish rules for the administration of the Plan and the transaction of its business. The Administrator shall have discretionary authority to construe and interpret the Plan (including, but not limited to, determination of an individual's eligibility for Plan participation, the right and amount of any benefit payable under the Plan and

the date on which any individual ceases to be a Participant). The determination of the Administrator as to the interpretation of the Plan or any disputed question shall be conclusive and final to the extent permitted by applicable law.

#### **8.06 Prudent Conduct**

The Plan Administrator shall use that degree of care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use in his or her conduct of a similar situation.

#### **8.07 Service in More Than One Fiduciary Capacity**

Any individual, entity or group of persons may serve in more than one fiduciary capacity with respect to the Plan and/or the funds of the Plan.

#### **8.08 Limitation of Liability**

The State, the Administrator, and any official, employee or agent of the State shall not incur any liability individually or on behalf of any other individuals or on behalf of the State for any act or failure to act, made in good faith in relation to the Plan or the funds of the Plan, to the extent permitted under applicable law.

## **Article 9. Amendment, Termination and Transfers**

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### **9.01 Amendment of Plan**

The State reserves the right at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the Plan. However, no amendment shall be made that has the effect of impairing the right of any Participant to amounts credited to the Participant's Account in the Plan, unless required to comply with the Code.

### **9.02 Termination of Plan**

The State may terminate the Plan or completely discontinue contributions under the Plan for any reason at any time. In such event, the total amount in each Participant's Account shall be distributed as the Administrator shall direct in accordance with the provisions of the Plan.

### **9.03 Transfer of Assets**

- (a) At the direction of the State, the Administrator may transfer all the assets of the Plan to another eligible governmental plan within the meaning of Section 457(b) of the Code and Section 1.457-2(f) of the Income Tax Regulations. A transfer is permitted under this Section 9.03(a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to Participants and for Participants to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred. Further, the transfer is permitted under this Section 9.03(a) only if Participants whose Deferral Contributions are being transferred will not be eligible for additional deferrals under the other eligible governmental plan unless the Participants are performing services for the employer maintaining the other eligible governmental plan.
- (b) Upon the transfer of assets under this Section 9.03, the Plan's liability to pay benefits to the Participants under this Plan shall be discharged to the extent of the amount transferred. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 9.03 (for example, to confirm that the receiving plan is an eligible governmental plan under Section 9.03(a), 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.

## **Article 10. General Provisions**

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### **10.01 Nonalienation**

- (a) Except as may be otherwise provided in this Section, neither the Participant nor any other person shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights thereto are expressly declared to be unassignable and non-transferable, nor shall any unpaid benefits be subject to attachment, garnishment or execution for the payment of any debts, judgments, alimony or separate maintenance owed by the Participant or any other person or be transferable by operation of law in the event of bankruptcy or insolvency of the Participant or any other person.
- (b) Payment shall be made in accordance with the provisions of any judgment, decree, or order which:
  - (i) creates for, or assigns to, a spouse, former spouse, child or other dependent of a Participant the right to receive all or a portion of the Participant's benefits under the Plan for the purpose of providing child support, alimony payments or marital property rights to that spouse, child or dependent,
  - (ii) is made pursuant to a State domestic relations law,
  - (iii) does not require the Plan to provide any type of benefit, or any option, not otherwise provided under the Plan,
  - (iv) does not require the Plan to pay benefits prior to January 1, 2002 at a time not otherwise provided under the Plan; and
  - (v) otherwise meets the requirements for a "qualified domestic relations order" under Section 414(p) of the Code.

Any such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits from the Plan. All determinations as to whether a judgment, decree or order is a "qualified domestic relations order" shall be made solely by the Administrator or the Administrator's delegate. Any such determination shall be final and binding on all parties.

### **10.02 Conditions of Employment Not Affected by Plan**

The establishment of the Plan shall not confer any legal rights upon any Employee or other person for a continuation of employment, nor shall it interfere with the rights of the State to discharge any Employee and to treat him or her without regard

to the effect which that treatment might have upon him or her as a Participant or potential Participant of the Plan.

### **10.03 Facility of Payment**

In the event the Administrator determines that any Participant or Beneficiary receiving or entitled to receive benefits under the Plan has been declared incompetent by a court of competent jurisdiction, benefit payments due under the Plan may be made to the legal guardian of the property of such incompetent person. In the event the Administrator determines that any Participant or Beneficiary has executed a binding power of attorney, or other legal document authorizing another to act as agent or attorney on behalf of such Participant or Beneficiary, benefit payments due under the Plan may be made to the agent or attorney so designated in the power of attorney or other legal document. Benefit payments made under the Plan in accordance with determinations of the Administrator shall be a complete discharge of any obligation arising under the Plan with respect to such benefit payments.

### **10.04 Information**

Each Participant, Beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or her, or on his or her account under the Plan, shall file with the Administrator the information that it shall require to establish his rights and benefits under the Plan.

### **10.05 Elections**

Any elections, notifications or designations made by a Participant pursuant to the provisions of the Plan shall be made in the time and manner determined by the Administrator. The Administrator reserves the right to change from time to time the time and manner for making notifications, elections or designations by Participants under the Plan if it determines after due deliberation that such action is justified in that it improves the administration of the Plan. In the event of a conflict between the provisions for making an election, notification or designation set forth in the Plan and such new administrative procedures, those new administrative procedures shall prevail.

### **10.06 Construction**

- (a) The Plan shall be construed, regulated and administered in such a manner as to satisfy the requirements of an “eligible deferred compensation plan” under Section 457 of the Code and, to the extent not incompatible with such provisions of the Code, under the laws of the State of Maine.

- (b) The titles and headings of the Articles and Sections in this Plan are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

**IN WITNESS WHEREOF**, and as conclusive evidence of the adoption of the foregoing instrument comprising the Maine Deferred Compensation Plan (Restated and Amended Effective December 30, 2003), the State has caused its seal to be affixed hereto and these presents to be duly executed in its name and behalf by its proper officers thereunto authorized this \_\_\_\_ day of \_\_\_\_\_, 2004.

**ATTEST:**

**STATE OF MAINE**

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**(SEAL)**