

**SRA REVISED VERSION. 10.15.08**

**MARYLAND OPTIONAL RETIREMENT PROGRAM**

**Section 403(b) Plan Document**

**Amended and Restated January 1, 2009**

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**MARYLAND OPTIONAL RETIREMENT PROGRAM**

**ARTICLE I.**

**ESTABLISHMENT AND RESTATEMENT OF PLAN**

The State of Maryland established and sponsors a retirement plan pursuant to Section 403(b) of the Internal Revenue Code ("Code") and Annotated Code of Maryland Sections 30-101 *et seq.* and the regulations thereunder, effective July 1, 1975 (Ch. 556 Laws of Md. 1975), and as amended from time to time thereafter, to provide retirement benefits to the eligible employees of certain State educational institutions within the meaning of Code Section 170(b)(1)(A)(ii). The plan was, and is intended to remain, a Code Section 403(b) plan and a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

The State of Maryland now desires to reduce the terms of the plan to writing in one document effective January 1, 2009, to comply with all applicable provisions of the Code and Maryland statutes, including the final regulations under Code Section 403(b). Certain capitalized terms are defined in Section 2.02 below. Except as otherwise specifically provided herein, the Maryland Optional Retirement Program Section 403(b) Plan Document (the "Plan"), as hereinafter set forth, establishes the rights and obligations of individuals who are Employees on and after such dates, as applicable, and applies to transactions under the Plan on and after such dates, as applicable. The rights and benefits, if any, of individuals who were formerly employees shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

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The Plan is funded exclusively through the purchase of Funding Vehicles from the Vendors described in Exhibit A attached hereto, as that Exhibit may be amended from time to time. The terms and conditions of such Funding Vehicles shall be considered part of, and shall be construed as having been incorporated into, this Plan, except to the extent that there are any provisions that conflict with the Plan. To the extent that there is any conflict between the terms of such Funding Vehicles and the terms of the Plan as provided herein, the terms of the Plan shall govern except as otherwise expressly provided herein.

## **ARTICLE II.**

### **DEFINITIONS AND CONSTRUCTION**

#### **Section 2.01 Construction and Governing Law.**

(a) This Plan shall be construed, administered and enforced according to the Code and, when not inconsistent with the Code or expressly provided otherwise herein, the laws of the State of Maryland without regard to conflict of law principles.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural where appropriate.

(c) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended; effective January 1, 2009, the Heroes Earnings Assistance and Relief Act of 2008, as amended (the "HEART" Act); and Code Section 414(u). For this purpose, the State of Maryland shall make the Employer Contribution attributable to the Employee's period of qualified military service, to the extent required, no later than 90 days after the date of reemployment or when

Employer Contributions are normally due for the year in which the qualified military service was performed, if later. Effective January 1, 2009, an Employee whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer will be treated as an Employee of the Employer and the differential wage payment will be treated as Compensation and Includible Compensation.

(d) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified leave will be provided in accordance with the Family Medical Leave Act of 1993, 29 U.S.C. Section 2601 *et. seq.*

**Section 2.02 Definitions.** When the initial letter of a word or phrase is capitalized herein the meaning of such word or phrase shall be as follows:

(a) "Account" means the following separate bookkeeping Accounts maintained for each Participant under a Funding Vehicle, reflecting his or her interest in such Funding Vehicle as follows:

(1) "Employer Contribution Account" means the Account maintained to reflect the interest of the Participant in a Funding Vehicle attributable to his or her Employer Contributions pursuant to Section 4.01.

(2) "Rollover Account" means the Account maintained to reflect the interest of the Participant in a Funding Vehicle attributable to his or her Rollover Contributions pursuant to Section 4.02.

(3) "Excess Annual Additions Account" means the Account maintained to reflect the interest of the Participant in a Funding Vehicle attributable to his or her excess annual additions pursuant to Section 5.02.

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(b) "Account Balance" means the balance in all Accounts maintained for a Participant which reflects the aggregate amount credited to or debited from the Participant's Accounts, including Employer Contributions and Rollover Contributions; the earnings or losses of each Annuity Contract or Custodial Account (net of expenses) allocable to the Participant; any transfers for the Participant's benefit; and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes the Account established for a Beneficiary after a Participant's death and any Account established for an alternate payee as defined in Code Section 414(p)(8).

(c) "Administrator" means the Board of Trustees for the State Retirement and Pension System and the State Retirement Agency when it is carrying out the duties of the Board of Trustees; provided, however, that to the extent that the Board has delegated any of its responsibilities as Administrator to any other person or persons, the term Administrator shall be deemed to refer to that person or persons.

(d) "Annuity Contract" means a nontransferable contract as defined in Code Section 403(b)(1), established for Participants by the Board, or by each Participant individually, that is issued by a Vendor who is licensed as an insurance company in a state and is qualified to issue annuities in the State of Maryland and that includes payment in the form of an annuity.

(e) "Applicable Form" means the appropriate form as designated and furnished by the Employer, the Vendor or the Administrator to make the election or provide the notice required by the Plan.

(f) "Beneficiary" means the person, institution, trustee, or estate designated by the Participant on the Applicable Form to receive any benefits payable under the Plan in the event of

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the Participant's death. Beneficiary also means an alternate payee pursuant to a qualified domestic relations order as defined under Treasury Regulation Section 1.403(b)-10(c).

(g) "Board" means the Board of Trustees for the State Retirement and Pension System.

(h) "Code" means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered

(i) "Compensation" means all compensation received by an Employee from the Employer that is based on the Employee's annual salary rate payable for working the normal time in the Employee's position, as set forth in the definition of "earnable compensation" in Section 20-101(0) of the State Personnel and Pensions Article of the Maryland Annotated Code; provided, however, that Compensation shall include any amounts excludable from taxable income because of an election under Code Sections 403(b), 457(b), 125, and 132(f). Compensation also includes any payment that would have been paid to the Employee prior to a Severance from Employment if the Employee continued in employment with the Employer and that is regular compensation for services during the Employee's regular working hours; provided, however, that it is paid by the later of 2½ months after the Employee's Severance from Employment with the Employer or the end of the calendar year in which the Employee has a Severance from Employment with the Employer. Notwithstanding any other provision in this paragraph, Compensation shall be limited in accordance with Section 6.02.

(j) "Contributions" means Employer Contributions and Rollover Contributions

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(k) "Cost of Living Adjustment" means the applicable cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 401(a)(17) or 415(d) for any applicable year.

(l) "Custodial Account" means the group or individual custodial Account or Accounts, as defined in Code Section 403(b)(7), established for Participants by the Board, or by each Participant individually, with a Vendor to hold assets of the Plan.

(m) "Eligible Employee" means any Employee who meets the eligibility requirements set forth in Title 30 of State Personnel and Pensions Article of the Maryland Annotated Code. Eligible Employee does not include (i) students performing services described in Code Section 3121(b)(10), (ii) any person designated in good faith as an independent contractor regardless of whether such person is later determined to be a common law employee for tax purposes, and (iii) part-time non-tenured track faculty.

(n) "Employee" means any common law employee performing services for an Employer.

(o) "Employer" means the University System of Maryland, Morgan State University, St. Mary's College, and the Maryland Higher Education Commission with respect to eligible employees of the Commission or any community college or regional community college established under Title 16 of the Education Article.

(p) "Employer Contributions" means the Contributions made by an Employer on behalf of a Participant pursuant to Section 4.01.

(q) "Former Vendor" means a provider that was approved by the Board to offer annuity contracts or custodial Accounts under the Plan, but that is no longer eligible to receive new contributions under the Plan; provided, however, that a Former Vendor shall not include any

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provider that ceased to be eligible to receive new contributions under the Plan prior to January 1, 2003.

(r) "Funding Vehicles" mean the Annuity Contracts and/or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the Board for use under the Plan.

(s) "Includible Compensation" means all compensation received by an Employee from the Employer that is includible in his or her gross income for Federal income tax purposes (computed without regard to Code Section 911) for the most recent period that is a year of service as defined in Code Section 403(b)(4) and the regulations thereunder. Includible Compensation also includes any amounts excludable from taxable income because of an election under Code Sections 403(b), 457(b), 125, and 132(f). Includible Compensation also includes any payment that would have been paid to the Employee prior to a Severance from Employment if the Employee continued in employment with the Employer, that is regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; provided, however, that it is paid by the later of 2½ months after the Employee's Severance from Employment with the Employer or the end of the calendar year in which the Employee has a Severance from Employment with the Employer.

The amount of Includible Compensation is determined without regard to any community property laws.

(t) "Individual Agreement" means the agreements between a Vendor and the Board or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

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(u) "Investment Options" means the investment funds available under the Funding Vehicles provided by the Vendors and specifically approved by the Board for use under this Plan in accordance with Article VIII.

(v) "Irrevocable Election" means an Eligible Employee's one-time irrevocable written election to participate in the Plan made on the Applicable Form and filed with the Board no longer than 90 days after first becoming an Eligible Employee; provided, however, that if an Eligible Employee initially elects to participate in SRPS, he or she may change such election and choose to instead participate in the Plan at any time during the one year period following the date the Eligible Employee first became an Eligible Employee. Notwithstanding the preceding, an Irrevocable Election is not effective unless accompanied by an Applicable Form on which the Eligible Employee enrolls with a Vendor and selects his or her Investment Options under the Plan.

(w) "Participant" means an individual who is or may become eligible to receive a benefit of any type under the Plan, and who has not received a distribution of his or her entire Account under the Plan.

(x) "Plan Document" means the agreement embodied herein, as amended from time to time, known as the "Maryland Optional Retirement Program Section 403(b) Plan Document."

(y) "Plan Year" means January 1 through December 31.

(z) "Program" means the Maryland Optional Retirement Program as set forth in Title 30 of the State Personnel and Pensions Article of the Maryland Annotated Code.

(aa) "Public School" means a State sponsored educational organization described in Code Section 170(b)(1)(A)(ii).

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(bb) "Related Employer" means the Employer and any other entity which is under common control with that Employer under Code Section 414(b), (c) or (m). For this purpose, the Board shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into Account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

(cc) "Rollover Contributions" means the contributions rolled into the Plan pursuant to Section 4.04.

(dd) "Section" means, when not preceded by the word Code, a section of the Plan.

(ee) "Severance from Employment" means the complete termination of the employment relationship between the Employee and his or her Employer and any Related Employer; provided, however, that a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a Public School, even though the Employee may continue to be employed by a Related Employer that is another unit of the State government that is not a Public School or in a capacity that is not employment with a Public School (*e.g.* ceasing to be an employee performing services for a Public School but continuing to work for the same State government employer). Notwithstanding the preceding, effective January 1, 2009, and for purposes of Section 9.01 only, a Participant will be treated as having had a Severance from Employment during any period the Participant is performing service in the uniformed services described in Code Section 3401(h)(2)(A).

(ff) "SRPS" means the State Retirement and Pension System of Maryland.

(gg) "Vendor" means (i) a life insurance company authorized to do business in the State of Maryland or (ii) a bank or approved non-bank trustee or custodian under Code Section 401(f), the assets of which are invested exclusively in regulated investment company stock, that

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has been approved by the Board to make Funding Vehicles available to Participants under this Plan, and that is set forth in **Exhibit A** hereto, as amended from time to time.

(hh) "Vested" means the interest of the Participant in his or her Account that is unconditional, legally enforceable, and nonforfeitable.

### **ARTICLE III.**

#### **ELIGIBILITY AND PARTICIPATION**

**Section 3.01 Participation Standards.** Eligible Employees become Participants in the Plan on the first day of the month after making an Irrevocable Election to participate in the Plan.

**Section 3.02 Reemployment.** An Eligible Employee who has previously made an irrevocable election and, who is reemployed by an Employer following a prior period of employment in which he or she satisfied the participation requirements, shall immediately begin participation in the Plan with respect to Employer Contributions pursuant to Section 4.01..

**Section 3.03 Cessation of Contributions.** A Participant shall cease to be eligible to make or have made on his or her behalf Contributions under the Plan when the Participant ceases to be an Eligible Employee or the Plan is terminated.

**Section 3.04 Information Provided by the Employee.** Each Eligible Employee enrolling in the Plan shall provide to the Employer at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Employer to have to assist in the administration of the Plan, including any information required under the Individual Agreements.



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any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the Eligible Employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code Section 401(a)(9). An eligible retirement plan means an individual retirement Account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a qualified trust described in Code Section 401(a), an annuity plan described in Code Section 403(a) or 403(b), or an eligible governmental plan described in Code Section 457(b).

(c) The Vendor shall establish and maintain for the Participant a separate Rollover Account for any eligible rollover distribution paid to the Plan.

**Section 4.03 Leave of Absence.** During a paid leave of absence, the Employer shall continue to make Employer Contributions. No Plan Contributions shall be made by or on behalf of a Participant who is on an unpaid leave of absence.

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**Section 4.04 Vesting.** Subject to Section 15.05, Participants shall be immediately 100% Vested in all Contributions made to their Accounts under the Plan.

**Section 4.05 Expenses of Plan.** The administrative and operational expenses of the Plan shall be charged against the Vendors in accordance with Section 30-209 of the State Personnel and Pensions Article of the Maryland Annotated Code.

## **ARTICLE V.**

### **LIMITATIONS ON CONTRIBUTIONS**

**Section 5.01 Code Section 415(c) Limitation.**

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(a) Notwithstanding any provision of the Plan to the contrary, annual additions to the Plan and to any other Code Section 403(b) plan (or, if required by Code Section 415 and the

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regulations thereunder, to any other defined contribution plan) for a Participant shall not exceed the limitation set forth in Code Section 415(c), except to the extent permitted under Code Section 414(v). The limitation on annual additions set forth in Code Section 415(c) for any calendar year is the lesser of :

- (1) \$40,000 increased by the Cost of Living Adjustment; or
- (2) 100% of the Participant's Includible Compensation.

(b) For purposes of this Section, "annual addition" has the meaning provided in Code Section 415(c), as modified by Code Sections 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines the annual addition as the sum of the following amounts credited to a Participant's Accounts for any calendar year under this Plan and to any 403(b) plan (or, if required by Code Section 415 and the regulations thereunder, to any other defined contribution plan): (1) employer contributions; (2) employee contributions; and (3) forfeitures. Annual additions shall not include: (1) any elective deferrals made by a Participant who is age 50 or older in accordance with, and subject to, Code Section 414(v); (2) excess elective deferrals distributed in accordance with Treasury Regulation Section 1.402(g)-1(e)(2); or (3) rollover contributions. Annual additions shall include:

- (1) amounts allocated to an individual medical Account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer or a Related Employer, or both (as applicable); and
- (2) mandatory employee contributions to a defined benefit plan maintained by the Employer, unless the contributions are "picked-up" by the Employer pursuant to Code Section 414(h)(2).

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**Section 5.02 Excess Annual Additions.** Excess annual additions made to the Plan shall be allocated to a separate Excess Annual Additions Account under the Funding Vehicle in accordance with Treasury Regulation Sections 1.403(b)-3(b)(2) and 1.403(b)-4(f)(2) for the year of excess and each year thereafter.

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## **ARTICLE VI.**

### **NONDISCRIMINATION**

**Section 6.01 Compliance with Code Section 403(b)(12).** Contributions to the Plan shall be made in accordance with any applicable requirements of Code Section 403(b)(12) or the regulations thereunder.

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**Section 6.02 Compliance with Code Section 401(a)(17).** For Plan Years beginning on or after January 1, 1996, Compensation during any Plan Year shall not exceed the Code Section 401(a)(17) limit (as increased by the Cost of Living Adjustment for the year). Notwithstanding anything in the Plan to the contrary, Compensation during a Plan Year shall be limited as follows:

(a) Effective for Plan Years beginning before January 1, 1996, the limitations on Compensation under Code Section 401(a)(17) shall be deemed to be satisfied in accordance with the applicable rules and regulations prescribed by the Secretary of Treasury for governmental plans.

(b) For Plan Years beginning on or after January 1, 1996, if and to the extent, required by Code Section 401(a)(17) for a governmental plan, Compensation taken into Account under the Plan for any Plan Year for a Participant who was not a Participant on or before December 31, 1995 shall not exceed, (i) for Plan Years beginning after 1995 and before 2002, \$150,000 (as increased by the Cost of Living Adjustment for the year) and, (ii) for Plan Years

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beginning after December 31, 2001, \$200,000, (as increased by the Cost of Living Adjustment for the year).

(c) For Plan Years beginning on or after January 1, 1996, as provided in the transitional rule of P.L. 103-66, § 13212(d)(3), Compensation taken into Account under the Plan for any Plan Year for an individual who became a Participant on or before December 31, 1995 (an eligible participant within the meaning of P.L. 103-66, § 13212(d)(3)(B)) shall be limited to the greater of (i) the maximum amount of Compensation permitted to be taken into Account under the Plan as in effect on July 1, 1993, or (ii), (A) for Plan Years beginning after 1995 and before 2002, \$150,000 (as increased by the Cost of Living Adjustment for the year), or, (B) for Plan Years beginning after December 31, 2001, \$200,000, (as increased by the Cost of Living Adjustment for the year). If the terms of the Plan as in effect on July 1, 1993, did not impose a limitation on the maximum amount of Compensation that could be taken into Account under the Plan, there shall be no limitation on the maximum amount of Compensation that Participants can make as described in this paragraph.

## **ARTICLE VII.**

### **ACCOUNTING**

**Section 7.01 Participant Accounts.** The Vendor shall establish and maintain adequate records to reflect the Accounts of each Participant. Credits and charges shall be made to such Accounts to reflect additions, distributions, withdrawals, and to reflect gains or losses pursuant to the terms of each Funding Vehicle. Each Participant shall have a separate Employer Contribution Account, Rollover Account, and Excess Annual Additions Account as applicable. The maintenance of individual Accounts is for Accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

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**Section 7.02 Participant Statements.** The Vendor shall provide to each Participant as soon as possible following each calendar quarter and year end, a statement depicting the value of such Participant's Account as of the end of such calendar quarter or year, as appropriate.

**Section 7.03 Value of Account.** The value of the Account of a Participant as of any valuation date is the value of the Account Balance as determined by the Vendor. All transactions and Account records shall be based on fair market value.

#### **ARTICLE VIII.**

#### **INVESTMENT OF CONTRIBUTIONS**

**Section 8.01 Vendors and Investment Options.**

(a) Contributions are invested in one or more of the Investment Options available to Participants under this Plan through the current Vendors, as selected by the Board and communicated to Participants. The current Vendors are listed in Exhibit A. The Board's current selection of Vendors and Investment Options is not intended to limit future additions or deletions of Vendors or Investment Options.

(b) On the Applicable Forms, each Participant shall select one Vendor and the Investment Options to which the Participant's Contributions under the Plan are to be deposited. A Participant can select no more than one vendor at any one time to receive current Contributions. The Participant is responsible for following the requirements and restrictions of the Vendor and Investment Options selected.

(c) If a Participant fails to designate a Vendor and/or Investment Options as provided herein, the Contributions shall be deposited in a default fund designated by the Board in its sole and absolute discretion.

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**Section 8.02 Funding Vehicle Exchanges.** Subject to an Individual Agreement's rules for exchanges (including application of any fees) and in accordance with the provisions of the Code for maintaining the tax deferral of the Account(s), a Participant or Beneficiary may (i) exchange a Funding Vehicle provided by a Vendor for another Funding Vehicle provided by a Vendor or (ii) exchange a Funding Vehicle provided by a Former Vendor, for another Funding Vehicle provided by a current Vendor. An exchange described in this Section must satisfy the following conditions:

(1) The Participant or Beneficiary has an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both Annuity Contracts and/or Custodial Accounts immediately before the exchange).

(2) The Funding Vehicle receiving the Participant's Account Balance is subject to distribution restrictions that are not less stringent than those imposed on the Funding Vehicle being exchanged.

(3) The Funding Vehicle receiving the Participant's Account Balance is issued by a Vendor listed on Exhibit A of the Plan.

**Section 8.03 General Provisions Regarding Funding Vehicles.** Each Vendor, the Employer, and the Administrator shall exchange such information as may be necessary to satisfy Code Section 403(b) or other requirements of applicable law. All amounts in each Funding Vehicle shall be nontransferable to any other person or entity other than the Participant or his or her Beneficiary, except as provided in Section 15.01.

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**Section 8.04 Former Vendors.** The Board and the the Former Vendor will, to the extent that any existing agreement between the Board and the Former Vendor does not already provide such, enter into an information sharing agreement providing for mutual sharing of the following information:

- (1) Information necessary for the resulting Annuity Contract or Custodial Account, or any other Annuity Contract or Custodial Account to which Contributions have been made by the Board to satisfy Code Section 403(b); and
- (2) Information necessary in order for the resulting Annuity Contract or Custodial Account and any other Annuity Contract or Custodial Account to which Contributions have been made for the Participant by the Board to satisfy other tax requirements.

#### **ARTICLE IX.**

#### **DISTRIBUTIONS**

##### **Section 9.01 Distribution Restrictions.**

- (a) Distributions may be made from the Plan only if a Participant has a Severance from Employment.
- (b) A Participant shall be entitled to a distribution of his or her Rollover Account at any time subject to the terms of the Funding Vehicle.
- (c) In the event a Participant is entitled to a distribution and requests such a distribution of Accounts on the Applicable Form, the Employer employing the Participant shall certify that he or she has satisfied a condition for distribution.

**Section 9.02 Benefit Payable.** The benefit of a Participant or a Beneficiary shall be based on the value of the Participant's Account Balance as of the payment date. Benefits shall be

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paid under a payment option elected by the Participant or Beneficiary and available under the Funding Vehicle.

**Section 9.03 Death Benefit.** If a Participant dies before the entire distribution of his or her Account has been made, his or her remaining Account, if any, shall be distributed to his or her Beneficiary as soon as administratively feasible after the Participant's death, unless the Beneficiary elects a later payment date on the Applicable Form, subject to Section 9.04. A Beneficiary may elect to receive the deceased Participant's Account under any payment option available under the Funding Vehicle.

**Section 9.04 Required Distribution Rules.** The provisions of this Section 9.04 take precedence over any inconsistent provisions of the Plan or of any Funding Vehicle. All distributions under this Plan will be made in accordance with Code Section 401(a)(9) and the regulations thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G). For this purpose, each Individual Agreement shall comply with the minimum distribution requirements of Code Section 401(a)(9) and the regulations thereunder, regardless whether the Participant has invested with more than one Vendor. For purposes of applying the distribution rules of Code Section 401(a)(9), each Individual Agreement is treated as an individual retirement account (IRA) and distributions will be made in accordance with the provisions of Treasury Regulation Section 1.408-8, except as provided in Treasury Regulation Section 1.403(b)-6(e). Notwithstanding the preceding sentence, each Vendor shall separately comply with the minimum distribution requirements under Code Section 401(a)(9) and the regulations thereunder with respect to its Funding Vehicles under the Plan.

**Section 9.05 Transfer to Defined Benefit Governmental Plan.**

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

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

**Section 9.06 Early Distribution Penalties.**

(a) Generally, and except as described in paragraph (b), if a Participant receives any amount under a Funding Vehicle, his or her tax for the taxable year in which such amount is received is increased by an amount equal to 10% of the portion of such amount which is includable in gross income. Such amount shall be included in gross income to the extent allocable to income on the Funding Vehicle and shall not be included in gross income to the extent allocable to the investment in the Funding Vehicle as provided in Code Section 72(e)(2)(b).

(b) The penalty described in paragraph (a) generally does not apply to any distribution (i) made on or after the date on which the Participant attains age 59 ½, (ii) made on or after the death of the Participant, (iii) attributable to the Participant becoming disabled within the meaning of Code Section 72(m)(7), (iv) which is part of a series of substantially equal

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periodic payments made (not less frequently than annually) for the life or life expectancy of the Participant or the joint lives (or joint life expectancies) of such Participant and his or her designated Beneficiary, (v) made to a Participant after separation from service following the attainment of age 55, or (vi) any other circumstance permitted by the Code or the Internal Revenue Service.

(c) In the case of an amount received before the annuity starting date, such amount shall be included in gross income to the extent allocable to income on the contract and shall be excluded from gross income to the extent allocable to the investment in the contract, as provided in Code Section 72(e)(2)(B).

#### **ARTICLE X.**

##### **LOANS**

Loans are not permitted under the Plan.

#### **ARTICLE XI.**

##### **ROLLOVERS FROM THIS PLAN**

**Section 11.01 Rollover Distributions.** A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Code Section 414(p)) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in Code Section 402(c)(4)) from the Plan paid directly to an eligible retirement plan (as defined in Code Section 402(c)(8)(B)) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the Participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement Account

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or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Code Section 408(d)(3)(C)).

**Section 11.02 Explanation of Plan Distribution and Withholding Requirements.**

Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

**ARTICLE XII.**

**ADMINISTRATION**

**Section 12.01 Responsibility of the Employers.** The Employers are responsible for eligibility and participation, generally, including the following:

(a) advising their respective Eligible Employees of their rights and responsibilities with respect to participation under the Plan;

(b) enrolling Eligible Employees in the Plan, and terminating participation under the Plan for Participants who have a Severance from Employment;

(c) determining questions of eligibility to participate in the Plan;

(d) except for all community colleges and regional community colleges other than the Baltimore City Community College, providing the Central Payroll Bureau of the Office of the Comptroller with instructions regarding the proper tax reporting of any contributions to the Plan

(e) except for all community colleges and regional community colleges other than the Baltimore City Community College, providing the Central Payroll Bureau of the Office of

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the Comptroller with instructions regarding to which Vendor contributions for each Participant should be remitted.

(f) for a community college or regional community college, providing its payroll division with instructions regarding the proper tax reporting of any contributions to the Plan; and

(g) for a community college or regional community college, providing its payroll division with instructions regarding to which Vendor contributions for each Participant should be remitted.

Each Employer shall have all power necessary or convenient to enable it to exercise this responsibility and authority under the Plan.

**Section 12.02 Responsibility of the Administrator.** The Administrator is responsible for the following:

(a) writing, construing and interpreting the Plan Document, including any ambiguities, and determining all questions of fact or law arising under the Plan document;

(b) selecting the Vendors and the Funding Vehicles available for investing contributions in the Program, in accordance with Section 30-202(a) of the State Personnel and Pensions Article of the Maryland Annotated Code.;

(c) approving the form and contents of the Funding Vehicles, in accordance with Title 30 of the State Personnel and Pensions Article;

(d) correcting any defect, supplying any omission, or reconciling any inconsistency in the Plan Document in such manner and to such extent as it may deem expedient and, subject to the provisions of the Plan Document regarding claims to benefits, the Administrator should be the sole and final judge of such expediency;

(e) accepting service of legal process for the Program.

The Administrator shall have all powers necessary or convenient to enable it to exercise its authority under the Plan Document.

**Section 12.03 Delegation by Administrator.** The Administrator may delegate to an individual, committee, or organization to carry out its fiduciary duties or other responsibilities under the Plan. Any such individual, committee or organization delegated fiduciary duties shall be a fiduciary until the Administrator revokes such delegation. A delegation of the Administrator duties or responsibilities may be revoked without cause or advance notice. Such individual, committee, or organization shall have the same power and authority with respect to such delegated fiduciary or other responsibilities as the Administrator has under the Plan.

**Section 12.04 Advice to Administrator.** The Administrator may employ or contract with one or more persons to render advice with regard to its duties, responsibilities and authority under the Plan.

**Section 12.05 Responsibility of the Vendors.** Each Employer and the Administrator agree that each Vendor is responsible for the following:

(a) providing all information, education, and counseling services to participants with respect to (a) the importance of saving for retirement; and (b) the Funding Vehicles provided by the Vendor.

(b) maintaining all Account Balances and sending quarterly statements to participants;

(c) providing all necessary administrative services in connection with the investment of a participant's Account in a Funding Vehicle offered by the Vendor

(d) annually monitoring the contribution limits under Code Section 403(b) for each Participant and timely segregating excess contributions; and

(e) complying with the minimum distribution rules under Code Section 401(a)(9).

**Section 12.06 Limitation on Recovery.** Participants and Beneficiaries may not seek recovery against the Administrator, Employers, or any employee, contractor, or agent of the Administrator or Employers, for any loss sustained by any Participant or Beneficiary due to the nonperformance of their duties, negligence, or any other misconduct of the above-named persons.

**Section 12.07 Benefit Payments.** Either the Administrator or the respective Employer, if in doubt regarding the correctness of its or a Vendor's action with respect to a benefit payment to a Participant, may direct suspension of payment until satisfied as to the correctness of the payment or the person to receive the payment. Alternatively, the Administrator or the Employer may file, in any state court of competent jurisdiction, a suit, in the form it deems appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator and the Employer shall comply with the final order of the court in any such suit, and the Administrator, Participants, Beneficiaries, Vendors and Employers shall be bound by such an order, insofar as it affects the benefits payable under this Plan, or the method or manner of payment.

**Section 12.08 Reliance.** If the Administrator, Employer or any other fiduciary with respect to the Plan acts in reliance on an election, consent, or revocation made pursuant to this Plan, the election, consent, or revocation shall be treated as valid for purposes of discharging the Plan from liability to the extent of payments made pursuant to such acts.

**ARTICLE XIII.****REQUESTS FOR INFORMATION AND OTHER CLAIMS PROCEDURES**

**Section 13.01 Requests for Information Concerning Eligibility, Participation, Contributions.** Requests for information concerning eligibility, participation, Contributions, or other aspects of the operation of the Program should be directed in writing to the Employer.

**Section 13.02 Requests for Information Concerning Funding Vehicles.** Requests for information concerning the Funding Vehicles and the terms, conditions, and interpretations thereof, should be directed in writing to the Vendor. In the event the information is not provided or any issues are not resolved, these requests for information should be directed in writing to the Administrator.

**Section 13.03 Claims for Benefits.** If a Participant makes a written claim for benefits under the Plan to the Employer or Vendor, as applicable, and the written request is denied, the Employer or Vendor, as applicable, shall within a reasonable period of time provide a written denial to the Participant. It shall include the specific reasons for denial, the provisions of the Plan and/or Funding Vehicles on which the denial is based, and how to apply for a review of the denied claim. Where appropriate, it shall also include a description of any material which is needed to complete or perfect a claim and why such material is necessary. Within 60 days after the Participant receives notification of the denial, a Participant may request in writing a review of a claim denied by the Employer or Vendor, as applicable. The Participant shall receive a written decision upon such request for review of a denied claim within a reasonable period of time following receipt of the request.

**ARTICLE XIV.****AMENDMENT AND TERMINATION**

**Section 14.01 Amendment and Termination.** While it is expected that the Program will continue indefinitely, the General Assembly of Maryland has the right to modify or terminate the Program, and the Administrator reserves the right to modify the Plan Document at any time.

**Section 14.02 Adverse Effects.** Any termination or modification of the Plan will not adversely affect the benefits accrued by Participants prior to the date of termination or modification.

**Section 14.03 Distribution upon Termination of the Plan.** The Administrator may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the Administrator on the date of termination does not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of Plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Treasury Regulations.

**ARTICLE XV.****MISCELLANEOUS**

**Section 15.01 Non-Alienation.** Participants' Accounts under the Program shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor be subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor be transferable by operation of law. However,

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the Program will comply with any judgment, decree or order which establishes the right of another person to all or a portion of a Participant's benefit under the Program to the extent that it is a "qualified domestic relations order" under Code Section 414(p). In addition, the Administrator may direct a Vendor to pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**Section 15.02 Limitation of Rights.** Neither the establishment nor maintenance of the Plan Document nor any amendment thereof, nor the purchase of any insurance contract, nor any act or omission under the Program or resulting from the operation of the Program shall be construed:

(a) As conferring upon any Participant, Beneficiary, or any other person any right or claim against an Employer or Administrator, except to the extent that such right or claim shall be specifically expressed and provided in the Plan.

(b) As an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of an Employer or any Participant to continue or terminate the employment relationship at any time.

**Section 15.03 Federal and State Taxes.** It is intended that Contributions under this Program, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries. However, neither the Administrator nor the Employer -guarantee that any particular Federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

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**Section 15.04 Erroneous Payments.** If the Employer or Vendor make any payment that, according to the terms of the Plan and the benefits provided hereunder, should not have been made, the Administrator, Employer or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Employer or Vendor, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Vendor may deduct it when making any future payments directly to that Participant.

**Section 15.05 Release.** Any payment to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Administrator, Employer or its designee, may condition such payment on the Participant delivering the duly executed receipt and release in such form as may be determined by the Administrator, Employer or its designee.

**Section 15.06 Liability.** Neither the Employer nor the Administrator shall incur any liability in acting upon any notice, request, signed letter, telegram, or other paper, document, or electronic transmission believed by the Employer or Administrator to be genuine, or to be executed, or sent by an authorized person.

**Section 15.07 Necessary Parties.** The Administrator and/or the Employer are the only parties necessary to any accounting, litigation, or other proceeding relating to the Program or Funding Vehicle. The settlement or judgment in any such case in which the Employer is duly served shall be binding upon all affected Participants in the Plan, their Beneficiaries, estates, and upon all persons claiming by, through, or under them.

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**Section 15.08 Headings.** Any headings or subheadings in the Plan are inserted for convenience of reference only and shall be ignored in the construction of any provisions of the Plan.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**BOARD OF TRUSTEES FOR THE STATE  
RETIREMENT AND PENSION SYSTEM**

By: \_\_\_\_\_  
R. Dean Kenderdine  
Secretary

I, \_\_\_\_\_, the duly qualified Secretary of the Board of Trustees of State Retirement and Pension System, do hereby certify that the Maryland Optional Retirement Program 403(b) Plan Document was adopted at the \_\_\_\_\_, 2008, meeting of the Board of Trustees.

In Witness Whereof, I have hereunto set my hand and fixed the seal of the Board of Trustees, State of Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

(SEAL)

\_\_\_\_\_  
\_\_\_\_\_, Secretary, \_\_\_\_\_ Board  
of  
Trustees of State Retirement and Pension System

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**UNIVERSITY SYSTEM OF MARYLAND  
BOARD OF REGENTS**

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

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Board of Regents of The University System  
of Maryland, by \_\_\_\_\_  
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**MORGAN STATE UNIVERSITY  
BOARD OF REGENTS**

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**ST. MARY'S COLLEGE  
BOARD OF REGENTS**

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

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Date

~~Board of Regents of Morgan State University, by~~

~~Board of Regents of St. Mary's College, by~~

~~Maryl~~ Maryland Higher Education Commission, on behalf of itself  
and each of the following listed public community colleges, by  
\_\_\_\_\_, Chairperson, Maryland Higher Education  
Commission.

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

\_\_\_\_\_  
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MARYLAND OPTIONAL RETIREMENT PLAN

EXHIBIT A - LIST OF VENDORS

**I. Approved Vendors**

Teachers Insurance Annuity Association and College Retirement Equities Fund ("TIAA-CREF")

Fidelity Investments

**II. Former Vendors**

AIG/VALIC

American Century

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