

# **CalSTRS Pension2**

## **457(b) DEFERRED COMPENSATION PLAN**

This specimen plan document, consisting of a basic plan document and adoption agreement, is for illustrative purposes only presented by CalSTRS for consideration of a plan sponsor's legal counsel and reflects a good faith interpretation of the Internal Revenue Code and 457 regulations. Because specific facts, circumstances, and laws of various states may impact a 457(b) plan, interested parties should consult legal counsel regarding any modifications that may be required. This document has not been reviewed or approved by the Internal Revenue Service, and the submission of the document to the IRS for a Private Letter Ruling by any interested party is also solely the responsibility of the plan sponsor. CalSTRS may update this specimen document from time to time as new guidance become available. Therefore, modifications to the document may be required. (8/31/15) This specimen plan is intended to assist school employers and their counsel in adopting a governmental 457(b) plan. Modifications may be required to meet the actual plan's particular objectives. (8/31/15)

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SPECIMEN DOCUMENT

SPECIMEN 457(b) DEFERRED COMPENSATION  
PLAN FOR PUBLIC SCHOOLS  
PREAMBLE

The Employer hereby establishes the Code Section 457(b) Deferred Compensation Plan for Public Schools (the "Plan").

The Plan is established pursuant to applicable state law and is intended to comply with the provisions of Section 457(b) of the Internal Revenue Code of 1986, as amended, Income Tax Regulations thereunder and applicable law. The Plan consists of the provisions set forth in this basic plan document and the Adoption Agreement, and is applicable to each Employee.

ARTICLE I  
DEFINITIONS

As used in this Plan, the following words and phrases will have the meanings set forth herein unless a different meaning is clearly required by the context.

1.1 "Administrator" means the person(s), committee or organization, appointed by the Employer pursuant to Section 5.2 to administer the Plan and perform administrative functions for the Plan as specified by the Employer. To the extent that there is an agreement between the Employer and CalSTRS to perform certain specified administrative functions, CalSTRS shall be the Administrator.

1.2 "Adoption Agreement" means the separate agreement that is executed by the Employer and sets forth the elective provisions of the Plan. The Adoption Agreement is considered a part of the Plan.

1.3 "Age 50 Plus Catch-Up Contribution" means the catch-up contribution for Participants who attain age 50 by the end of the calendar year, as permitted under Code Section 414(v) and pursuant to Section 3.3.

1.4 "Beneficiary" means the individual, individuals or trust designated by the Participant in writing on a form acceptable to the Administrator, and received by the Administrator before the Participant's death, to receive any undistributed amounts under the Participant Account which becomes payable upon the Participant's death. A Beneficiary may designate his own Beneficiary. If a Participant or Beneficiary does not designate a Beneficiary in a form acceptable to the Administrator, then his estate will be deemed to be his Beneficiary. In addition, any Beneficiary designation will meet the requirements of applicable state law.

1.5 "CalSTRS" means the California State Teachers' Retirement System.

1.6 "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.

1.7 "Compensation" means for an Employee all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b) or 457(b) (including an election under Article III to defer Compensation under the Plan).

1.8 "Deferrals" means the amount of Compensation deferred by a Participant to the Plan, comprising of Elective Deferrals and, if elected by the Employer in the Adoption Agreement and the Participant so elects on a Salary Reduction Agreement, Roth 457(b) Contributions.

1.9 "Elective Deferrals" means amounts made by the Employer to the Plan on a voluntary pre-tax basis pursuant to a Salary Reduction Agreement entered into by a Participant.

1.10 "Employee" means any statutory or common law employee who is employed by the Employer and who performs services for the Employer for which Compensation is payable.

1.11 "Employer" means the State of California, any political subdivision of the state, or any agency or instrumentality of the state, which satisfies the definition of Code Section 457(e)(1)(A) (together with any other entity required to be aggregated with such governmental employer under Code Sections 414(b), (c), (m) or (o)) and which has adopted this Plan as indicated in the Adoption Agreement.

1.12 "Includible Compensation" means an Employee's actual wages in box 1 of Form W-2 for the Employer, but increased (up to the dollar maximum) by any compensation reduction election under Code Section 125, 132(f), 402(g)(3) or 457(b). The amount of Includible Compensation is determined without regard to any community property laws. Pursuant to Section 1.457-4(d) (1) of the Income Tax Regulations, Includible Compensation will include any payments made to a Participant who has had a Severance from Employment, provided that the Includible Compensation is paid by the later of 2 ½ months after the Participant's Severance from Employment or the end of the calendar year that contains the date of such Participant's Severance from Employment. In addition, pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include payments made to an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Code Section 414(u)(5)) to the extent those payments do not exceed the amount the individual would have received if the individual had continued to perform services for the Employer rather than enter qualified military service. Includible Compensation will not include Employee pick-up contributions described in Code Section 414(h)(2).

1.13 "In-Plan Roth Rollover" means a rollover contribution to the Plan that consists of a distribution from an Elective Deferral Account, a 457(b) Rollover Account or a non-457(b) Rollover Account under the Plan that the Participant rolls over to the Participant's In-Plan Roth 457(b) Rollover Account in the Plan, in accordance with Code Section 402A(c)(4).

1.14 "Investment Product" means group or individual annuity contracts or such other investment arrangements issued by or offered through the Provider and used to hold assets of the Plan.

1.15 "Normal Retirement Age" means the age as elected by the Employer in the Adoption Agreement that is used for the Special 457 Catch-up Contribution election under Section 3.2. The Employer is not permitted to have more than one Normal Retirement Age for each Participant under all plans under Code Section 457(b) that it (together with any other entity required to be aggregated with the Employer under Code Section 414(b), (c), (m) or (o)) sponsors.

1.16 "Participant" means any individual who has entered into a Salary Reduction Agreement to make Deferrals under the Plan or has previously made Deferrals under the Plan and who has not yet received a distribution of his entire Participant Account under the Plan. As appropriate, a Participant means a Beneficiary or an alternate payee as defined in Code Section 414(p)(8).

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1.17 "Participant Account" means the following accounts established for the Participant and maintained by the Administrator for each Participant, including any earnings and losses attributable thereon:

- (a) Elective Deferral Account,
- (b) Roth 457(b) Contributions Account,
- (c) 457(b) Rollover Account,
- (d) Non-457(b) Rollover Account,
- (e) Roth 457(b) Rollover Account,
- (f) Roth Non-457(b) Rollover Account,
- (g) Rollover of In-Plan Roth Non-457(b) Rollover Account; and
- (h) In-Plan Roth 457(b) Rollover Account.

1.18 "Pension2" or "CalSTRS Pension2" means the Investment Product plan made available by the California State Teachers' Retirement System.

1.19 "Plan" means the name of the Plan as indicated in the Adoption Agreement.

1.20 "Plan Year" means the Plan's 12-consecutive month accounting year as elected by the Employer in the Adoption Agreement.

1.21 "Provider" means such product vendor(s), including any legacy product vendor(s), under the Plan that may be designated by the Employer.

1.22 "Recordkeeper" means the entity as designated by CalSTRS in its capacity as Administrator pursuant to an agreement with such entity. The Employer can designate such other Recordkeepers for the Plan as deemed appropriate.

1.23 "Rollover Contribution" means, if so elected by the Employer in the Adoption Agreement, contributions made by a Participant (or, if applicable, Employee) of "eligible rollover distributions" in accordance with Code Section 402(c)(4).

1.24 "Roth 457(b) Contributions" means, if so elected by the Employer in the Adoption Agreement, contributions that are:

(a) made by the Employer to the Plan pursuant to a Salary Reduction Agreement entered into by a Participant, which qualifies as a "designated Roth contribution" within the meaning of Code Section 402A;

(b) irrevocably designated by the Participant at the time of the cash or deferred election as a Roth 457(b) Contribution that is being made in lieu of all or a portion of the Elective Deferrals the Participant is otherwise eligible to make under the Plan; and

(c) treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

1.25 "Salary Reduction Agreement" means an agreement, which meets the requirements of Section 2.4, entered into between an Employee and the Employer pursuant to which an Employee agrees to defer Elective Deferrals and/or Roth 457(b) Contributions to the Plan and thus to become a Participant.

1.26 "Severance from Employment" means the date, on which the Employee dies, retires or otherwise has a severance from employment with the Employer, as determined by the Administrator.

1.27 "Special Section 457 Catch-up Contributions" means the catch-up contribution for a Participant in the three consecutive years prior to the year in which the Participant reaches Normal Retirement Age, as permitted under Code Section 457(b)(3) and pursuant to Section 3.2.

1.28 "Unforeseeable Emergency" means a financial hardship of the Participant or Beneficiary resulting from:

- (a) An illness or accident of:
  - (1) the Participant or the Beneficiary
  - (2) the spouse of the Participant or Beneficiary, or
  - (3) the dependent of the Participant or Beneficiary;
- (b) Loss of the Participant's or Beneficiary's property due to casualty; or
- (c) Similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary.

In addition, if elected by the Employer in the Adoption Agreement, an Unforeseeable Emergency means a severe financial hardship of the Participant resulting from an illness or accident of a primary Beneficiary designated by the Participant under the Plan.

A determination of an Unforeseeable Emergency will be based on each Participant's and Beneficiary's specific facts and circumstances.

## ARTICLE II PARTICIPATION

### 2.1 Eligibility to Participate

(a) Each Employee will be a Participant in the Plan when the Employee has executed a Salary Reduction Agreement with the Employer and has completed such documentation as may be required by the Provider(s).

(b) The Participant will provide investment direction for the Participant Account, including any subsequent change of investment direction, made to an Investment Product on such documentation as may be required by the Provider.

### 2.2 Salary Reduction Agreements

(a) In order to participate in the Plan, a Participant must complete a Salary Reduction Agreement with the Employer and file such Salary Reduction Agreement in a manner and method determined by the Administrator. The Salary Reduction Agreement will specify:

- (1) The amount (expressed either as a dollar amount or as a percentage) of the Participant's Compensation which the Participant agrees to make as Deferrals, subject to the limitations of Article III; and
- (2) The date as of which Deferrals pursuant to the Salary Reduction Agreement will begin.

(b) A Participant may make Deferrals payable in the calendar month during which the Employee first becomes a Participant if the Salary Reduction Agreement providing for such Deferrals is entered into before the first day of the month in which the Compensation is paid or becomes available, or as soon as administratively feasible.

(c) A Participant may, by amendment of a Salary Reduction Agreement change prospectively the amount of Deferral.

An amendment to the Salary Reduction Agreement will be effective as early as administratively practicable, but not earlier than the first day of the following calendar month in which the Compensation is paid or made available.

### 2.3 Information Provided by the Employee

Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary for the Administrator to administer the Plan, including, without limitation, whether he is a participant in any other eligible plan under Code Section 457(b).

### 2.4 Contributions Made Promptly

All contributions under the Plan will be transferred to the applicable Investment Product within a period that is not longer than is reasonable for the proper administration of the Participant Accounts. For purposes of this requirement, Deferrals under the Plan by a Participant must be transferred to the Investment Product within 15 business days following the month in which these amounts would otherwise have been paid to the Participant.

### 2.5 Leave of Absence

Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Deferrals under the Plan will continue to the extent that Compensation continues.

ARTICLE III  
CONTRIBUTIONS AND LIMITATIONS

3.1 Deferrals

(a) Except as provided in Section 3.2 and 3.3 and subject to any applicable law or under any applicable collective bargaining agreement, the maximum amount of Deferrals which may be made by a Participant in any taxable year will not exceed the lesser of (1) the applicable dollar amount provided under Code Section 457(b)(2) (adjusted for cost of living under Code Section 457(e)(15)) or (2) 100% of the Participant's Includible Compensation.

(b) If elected by the Employer in the Adoption Agreement, a Participant may elect to make Deferrals from accumulated sick pay, accumulated vacation pay and back pay, provided the Participant enters into a Salary Reduction Agreement pursuant to Section 2.4 to make such Deferrals before the amounts would otherwise be paid or made available. A Participant who is a former Employee may make Deferrals from accumulated sick pay, vacation pay and back pay, provided that the Participant enters into a Salary Reduction Agreement pursuant to Section 2.4 prior to the first day of the calendar month to make such Deferrals before the amounts would otherwise be paid or made available, provided that such amounts are payable within the later of 2 ½ months after the Participant's Severance from Employment or the end of the calendar year that includes the date of the Participant's Severance from Employment.

3.2 Special 457 Catch-Up Contributions

(a) If permitted in the Adoption Agreement, in any one or more of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age, as defined by the Employer in the Adoption Agreement, the Participant may elect to make Deferrals in an amount not exceeding the lesser of (1) twice the dollar amount permitted as a general deferral under Section 3.1 or (2) the sum of the maximum deferral permitted under Section 3.1 for the current tax year and as much of the applicable deferral limit under Code Section 457(b)(2) in prior years before the current tax year that had not previously been used ("underutilized amount"). For purposes of this Section, a prior year will be taken into account only if such year began after December 31, 1978, and the Participant was eligible to participate in the Plan during all or a portion of the prior year. A Participant may only make this election under this subsection once with respect to any plan under Code Section 457(b) of the Employer.

(b) In determining a Participant's underutilized amount, the Plan will take into consideration:

- (1) Prior to 2002, if a Participant made Deferrals to the Plan and deferrals to any other plan under Code Section 457(b), salary reduction contributions made to plans under Code Section 401(k), plans under Code Section 403(b), simplified employee pension (SARSEP) plans under Code Section 402(h)(1), simple retirement accounts under Code Section 408(p), and amounts deferred under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), such deferrals to the other plans will be taken into account in determining a Participant's underutilized amount under Code Section 457(b)(2). In addition, Includible Compensation will be limited to the limitation in effect in the calendar year in which the deferrals were made. If such deferrals cumulatively exceed the then-applicable dollar amount in Code Section 457(b)(2) in the year that such amounts were deferred, then there will be no underutilized amount for that year.
- (2) To the extent that the Employer did not maintain a plan under Code Section 457(b), no underutilized limitation is available to a Participant for that prior year.
- (3) After 2001, only deferrals to plans under Code Section 457(b) will be taken into account for purposes of determining the underutilized amount.
- (4) Age 50 Plus Catch-Up Contributions will not be taken into account for purposes of determining a Participant's underutilized amount.



### 3.3 Age 50 Plus Catch-Up Contributions

If elected by the Employer in the Adoption Agreement, a Participant who has attained age 50 before the close of the calendar year may elect Age 50 Plus Catch-up Contributions. Such contributions are not subject to the limitations of Code Section 457(b). The maximum dollar amount of the Age 50 Plus Catch-up Contributions for a calendar year adjusted for cost of living under Code Section 414(v)(2)(C).

### 3.4 Maximum Amount of Catch-Up Contributions

Any catch-up contributions made by a Participant pursuant to Section 3.4 or Section 3.5 may not exceed the greater of (a) the amount that the Participant is eligible to make as Deferrals under Section 3.4 or (b) the amount that the Participant is eligible to make as Deferrals under Section 3.5.

### 3.5 Participant Covered by More than one 457(b) Plan

If a Participant is or has been a participant in one or more other plans under Code Section 457(b) in the same calendar year, then the Plan, and all such other plans, will be considered as one plan for purposes of applying the limitations of this Article III. For this purpose, the Administrator will take into account any other such plan of the Employer under Code Section 457(b) and, to the extent the Participant provides the Administrator with sufficient information concerning his participation, any such other plans under Code Section 457(b) in which the individual participated in the same calendar year.

### 3.6 Excess Deferrals

(a) In the event that the limit on Deferrals is exceeded pursuant to this Article III, the Employer will direct the Provider, or in accordance with such agreement as the Employer may enter into, to an Administrator, as to the proper correction method permissible under applicable law, including calculation of any earnings or losses and the proper tax reporting with respect to such distributions as soon as administratively practicable after the Administrator determines that the amount is an excess deferral.

(b) A Participant who participates in the Plan and another 457(b) plan of another employer will be responsible for complying with the deferral limits of this Article III. In the event of an excess amount, the Participant will notify the Administrator so that the excess may be distributed as soon as practicable after the Administrator determines that the amount is an excess deferral.

### 3.7 Transfers from Other Plans under Code Section 457(b)

(a) If elected by the Employer in the Adoption Agreement, the Plan will accept transfers of amounts previously deferred under another plan under Code Section 457(b) maintained by another employer as defined in Code Section 457(e)(1)(A).

(b) A transfer under subsection (a) will only be permitted if:

- (1) the transferring plan provides for the transfer of such amounts, and
- (2) the Participant has a benefit equal to the amount immediately after the transfer to least equal to the amount under the Plan immediately before the transfer.

(c) The Administrator may require such documentation from the transferring plan as it deems necessary to effectuate the transfer in accordance with Section 1.457-10(b) of the Income Tax Regulations and to confirm that the transferring plan is an eligible government plan as defined in Section 1.457-2(f) of the Income Tax Regulations. The amount so transferred will be credited to the appropriate account under the Participant Account and will be held, accounted for, administered and otherwise treated in the same manner as amounts as held in the transferor plan, except that the transferred

amounts will not be taken into consideration for purposes of Code Section 457(b)(2) for the year of transfer.

### 3.8 Rollovers to the Plan

(a) The Employer may elect in the Adoption Agreement to permit an Employee, whether a Participant at the time, to rollover amounts that are considered eligible rollover distributions as defined in Code Section 402(c)(4) to the Plan from an eligible retirement plan, as defined in Code Section 402(c)(8)(B).

(b) Amounts (other than designated Roth contributions as defined in Code Section 402A) rolled over from another Code Section 457(b) plan maintained by an employer defined in Code Section 457(e)(1)(A) will be allocated to the Participant's 457(b) Rollover Account. Amounts (other than designated Roth contributions as defined in Code Section 402A) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Non-457(b) Rollover Account.

(c) Designated Roth contributions as defined in Code Section 402A rolled over from another Code Section 457(b) plan maintained by an employer as defined in Code Section 457(e)(1)(A) will be allocated to the Participant's Roth 457(b) Rollover Account. Designated Roth contributions as defined in Code Section 402A rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Roth Non-457(b) Rollover Account.

(d) Designated Roth contributions relating to in-plan rollovers under Code Section 402A(c)(4) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Rollover of In-Plan Roth Non-457(b) Rollover Account.

(e) Amounts attributable to In-Plan Rollovers will be allocated to an In-Plan Roth 457(b) Rollover Account. In-Plan Roth Rollover Contributions will be subject to the Plan rules related to Roth 457(b) Contributions.

### 3.9 Investments

Subject to Section 5.9, amounts contributed to the Plan will be invested in an Investment Product. Participants will direct the investment of their Participant Accounts among the investment options available under the Investment Product. Contributions will be allocated to a Participant Account in accordance with this Article III and earnings and losses attributable to such contributions will be allocated to such Participant Account. If any provision of an Investment Product agreement is not consistent with the Plan provisions, the terms of the Plan will control.

### 3.10 Protection of Persons Who Serve In a Uniformed Service

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

(b) In the case of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)), the Beneficiaries are entitled to any additional benefits (other than Deferrals relating to the period of qualified military service) provided under the Plan had the Participant resumed employment and then had a Severance from Employment on account of death.

ARTICLE IV  
BENEFIT DISTRIBUTIONS

4.1 Distributions Under the Plan

(a) A Participant Elective Deferral Account, Roth 457(b) Contributions Account or In-Plan Roth 457(b) Rollover Account may not be paid to a Participant (or, if applicable, the Beneficiary) until one of the following events has occurred:

- (1) upon the Participant's Severance from Employment;
- (2) the calendar year in which the Participant attains age 70 ½;
- (3) an Unforeseeable Emergency, within the meaning of and subject to Section 4.6, if elected by the Employer in the Adoption Agreement; or
- (4) the election of a small balance distribution within the meaning of and subject to Section 4.7, if elected by the Employer in the Adoption Agreement.

(b) A Participant may choose to receive a distribution from his 457(b) Rollover Account, Non-457(b) Rollover Account, Roth 457(b) Rollover Account, Rollover of In-Plan Roth Non-457(b) Rollover Account and Roth Non-457(b) Rollover Account at the time elected by the Employer in the Adoption Agreement.

4.2 Distributions from a Roth 457(b) Contributions Account, a Roth 457(b) Rollover Account, a Roth Non-457(b) Rollover Account, a Rollover of In-Plan Roth Non-457(b) Rollover Account and an In-Plan Roth 457(b) Rollover Account, will be tax-free for federal income tax purposes if:

- (1) The distribution meets the requirements of Section 4.1(a);
- (2) The amounts are held for a 5-year holding period, measured from the first year that the initial Roth 457(b) Contribution was made on behalf of the Participant to a Roth 457(b) Contributions Account, and
- (3) The distribution is due to a Participant's attainment of age 59 ½, death, or in the event of the Participant's becoming Disabled.

4.3 Determination of Benefits Payable to a Participant

(a) Upon attainment of a distributable event described in Section 4.1, but in no event later than the requirement to commence minimum distribution payments in accordance with Code Section 401(a)(9) and the Income Tax Regulations thereunder, a Participant may elect a benefit distribution option to which benefits will be paid.

(b) Upon a Participant's application for benefits, the Administrator will direct the distribution of a Participant Account in accordance with this Section 4.2.

(c) A Participant may choose a benefit distribution option as elected by the Employer in the Adoption Agreement. In the event a Participant fails to make an election as to a benefit distribution option, any benefit payable to such Participant will be distributed as elected by the Employer in the Adoption Agreement. The terms of any annuity contract purchased and distributed by the Plan to a Participant will comply with the requirements of the Plan.

4.4 Determination of Benefits upon Death

(a) Upon the death of a Participant, the Administrator will direct that the deceased Participant's Participant Account, be distributed to the Beneficiary in accordance with the provisions of this Section.

(b) The designation of a Beneficiary will be made on a form satisfactory to the Administrator. A Participant or Beneficiary may at any time revoke his designation of a Beneficiary or change his Beneficiary by filing written notice of such revocation or change with the Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's or Beneficiary's death, the death benefit will be payable to the Participant's or Beneficiary's estate.

(c) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Participant Account of a deceased Participant or Beneficiary, as the Administrator may deem appropriate. The Administrator's determination of death and of the right of any person to receive payment will be conclusive.

(d) Death benefits payable to a Beneficiary will be made in a form as selected by the Beneficiary in accordance with the available options as elected by the Employer in the Adoption Agreement. In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary will be distributed in accordance with Code Section 401(a)(9). The terms of any annuity contract purchased and distributed by the Plan to a Beneficiary will comply with the requirements of the Plan.

#### 4.5 Minimum Distributions.

(a) All distributions under the Plan will comply with the minimum distribution requirements of Code Section 401(a) (9) and the Income Tax Regulations.

(b) Notwithstanding the foregoing, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

(c) In addition, notwithstanding Section 4.8, 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions as defined in Code Section 402(c)(4).

#### 4.6 Unforeseeable Emergency Withdrawals

(a) If elected by the Employer in the Adoption Agreement, a Participant or Beneficiary may request an Unforeseeable Emergency withdrawal subject to the following requirements:

- (1) The request for an Unforeseeable Emergency withdrawal will be determined by the Administrator based on the Participant's or Beneficiary's relevant facts and circumstances.
- (2) The request for an Unforeseeable Emergency may be made only to the extent that such emergency is or may not be relieved through:
  - reimbursement or compensation from insurance or otherwise;
  - liquidation of the Participant's or Beneficiary's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship;  
or
  - Cessation of the Participant's Deferrals to the Plan.

- (3) Distributions due to an Unforeseeable Emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(b) A Participant or Beneficiary may request an Unforeseeable Emergency withdrawal by submitting that request in writing on an approved form to the Provider, or in accordance with such agreement as the Employer may enter into, to an Administrator, who will review and approve the request. If the request is denied, a request for review of the determination may be made in writing to such entity as the Administrator may designate, provided that such entity has accepted the designation. If at any time a request of an Unforeseeable Emergency withdrawal is approved, the Employer may thereupon direct the Provider, or in accordance with such agreement as the Employer may enter into, to an Administrator, to distribute so much of the Participant Account as is necessary to provide the amount approved to meet the Unforeseeable Emergency, as determined by the Administrator.

(c) Unforeseeable Emergency withdrawals will be made in accordance with the procedures established by the applicable Investment Products.

#### 4.7 Small Balance Distribution

If elected by the Employer in the Adoption Agreement and upon proper written request, a Participant may elect to receive a small balance distribution, payable in a lump sum, if the Participant's Deferral Account value is \$5,000 or less, and the Participant has not made Deferrals to the Plan for a period of two years before distribution. A Participant may take a small balance distribution under this Section only once while a Participant under the Plan.

#### 4.8 Rollovers from the Plan

(a) Notwithstanding any provision of the Plan to the contrary, a Participant, a surviving spouse who is the designated Beneficiary of the Participant or a spouse or former spouse who is the alternate payee will be permitted to elect to have any eligible rollover distribution as defined in Code Section 402(c)(4) paid directly to an eligible retirement plan as defined in as defined in Code Section 402(c)(8)(B) or to a Roth IRA established under Code Section 408A specified by the Participant. The Participant will, in the time and manner prescribed by the Administrator, specify the amount to be rolled over and the eligible retirement plan to receive such rollover. Any portion of a distribution which is not rolled over will be distributed directly to the Participant.

(b) A non-spousal Beneficiary may elect to roll over death benefits amounts in accordance with Code Section 402(c) (11) provided that:

- (1) such amounts are rolled over to an inherited IRA via a direct trustee-to-trustee transfer;
- (2) such election is made by December 31 of the year following the year of the Participant's death; and
- (3) the rolled over amounts are eligible rollover distributions as defined in Code Section 402(c)(4).

#### 4.9 Permissive Service Credit Transfers

(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 his Participant Account transferred to the defined benefit governmental plan in accordance with Code Section 457(e) (17). A transfer under this Section may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under subsection (a) 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).

#### 4.10 Transfers to Other Plans under Code Section 457(b) Upon Severance from Employment

(a) Upon a Participant's Severance from Employment, a Participant may elect to have all or a portion of the Participant Account transferred to the plan under Code Section 457(b) of an employer defined in Code Section 457(e)(1)(A). Such amounts will be transferred at the Participant's election, provided:

- (1) The plan under Code Section 457(b) to which the Participant's benefit is being transferred provides for the acceptance of such amounts;
- (2) The Participant or Beneficiary has a benefit equal to the amount immediately after the transfer to least equal to the amount under the Plan immediately before the transfer; and
- (3) In the case of a transfer made on behalf of a Participant, such individual has had a Severance from Employment with the Employer and is performing services for the employer maintaining the receiving plan.

(b) Upon the transfer of amounts under subsection (a), the Plan's liability to pay benefits to the Participant or Beneficiary under the Plan will be discharged to the extent of the amount so transferred on behalf of the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section or effectuate the transfer pursuant to Section 1.457-10(b) of the Income Tax Regulations. If Roth 457(b) Contributions are transferred, the receiving plan must permit Designated Roth contributions as defined in Code Section 402A.

#### 4.11 Loans to Participants

(a) If elected by the Employer in the Adoption Agreement, a Participant may receive a loan from his Elective Deferral Account, 457(b) Rollover Account and non-457(b) Rollover Account. Such loans may also be subject to the requirements of the Investment Product and as set forth in the loan program created by the Employer.

(b) For purposes of this Section, all plans of the Employer will be considered one plan in accordance with Code Section 72(p) and Income Tax Regulations thereunder, and the balance of all loans under any plan of the Employer under which the Participant participates must be aggregated in determining the maximum loan available under subsection (d).

(c) The Plan may make loans to Participants under the following circumstances: (1) loans will be made available to all Participants on a reasonably equivalent basis; (2) loans will bear a reasonable rate of interest; (3) loans will be adequately secured; and (4) will provide for periodic repayment over a reasonable period of time.

(d) No loan made pursuant to this Section will exceed the lesser of:

- (1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one-year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or
- (2) One-half (1/2) of the Participant Account.

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

(e) Loans will provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a principal residence of the Participant will, provide for periodic repayment over a reasonable period to be determined by the Administrator of time that may exceed five (5) years. Notwithstanding the foregoing, in the event a Participant enters the uniformed services of the United States and retains reemployment rights under law, repayments will be suspended and interest will cease to accrue during the period of leave and the period of repayment will be extended by the number of months of leave in the uniformed services. In the event a Participant is on an Employer approved, bona fide leave of absence without pay, loan payments may be suspended (but interest will continue to accrue) for the period of leave but not to exceed one year; however, the loan must be repaid by the original loan repayment date.

(f) An assignment or pledge of any portion of a Participant's interest in the Plan will be treated as a loan under this Section.

(g) Any security interest held by the Plan by reason of an outstanding loan to the Participant will be taken into account in determining the amount of the death benefit or single lump-sum payment.

#### 4.12 Distributions from Governmental Plans for Health and Long Term Care.

If elected by the Employer in the Adoption Agreement and pursuant to Code Section 457(a)(3), annual distributions of up to \$3,000 from the Plan that would otherwise be taxable, are excludable for income tax purposes if the following conditions are satisfied: (1) the distribution is used to pay for qualified health insurance premiums (accident, health insurance or long term care) for an eligible public safety officer, or spouse or dependent of the public safety officer, (2) the public safety officer is separated from service due to disability or attainment of the age which the Participant has the right to retire and receive unreduced retirement benefits from the Employer's basic pension plan, and (3) the distributions are paid directly to the insurer or to the administrator of a self-insured plan.

## ARTICLE V ADMINISTRATION

### 5.1 Powers and Responsibilities of the Employer

(a) The Employer will have full power to interpret and construe the Plan in a manner consistent with its terms and the provisions of Code Section 457, including the applicable Income Tax Regulations and to establish practices and procedures conforming to those provisions. In all such cases, the Employer's determination will be final and conclusive upon all persons. It is recognized that unusual circumstances may occur and questions may arise that are not specifically covered by any provision of the Plan, and the Employer will have the right to resolve all such questions. Notwithstanding the above, the Employer's power and responsibility under the Plan will not extend to, nor have any control over, those responsibilities and duties of the Provider.

(b) The Employer will be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.

### 5.2 Designation of Administrative Authority

The Employer may appoint a committee ("Committee") of one or more persons to serve as the Administrator and to discharge the Administrator's responsibilities under the Plan. The Employer may remove a Committee member for any reason by giving such member ten (10) days written notice and may thereafter fill any vacancy thus created. If the Employer does not appoint a Committee to administer the Plan, the Employer will be the Administrator.

### 5.3 Allocation and Delegation of Responsibilities

If more than one person is appointed as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that the Employer makes no such delegation, the Administrators may allocate the responsibilities among themselves, in which event the Administrators will notify the Employer in writing of such action and specify the responsibilities of each Administrator.

### 5.4 Powers and Duties of the Administrator

The primary responsibility of the Administrator is to administer the Plan for the benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator will administer the Plan in accordance with its terms and will have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator will be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as will be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction will be done in a nondiscriminatory manner based upon uniform principles consistently applied and will be consistent with the intent that the Plan will continue to be deemed a qualified plan under the terms of Code Section 457, and will comply with the terms of all Income Tax Regulations issued pursuant thereto. The Administrator will have all powers necessary or appropriate to accomplish his duties under this Plan. The Administrator will be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

(a) the discretion to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder and to receive benefits under the Plan;

(b) determine the amounts to be contributed to each Participant Account;



- (c) to authorize and direct the Provider with respect to all disbursements to which a Participant is entitled under the Plan;
- (d) to maintain all necessary records for the administration of the Plan;
- (e) to maintain practices and procedures necessary to administer the Plan as are consistent with the terms hereof;
- (f) to determine the type of any Investment Product to be purchased from the Provider; and
- (g) to assist any Participant regarding his rights, benefits, or elections available under the Plan.

#### 5.5 Records and Reports

The Administrator will keep a record of all actions taken and will keep all other books of accounts, records, and other data that may be necessary for proper administration of the Plan and will be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

#### 5.6 Appointment of Advisors

The Administrator may appoint/employ such agents, attorneys, actuaries, accountants, auditors, investment counsel, and clerical assistants, and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan.

#### 5.7 Information from the Employer

To enable the Administrator to perform his functions, the Employer will supply the necessary information to the Administrator on a timely basis regarding the Participants under the Plan, including but not limited to Compensation, date of hire, date of death, Severance from Employment, and such other pertinent facts and data as the Administrator may require. The Administrator may rely upon such information as is supplied by the Employer and will have no duty or responsibility to verify such information.

#### 5.8 Payment of Expenses

All expenses of administration will be paid by the Participant Accounts under the Plan unless the Employer agrees to pay such expenses directly. Such expenses may include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan.

#### 5.9 Discontinuance

- (a) Notwithstanding Section 3.9, if any Provider ceases to be eligible to receive Deferrals under the Plan, the Employer may direct that both existing amounts under Participant Accounts that were invested with such Recordkeeper and any future contributions be transferred to the Investment Products of those Providers which are currently approved to receive Deferrals under the Plan.
- (b) If CalSTRS is replaced as the Administrator, all Participant Accounts will remain under the Pension2 Investment Product, subject to the terms of that Investment Product.

ARTICLE VI  
AMENDMENT AND TERMINATION

6.1 Amendment

(a) The Employer will have the right at any time to amend this Plan subject to the limitations of this Section. Any such amendment will become effective as provided therein upon its execution.

(b) No amendment to the Plan will be effective if it authorizes or permits any part of the Investment Product (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of Participants or Beneficiaries; or causes any reduction in the amount credited to the account of any Participant or Beneficiary; or causes or permits any portion of the Investment Product to revert to or become property of the Employer.

6.2 Termination

(a) The Employer will have the right at any time to terminate the Plan by resolution of its governing board. In addition, the Employer must deliver written notice of discontinuance of the Investment Product to the Provider.

(b) Upon the full termination of the Plan, the Employer will direct the distribution of the assets to Participants and Beneficiaries in a manner which is consistent with and satisfies the provisions of Article IV as soon as administratively practicable after termination of the Plan.

6.3 Transfer of Entire Plan Assets to another Eligible Plan within the Same State

Subject to this Section, the Employer may direct the transfer of all assets of the Plan to another plan under Code Section 457(e)(1)(A) and that is located in the same state, provided that the requirements of Code Section 457(b) and Section 1.457(b)-10 (b)(3) of the Income Tax Regulations are satisfied. If Roth 457(b) Contributions are transferred, the receiving plan must permit Designated Roth contributions as defined in Code Section 402A.

## **ARTICLE VII MISCELLANEOUS**

### **7.1 Assets for Exclusive Benefit of Participants And Beneficiaries**

All amounts in the Participant Accounts under this Plan, all property and rights which may be purchased with such amounts and all income attributable to such amounts, property or rights will be held in trust (or a custodial account or annuity contract described in Code Section 401(f)) for the exclusive benefit of Participants and their Beneficiaries. All such amounts will not be subject to the claims of the Employer's general creditors.

### **7.2 Participant Rights**

This Plan will not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant, Employee. Nothing contained in this Plan will be deemed to give any Participant, Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant, Employee at any time regardless of the effect which such discharge will have upon him as a Participant in this Plan.

### **7.3 Alienation**

Subject to applicable state law (and Code Section 401(g) if the Investment Product consists of an annuity contract) and except as provided in Section 7.4, no benefit which will be payable to any person (including a Participant or his Beneficiary) will be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same will be void; and no such benefit will in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor will be subject to attachment or legal process for or against such person, and the same will not be recognized except to such extent as may be required by law.

### **7.4 Recognition of Approved Domestic Relations Orders**

Notwithstanding Section 7.3, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order") and Code Section 414(p), then the amount of the Participant Account will be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment will be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator will establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

### **7.5 IRS Levy**

Notwithstanding Section 7.3, if a Participant or Beneficiary is entitled to a distribution in accordance with Section 5, the Administrator may pay from a Participant's or Beneficiary's Account 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.

### **7.6 Distribution for Minor Beneficiary or Incompetent**

If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or

Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

#### 7.7 Mistaken Contributions

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

#### 7.8 Procedure When Distributee Cannot Be Located

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

#### 7.9 Governing Law

The Plan will be construed, administered and enforced according to the Code and the laws of the state in which the Employer has its principal place of business.

#### 7.10 Headings

Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

#### 7.11 Gender

Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

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