STATE OF TENNESSEE
OPTIONAL RETIREMENT PROGRAM
PLAN DOCUMENT

As Amended and Restated Effective April 3, 2019
TABLE OF CONTENTS

Preamble
Article I – Definitions
Article II – Eligibility
Article III – Contribution and Allocation
Article IV – Determination and Distribution of Benefits
Article V – Governance and Administration
Article VI – Amendment and Termination
Article VII – Miscellaneous
PREAMBLE

Tennessee Code Annotated § 8-35-401 et seq., as replaced by § 8-25-201 et seq., establishes the Optional Retirement Program as a qualified defined contribution plan pursuant to § 401(a) of the Internal Revenue Code (the “Plan”).

The Plan is intended to be a qualified plan within the meaning of § 401(a) of the Internal Revenue Code and is established pursuant to §§ 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable Treasury regulations and other guidance.

The Plan consists of the provisions set forth in this plan document, which provides the terms of the Plan established in Tennessee Code Annotated § 8-35-401 et seq., as replaced by § 8-25-201 et seq. The provisions of Tennessee Code Annotated § 8-25-201 et seq. are incorporated into the Plan as if fully set out in this document.

ARTICLE I
DEFINITIONS

1.1 “Alternate Payee” means a former spouse of a Participant who is recognized by a qualified domestic relations order as having a right to receive all or a portion of the Participant’s account.

1.2 “Annual Additions” means, for the purpose of limitations for defined contributions plans under Internal Revenue Code 415(c), the sum for any year of Employer and Participant contributions (whether voluntary or mandatory), post-tax employee contributions to a defined benefit plan of the Employer (except for purposes of service purchases, if tested under the modified limit of § 415(b) of the Internal Revenue Code), and forfeitures credited to the Participant’s account. Participant contributions are determined without regard to rollover contributions and to picked-up contributions.

1.3 “Beneficiary” means the individual, individuals or trust designated by the Participant in writing on a form acceptable to the Plan Administrator, and received by the Plan Administrator before the Participant’s death, to receive any undistributed amounts under the Participant account which becomes payable upon the Participant’s death.

1.4 “Covered Compensation” means, with respect to any calendar year, the amount of a member’s earnable compensation subject to contributions under the provisions of the Federal Insurance Contributions Act, compiled in 26 U.S.C. §§ 3101-3126.

1.5 “Designated Companies” mean the companies designated and authorized by the Trustees to provide Investment Products to Participants.
1.6  (a)  “Earnable Compensation” means the compensation payable to a member for services rendered to an Employer.

(b) Earnable compensation includes, but is not limited to, any bonus or incentive payment, provided that such payment is authorized by legislation passed by the general assembly and that such legislation provides that the payment shall be included as Earnable Compensation for retirement purposes and is not made for the purpose of increasing a member’s retirement benefit or inducing a member to retire.

(c) Earnable compensation does not include compensation paid to a teacher employed in a public institution of higher education for performing extra services for the institution that exceeds twenty-five percent (25%) of the teacher’s base compensation. For purposes of this subdivision, extra services means any duties other than summer school or regular duties.

(d) Earnable compensation does not include compensation that exceeds the maximum dollar limitation imposed by § 401(a)(17) of the Internal Revenue Code, codified in 26 U.S.C. § 401(a)(17), as adjusted for cost-of-living increases in accordance with § 401(a)(17)(B) of the Internal Revenue Code. For any person becoming a Participant in the Plan before July 1, 1996, the dollar limitation under § 401(a)(17) of the Internal Revenue Code shall not apply to the extent the amount of compensation which is allowed to be taken into account under the system would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993.

(e) Earnable compensation does not include deferred compensation paid under a § 457(f) plan or arrangement.

1.7 “Effective Date” means July 1, 1972, the original effective date of the Plan.

1.8 “Eligible Employee” means an individual eligible to participate in the Plan under Section 2.1.

1.9 “Employer” means the public institution of higher education of which an Eligible Employee is in service.

1.10 “Investment Products” means the investment products offered through the Designated Companies, in accordance with the Plan’s investment policy, and used to hold the assets of the Plan.

1.11 “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, including any regulations, rulings or other guidance under the Internal Revenue Code, as applicable to a governmental plan as defined by Internal Revenue Code § 414(d).

1.12 “Limitation Year” means, for the purpose of determining/ensuring/testing the Plan’s compliance with 26 U.S.C. §415, the calendar year.
1.13 “Participant” means an Eligible Employee of a public institution of higher education in Tennessee who is eligible to participate in the Plan, and elects to participate.

1.14 “Plan” means the Optional Retirement Program established pursuant to Tennessee Code Annotated § 8-35-401 et seq., as replaced by § 8-25-201 et seq.

1.15 “Plan Administrator” means the state treasurer, as delegated by the Trustees to administer the Plan.

1.16 “Plan Year” means each twelve (12) month period commencing July 1 and ending June 30.


1.18 “Trustees” means the trustees of the Optional Retirement Program as prescribed in Tennessee Code Annotated § 8-25-203(a).

ARTICLE II
ELIGIBILITY

2.1 Eligibility

Pursuant to Tennessee Code Annotated § 8-25-204, an individual who is exempt from the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), and who is employed in a public institution of higher education, including, but not limited to, the Tennessee Colleges of Applied Technology, is eligible to become a Plan Participant upon election to participate. Such eligibility to participate is as an alternative to participation in the Tennessee Consolidated Retirement System established in Tennessee Code Annotated § 8-34-201. Individuals eligible to participate include those Participants who entered the Plan prior to July 1, 2014 and those Eligible Employees who enter the service of a public institution of higher education on or after July 1, 2014, who are exempt from the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), who elect to participate in lieu of participating in the Tennessee Consolidated Retirement System’s hybrid plan established in Tennessee Code Annotated § 8-36-901 et seq.

2.2 Determination of Eligibility and Election of Eligible Employee to Participate

(a) In all cases of doubt, the Plan Administrator will determine whether an employee has satisfied the eligibility requirements.

(b) Each Eligible Employee who elects to participate in the Plan shall so designate in a manner approved by the Plan Administrator and filed with the institution with which the employee is employed.
(c) Any Eligible Employee who is not a member of the Retirement System and who has not accumulated creditable service thereunder as a member of a local retirement fund may make this election upon employment with a public institution of higher education. Any Eligible Employee who does not make such election upon employment shall become a member of the Retirement System.

(d) Any member of the Retirement System or any member of a local retirement fund having rights under the Retirement System, who is an Eligible Employee, may elect at any time to participate in the Plan in lieu of participating in the Retirement System while employed in a public institution of higher education. Any such election shall become effective no later than the first day of the month following thirty (30) days’ written notice to the Tennessee Consolidated Retirement System and to the institution where the employee is employed in a manner prescribed by the Plan Administrator.

2.3 Termination of Eligibility

(a) In the event that a Participant is no longer an Eligible Employee as defined in Section 2.1, the Participant will not be able to participate in the Plan until the Participant is again an Eligible Employee. The Participant Account of such inactive Participant will continue to be allocated any attributable earnings and losses.

(b) Any Participant who attains either five (5) or more but less than six (6) years of creditable service in the Plan, or five (5) or more but less than six (6) years of creditable service in the Retirement System and the Plan combined, shall have the option to make an irrevocable election to terminate membership in the Plan and to join the Retirement System under the process prescribed by Tennessee Code Annotated § 8-25-204.

2.4 Payment of Contributions to Investment Products

An individual Participant’s Employer shall remit to the relevant Designated Company the contributions to be allocated under the company’s Investment Products to fund benefits under the Plan within the time period prescribed by applicable law.
ARTICLE III
CONTRIBUTION AND ALLOCATION

3.1 Employer Contributions

(a) For Eligible Employees who entered service with a public institution of higher education in Tennessee prior to July 1, 2014, and elected to participate in the Plan, the Employer shall make Employer contributions to the Participant’s account at the rate of ten percent (10%) of each Eligible Employee’s Earnable Compensation, plus one percent (1%) of the part of the Eligible Employee’s Earnable Compensation in excess of the employee’s Covered Compensation. This provision shall apply to Eligible Employees who entered service with a public institution of higher education in Tennessee prior to July 1, 2014, who left service and then returned to service with a public institution of higher education in Tennessee on or after July 1, 2014, unless such Eligible Employee annuitized his/her entire account, rolled his/her entire account balance over to another plan, or took a distribution of his/her entire account balance.

(b) For Eligible Employees who entered service with a public institution of higher education in Tennessee on or after July 1, 2014, and elected to participate in the Plan, the Employer shall make Employer contributions to the Participant’s account at the rate of nine percent (9%) of the Participant’s Earnable Compensation, or such alternate amount as may be prescribed by the General Assembly in the general appropriations act each year.

3.2 414(h) Pick-Up Contributions

For Eligible Employees who entered service with a public institution of higher education in Tennessee on or after July 1, 2014, and elected to participate in the Plan, the Participant shall make contributions of five percent (5%) of the Participant’s Earnable Compensation to the Participant’s account. Such Participant contributions shall be treated as Employer contributions in accordance with § 414(h) of the Internal Revenue Code. Such contributions, although designated as Participant contributions, shall be paid by the Employer in lieu of contributions by Participants. Participants shall not be given the option to have a cash or deferred election right (within the meaning of Treasury Regulation § 1.401(k)-1(a)(3)) with respect to designated picked-up contributions, which includes not having the option to receive such contributions directly instead of having them paid by the Employer to the Plan. Employer contributions so picked up shall be treated for all purposes of the Plan and State law, other than federal tax law, in the same manner as Participant contributions made without a pick-up.

3.3 Mistaken Contributions

If any contribution (or any portion of a contribution) is made by the Employer by a good faith mistake of fact, upon receipt in good order of a proper request by the Plan Administrator, the Trustees or the appropriate Designated Company shall return the amount of the mistaken contribution(s), except as limited below, to the Employer. A return of a mistaken contribution will not be made if the return will not be made within one year from the date of the mistaken

ORP Plan Document 2019 7
payment of the contribution. Upon any return of a mistaken contribution, earnings attributable to the mistaken contributions will not be returned and losses attributable to the mistaken contribution shall reduce the amount to be returned.

3.4 Limitations on Contributions and Benefits

(a) The contributions paid to the Plan shall be limited to such extent as may be necessary to conform to the requirements of § 415 of the Internal Revenue Code for a qualified plan.

(b) The maximum permissible Annual Additions that may be contributed or allocated to each Participant’s account under the Plan for any Limitation Year shall not exceed the lesser of:

(1) $40,000, as adjusted for increase in the cost of living under Section 415(d) of the Internal Revenue Code, or

(2) 100 percent of the Participant’s compensation for the Limitation Year.

(c) The § 415(c) limit with respect to any Participant who at any time has been a Participant in any other defined contribution plan as defined in § 414(i) of the Internal Revenue Code, maintained by the Participant’s Employer in this Plan, shall apply as if the total Annual Additions under all such defined contribution plans in which the Participant has been a Participant were payable from one (1) plan.

(d) For purposes of applying § 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable shall be compensation as defined by Treasury Regulation 1.415(c)-2(d)(3), or successor regulation; provided, however, that member contributions picked up under § 414(h) of the Internal Revenue Code shall not be treated as compensation.

(1) However, for Limitation Years beginning after December 31, 1997, compensation shall also include amounts that would otherwise be included in compensation but for an election under § 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of § 132(f)(4) of the Internal Revenue Code.

(2) For Limitation Years beginning on and after January 1, 2009, compensation for the Limitation Year shall also include compensation paid by the later of two and one-half (2 ½) months after a member’s severance from employment or the end of the limitation year that includes the date of the member’s severance from employment if:

(A) the payment is regular compensation for services during the member’s regular working hours, or compensation for services outside the member's
regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(B) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

(C) the payment is pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in paragraph (2) above are not considered compensation if paid after severance from employment, even if they are paid within two and one-half (2 ½) months following severance from employment, except for payments to the individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of § 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service or deemed compensation to the individual if permanently and totally disabled (as defined in § 22(e)(3) of the Internal Revenue Code).

An employee who is in qualified military service (within the meaning of § 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the Employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the Employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the Employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(3) Back pay, within the meaning of Treasury Regulation § 1.415(c)-2(g)(8), shall be treated as compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

A member's compensation for purposes of this subsection (d) shall not exceed the annual limit under § 401(a)(17) of the Internal Revenue Code which applies for that Limitation Year. If the Annual Additions for any member for a Plan Year exceed the limitation under § 415(c) of the Internal Revenue Code, the excess Annual Addition shall be corrected as permitted under the
employee plans compliance resolution system (or similar Internal Revenue Service correction program).

3.5 Rollovers to the Plan

(a) Subject to subsection (d) below, amounts that are considered eligible rollover distributions as defined in § 402(c)(4) of the Internal Revenue Code may be rolled over by a Participant from an eligible retirement plan, as defined in subsection (b) below. A Participant who is a surviving spousal Beneficiary or an Alternate Payee (who is a former spouse) of another eligible retirement plan may roll over eligible rollover distributions from such eligible retirement plan as further defined in subsection (b).

(b) For purposes of this section 3.5, “eligible retirement plan” has the same meaning as provided in section 4.4(b).

(c) For purposes of this section 3.5, amounts “rolled over by a Participant from an eligible retirement plan” means:

(1) amounts rolled to the Plan directly from another eligible retirement plan on behalf of a Participant; and

(2) eligible rollover distributions as defined in § 402(c)(4) of the Internal Revenue Code received by a Participant, from another eligible retirement plan that are rolled over to the Plan within sixty (60) days following receipt thereof.

(d) Notwithstanding anything herein to the contrary, for purposes of this section 3.5, an eligible rollover distribution shall not include a distribution under section 4.4(b)(7) from a Roth IRA as described in 408A of the Internal Revenue Code or any portion of a distribution that is not includable in gross income.

3.6 Investments

(a) The Designated Companies shall make available Investment Products to the Participants in the Plan. Investment Products shall be selected, provided, and reviewed in accordance with the Plan’s investment policy established by the Trustees. From time to time, the Investment Products offered under the Plan may be discontinued or otherwise changed. If an Investment Product is eliminated, the Plan Administrator may automatically reinvest the money in the eliminated Investment Product into a new Investment Product. After any applicable blackout period, the affected Participants may re-direct money in the new Investment Product to any other then available Investment Product. The Participants shall have no right to require the Trustees or the Plan Administrator to select or retain any Investment Product. Any change with respect to an Investment Product made by the Plan (on the Plan level) or a Participant (on the individual level), however, shall be subject to the terms and conditions (including any rules or procedural requirements) of the affected Investment Products.
(b) Each Participant (and, when applicable, each Beneficiary or Alternate Payee) shall, subject to the requirements of applicable law and any procedures established by each Designated Company (with the approval of the Plan Administrator), direct the investment of his or her account. Accounts may only be invested in the Investment Products offered by each Designated Company.

(c) The Participant, Beneficiary, or Alternate Payee must give his or her investment direction in the form required by the Designated Company (with the approval of the Plan Administrator).

(d) If a Designated Company or the Plan Administrator provides any investment education or investment information of any kind, the Plan Administrator and the Trustees shall not be liable for any loss or liability arising out of such investment education or investment information.

3.7 Vesting

Participants shall be 100% vested in his or her account balance at all times.

3.8 Qualified military service

(a) Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with § 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

(b) Effective with respect to deaths occurring on or after January 1, 2007, while a Participant is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by § 401(a)(37) of the Internal Revenue Code, survivors of a member in the Plan are entitled to any additional benefits that the Plan would provide if the Participant had resumed employment and then died, such as accelerated vesting or survivorship benefits that are contingent on the Participant’s death while employed. In any event, a deceased Participant’s period of qualified military service must be counted for vesting purposes.

(c) Beginning January 1, 2009, to the extent required by § 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (as defined under § 3401(h)(2)) of the Internal Revenue Code) from an Employer shall be treated as employed by that Employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on Annual Additions under § 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.
ARTICLE IV
DETERMINATION AND DISTRIBUTION OF BENEFITS

4.1 Distributions Under the Plan
(a) A Participant account may not be paid to a Participant (or as applicable, the Beneficiary) until one of the following events has occurred:
   (1) separation from service, or
   (2) the Participant’s death.
(b) Notwithstanding subsection (a), a Participant may choose to terminate membership in the Plan under Section 2.3.

4.2 Distribution of Benefits upon Separation from Service
(a) The Plan shall pay all benefits upon attainment of a distributable event described in Section 4.1 with a good faith interpretation of the requirements of § 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of § 414(d) of the Internal Revenue Code.
(b) Distribution of a Participant’s benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the Participant attains age seventy and one-half (70 1/2) or April 1 of the year following the calendar year in which the Participant terminates. If a Participant fails to apply for retirement benefits by the later of either of those dates, the Plan shall begin distribution of the monthly benefit as required by this section.
(c) Upon a Participant’s request for a distribution, the Plan will direct the distribution of a Participant Account in accordance with this section.
(d) Upon separation from service, a Participant may elect to receive a cash withdrawal of such Participant’s accumulated account or accounts if permitted by the relevant Designated Company. Any Participant who receives a cash withdrawal pursuant to this section shall not be entitled to reestablish the withdrawn amount or any period of service represented by that amount in either the Plan, the Retirement System, or any other Tennessee state retirement program.
(e) Notwithstanding any other provision of this section, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code (“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’s designated Beneficiary, or for a period of at least ten (10) years (“Extended
2009 RMDs”), will not receive those 2009 distributions unless the Participant or Beneficiary elects to receive such distribution. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. However, those Participants and beneficiaries who receive required minimum distributions through a systematic withdrawal system continued to receive 2009 RMDs unless he or she elected not to receive the 2009 RMDs. Solely for purposes of applying the rollover provisions of the Plan, 2009 RMDs (amounts that would have been required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Internal Revenue Code) and Extended 2009 RMDs (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 a member’s designated Beneficiary, or for a period of at least ten (10) years), will be treated as eligible rollover distributions.

4.3 Distribution of Benefits upon Death

(a) Upon the death of a Participant, the Plan 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 in a manner satisfactory to the Plan. A Participant or Beneficiary may at any time revoke his designation of a Beneficiary or change his or her Beneficiary by filing written notice of such revocation or change with the Plan. Any beneficiary designation will meet applicable requirements of state law. A beneficiary may designate his or her own beneficiary. In the event no valid designation of Beneficiary exists at the time of the Participant’s death or Beneficiary’s death, the death benefit will be payable to the Participant’s or Beneficiary’s estate.

(c) The Plan may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Beneficiary, as the Plan may deem appropriate. The Plan’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 manner as selected by the Beneficiary in accordance with the available options under the Plan. 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 § 401(a)(9) of the Internal Revenue Code. The terms of any annuity contract purchased and distributed by the Plan to a Beneficiary will comply with the requirements of the Plan.

(e) The amount of an annuity paid to a Participant’s Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of § 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation 1.401(a)(9)-6, Q&A-2.
4.4 Rollovers from the Plan

(a) For purposes of compliance with § 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision in this Plan document or in the Tennessee Code Annotated that would otherwise limit a distributee’s election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Plan, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) For purposes of this section, “eligible retirement plan” means any of the following that accepts the distributee’s eligible rollover distribution:

(1) a qualified retirement plan described in § 401(a) of the Internal Revenue Code

(2) an annuity plan described in § 403(a) of the Internal Revenue Code;

(3) an individual retirement account described in § 408(a) of the Internal Revenue Code;

(4) an individual retirement annuity described in § 408(b) of the Internal Revenue Code;

(5) effective January 1, 2002, an annuity contract described in § 403(b) of the Internal Revenue Code

(6) effective January 1, 2002, a plan eligible under § 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Plan, or

(7) effective January 1, 2008, a Roth IRA described in § 408A of the Internal Revenue Code.

(c) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated Beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent that such distribution is required under § 401(a)(9) of the Internal Revenue Code;
the portion of any distribution that is not includible in gross income; provided, however, effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, but such portion may be transferred only:

(A) to an individual retirement account or annuity described in § 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in § 401(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(B) on or after January 1, 2007, to a qualified defined benefit plan described in § 401(a) of the Internal Revenue Code or to an annuity contract described in § 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(C) on or after January 1, 2008, to a Roth IRA described in § 408A of the Internal Revenue Code; and

(4) any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of § 415 of the Internal Revenue Code or any distribution that is reasonably expected to total less than two hundred dollars ($200) during the year or any greater amount as provided under Treasury Regulation 1.401(a)(31)-1, Q&A 11.

The definition of an eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an Alternate Payee under a qualified domestic relations order, as defined in § 414(p) of the Internal Revenue Code.

(d) "Distributee" means an employee or former employee. It also includes the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in § 414(p) of the Internal Revenue Code. Effective April 16, 2010, a distributee further includes a nonspouse Beneficiary who is a designated Beneficiary as defined by § 401(a)(9)(e) of the Internal Revenue Code. However, a nonspouse Beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

(e) "Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the distributee.

ORP Plan Document 2019
15
(f) Prior to making such a direct rollover, the Plan may require the individual requesting the
direct rollover to establish that the receiving plan or account meets the requirements of this section
and the Internal Revenue Code.

(g) This section shall be administered in accordance with the direct rollover provisions of the
Internal Revenue Code.

4.5 Hardship Withdrawals

Hardship withdrawals are not permitted under the Plan.

4.6 Participant Loans

Participant loans are not permitted under the Plan.

ARTICLE V
GOVERNANCE AND ADMINISTRATION

5.1 Authority of the Trustees

(a) The Trustees shall govern the Plan as a qualified defined contribution plan under
Tennessee Code Annotated, Title 8, chapter 25, as amended from time to time, pursuant to §§
401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue
Code as applicable and applicable Treasury regulations and other guidance. The Trustees shall be
authorized to adopt rules and regulations which are appropriate or necessary to maintain the
qualified status of the Plan.

(b) The Trustees may delegate to the Plan Administrator the authority to carry out the day-to-
day operations and responsibilities for administration of the Plan. In exercising the delegation,
the Plan Administrator may assign any duties and responsibilities to the Plan Administrator’s
staff or private vendors and contractors as the Plan Administrator deems necessary and proper
and may consult with professionals as necessary about the administration of the program.

5.2 Powers and Duties of the Plan Administrator

(a) The Plan Administrator shall administer the Plan for the exclusive benefit of the
Participants and their Beneficiaries, subject to the specific terms of the Plan. The Plan
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 Plan Administrator will be conclusive and binding upon all persons. The Plan 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. Any procedure, discretionary act, interpretation or construction will be done in a nondiscriminatory manner based upon uniform principles consistently applied. Any action, interpretation, or construction, will be consistent with the intent that the Plan is deemed a qualified plan under the terms of § 401(a) of the Internal Revenue Code, and will comply with all regulations issued pursuant thereto. The Plan Administrator will have all the powers necessary or appropriate to accomplish his or her duties under this Plan. The Plan Administrator will be charged with the duties of the general administration of the Plan, including, but not limited to:

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

(2) ensure Employer contributions are being made in accordance with Tennessee Code Annotated § 8-25-205;

(3) to authorize and direct the relevant Designated Company with respect to all disbursements to which a Participant or Beneficiary is entitled under the Plan;

(4) to maintain all necessary records for the administration of the Plan;

(5) to maintain practices and procedures necessary to administer the Plan as are consistent with the terms hereof;

(6) to assist any Participant or Beneficiary regarding his or her rights, benefits, or elections available under the Plan.

5.3 Records and Reports

The Plan Administrator will keep a record of all actions taken and will keep all other books of account, 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.

5.4 Appointment of Advisers

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

5.5 Information from Employer

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

5.6 Payment of Expenses

All expenses of administration will be paid from Plan assets separately designated for such purpose. The Plan Administrator is authorized to assess an administration fee to Participants for such purpose. Such expenses will include any expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan.

ARTICLE VI
AMENDMENT AND TERMINATION

6.1 Amendment

(a) The Trustees shall have the right at any time to amend this Plan subject to the limitations of this Section and applicable state and federal law. Any such amendment shall 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 assets of the Plan (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 the Participants or their 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 assets to revert to or become property of the Employer.

6.2 Termination

The Tennessee General Assembly may, by statute, direct the Trustees to terminate the Plan at any time. However, no termination shall affect the amount of benefits, which at the time of such termination shall have accrued to the Participants or Beneficiaries since the Participants are 100% vested at all times.

6.3 Final Allocation

If on termination of the Plan any amount is not allocated, all such amounts will be allocated among Participants in the ratio of the Participant’s total account balance as of the valuation day that immediately precedes this allocation to the total account balances of all Participants on such valuation day.
ARTICLE VII
MISCELLANEOUS

7.1 Assets For Exclusive Benefit Of Participants And Beneficiaries

The assets of the Plan shall never inure to the benefit of the Employer, the State, or the Plan Administrator and shall be held for the exclusive purposes of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan.

7.2 Recognition of Approved Domestic Relations Orders

The Plan shall honor claims under a qualified domestic relations order. For purposes of this section, “qualified domestic relations order” has the same meaning ascribed to it in § 414(p) of the Internal Revenue Code (26 U.S.C. § 414(p)); provided, that such order may relate only to the provision of marital property rights for the benefit of the former spouse of the Plan Participant.

7.3 Anti-alienation

Except to the extent as otherwise required by law, any benefit or interest available under the Plan, or any right to receive or instruct payments under the Plan, or any distribution or payment made under the Plan shall not be subject to assignment, alienation, garnishment, attachment, transfer, anticipation, sale, mortgage, pledge, hypothecation, commutation, execution, or levy, whether by the voluntary or involuntary act of any interested person under the Plan, except for an interest which becomes payable pursuant to a qualified domestic relations order. However, the preceding sentence shall not be construed to preclude the payment of any fees or expenses (including taxes) of the Plan.

7.4 Levy or Judgment

Notwithstanding any other provision of the Plan, the Plan Administrator may pay to the Internal Revenue Service from a Participant’s, Beneficiary’s, or Alternate Payee’s account the amount that the Plan Administrator finds is demanded under an Internal Revenue Service levy with respect to that Participant, Beneficiary, or Alternate Payee or is sought to be collected by the United States under a judgment resulting from an unpaid tax assessment against the Participant, Beneficiary, or Alternate Payee.

7.5 Procedure When Distributee Cannot Be Located

The Plan Administrator, or the applicable Designated Company, if so delegated by the Plan 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 made means (a) the mailing by certified mail of a notice to the last known address shown on the Employer’s or the Plan Administrator’s records, (b) use of Internet search engines to locate the Participant or Beneficiary, and (c) the payee has not responded within 6 months. If the
Plan Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Plan shall continue to hold the benefits due such person.

7.6 Governing Law

The Plan will be construed, administered and enforced according to the Internal Revenue Code and the laws of the state of Tennessee.

7.7 Internal Revenue Service Approval

If, under any application filed by or on behalf of the Plan, the Internal Revenue Service determines that the Plan as amended and restated does not qualify under Internal Revenue Code § 401(a), and the determination is not contested, or if contested, is finally upheld (or otherwise finally determined), the Plan Administrator may retroactively amend the Plan to the earliest date permitted by Treasury Regulations to the fullest extent that the Plan Administrator considers necessary to obtain an Internal Revenue Service determination that the Plan qualifies under Internal Revenue Code § 401(a).

7.8 No Right Other Than Provided by Plan

The establishment of the Plan and the purchase of any Investment Product(s) under the Plan shall not be construed as giving to any Participant or Beneficiary or any other person any legal or equitable right against the Employer or the Plan Administrator or their representatives, except as expressly provided by the Plan.

7.9 Severability

If a court finds that any provision of the Plan is invalid, that holding shall not affect the remaining provisions of the Plan which shall be construed and enforced as if the invalid provision had not been included in the Plan, unless such a construction of the Plan would be clearly contrary to the enabling statute.

7.10 Venue

If any person bound by the Plan or otherwise brings any proceeding against the Plan Administrator or Trustees, such person submits to exclusive venue in the Tennessee Claims Commission.

7.11 Construction of Statutes and Regulations

Any reference to a section of the Internal Revenue Code shall be construed to also refer to any successor provision. Any reference to a section of Treasury Regulations shall be construed to also refer to any successor provision of such Regulations. Any reference to a Revenue Ruling or Revenue Procedure or IRS Notice or IRS Announcement shall be construed to also refer to any
guidance of general applicability that extends, amplifies, or modifies the Revenue Ruling or Revenue Procedure or IRS Notice or IRS Announcement.

The Plan refers to relevant regulations, including (but not limited to) Treasury regulations under the Internal Revenue Code, without regard to whether the regulations are substantive or interpretive and without regard to whether the regulations are proposed or temporary or final; but it is intended that any provision that refers to a regulation shall be construed to refer to the regulation in the sense of the appropriate legal effect (under administrative procedure law and otherwise) that the regulation currently has at the time the construction is made.

To the extent that a provision states a duty owed to any government (rather than a duty to a Participant or Beneficiary or other person or entity having an interest under the Plan), the provision shall be construed as directory and shall be enforced only by the government. However, a provision that is necessary for the Plan to meet the requirements of a qualified plan within the meaning of IRC § 401(a) includes a duty owed to Participants and Beneficiaries and is not directory.

IN WITNESS WHEREOF, this Plan Document, as amended and restated, is adopted as of the date of the last signatory below to sign.

STUART MCWHORTER, COMMISSIONER, DEPARTMENT OF FINANCE AND ADMINISTRATION

BO WATSON, CHAIR, SENATE FINANCE, WAYS AND MEANS COMMITTEE

SUSAN LYNN, CHAIR, HOUSE OF REPRESENTATIVES FINANCE, WAYS AND MEANS COMMITTEE

ORP Plan Document 2019
21
DAVID H. LILLARD, JR., CHAIR,
TENNESSEE CONSOLIDATED RETIREMENT SYSTEM BOARD

March 26, 2019

Approved for signature by  a c 3/25/19