Idaho State Board of Education
Optional Retirement Plan

A Defined Contribution Retirement Plan

Restated November 2001
Amendment 1, effective the first day of the first plan year beginning after December 31, 2001
Restated December 2003
Restated to include amendments through 2008
Restated December 2011
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Table of Contents

ARTICLE I	Definitions
ARTICLE II	Establishment of Plan
ARTICLE III	Eligibility for Participation
ARTICLE IV	Plan Contributions
ARTICLE V	Funding Vehicles
ARTICLE VI	Vesting
ARTICLE VII	Benefits
ARTICLE VIII	Administration
ARTICLE IX	Amendment and Termination
ARTICLE X	Miscellaneous

Article I: Definitions

1.1 ***Accumulation Account*** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.

1.2 ***Annual Additions*** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(l)(2) and 419A(d)(2) of the Code, if any.

1.3 ***Beneficiary (ies)*** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.

1.4 ***Board*** means the Idaho State Board of Education and Board of Regents of the University of Idaho as defined in Idaho Code §33-101.

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

1.6 ***Compensation*** means an employee's total annual salary (inclusive of bonuses, overtime pay and overload pay, as applicable) paid in the Plan Year not reduced by a compensation election deduction because of the application of Code Sections 125 , 403(b) or 457(b). Compensation does not include the following items (even if includible in gross income):

(a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.
(b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs and bonuses.
(c) Employer payments to employees for or related to travel, mileage, meals, lodging or subsistence expenses, without regard to the taxability of such payments for federal income tax purposes and without regard to the form of payment, including payment made as reimbursement of an itemized expense voucher and payment made of an unvouchered expense allowance.
(d) The value of a reduction in tuition provided by an educational institution to an employee which does not qualify for exclusion from the employee's wages because of the application of Code Section 117.
(e) Fringe benefits (cash and noncash).
(f) Moving expense reimbursements as defined in section 67-5337, Idaho Code.

Annual Compensation Limit. The annual compensation of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other

consecutive 12 month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996 through December 31, 2001, the OBRA '93 annual compensation limit is $150,000.

Notwithstanding the above, employees who became Participants in the Plan before the first day of the Plan Year beginning on or after January 1, 1996, will be subject to the annual compensation limit in effect under the Plan before that date, as determined by IRS regulations.

1.7 ***Date of Employment or Reemployment*** means the effective date of the appointment for a faculty member or professional staff. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with the Institution.

1.8 ***Eligible Employee*** means faculty or nonclassified staff of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired between July 1, 1990 and June 30, 1993 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1990 who elected to participate in the Plan during the 90 day period from July 1, 1990 to September 28, 1990; and teaching staff and officers of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired on or after July 1, 1993 who work on a .50 full-time equivalency basis or more; and teaching staff and officers of the College of Southern Idaho, North Idaho College, College of Western Idaho, or Eastern Idaho Technical College initially appointed or hired on or after July 1, 1997 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1997 who elected to participate in the Plan during the 150 day period from July 1, 1997 to November 28, 1997. However, "Eligible Employee" shall exclude:

(a) an Employee whose employment is expected to be less than five (5) months; and

(b) an Employee whose employment is incidental to his or her status as a student at the Institution; and

(c) an Employee who is vested in the Public Employee Retirement System of Idaho (PERSI) and who makes a one-time irrevocable election to remain a member of that retirement system within 60 days of the date of initial hire or appointment.

The term Eligible Employee shall not include any leased employee deemed to be an employee of the Institution as provided in Code Section 414(n).

If an individual is classified as an independent contractor during any period of providing services to the Institution, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation. Notwithstanding the above, if the failure to cover such reclassified individual would prevent the Plan from satisfying the minimum coverage requirement under Code Section 410(b) for a Plan year, the minimum number of such individuals necessary for the plan to fulfill such minimum coverage requirements will be included as eligible employees for the plan year, with preference given to those reclassified individuals with the smallest amount of compensation.

No individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole discretion, or individual performing services for the Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Employer, shall be an Eligible Employee for purposes of this plan.

1.9 ***Fund Sponsor*** means an insurance, variable annuity or Investment Company that provides Funding Vehicles available to Participants under this Plan.

1.10 ***Funding Vehicles*** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

1.11 ***Hours of Service means:***

(a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.

(b) Each hour for which an employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, or maternity or paternity leave (whether paid or

unpaid). However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically-related expenses is excluded. An employee is directly or indirectly paid, or entitled to payment by the Institution regardless of whether payment is made by or due from the Institution directly or made indirectly through a trust fund, insurer or other entity to which the Institution contributes or pays premium. No more than 501 Hours of Service will be credited under this paragraph. Hours of Service under this paragraph will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, incorporated herein by reference.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Institution, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in (b) above.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the Institution is a member, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o) and the regulations thereunder. Hours of Service also will be credited for any person considered an employee for this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.

Hours of Service will be determined on the basis of actual hours that an employee is paid or entitled to payment.

1.12 ***Institution*** means the Board and employment units under its jurisdiction, namely:

The Office of the Idaho State Board of Education
Boise State University
Idaho State University
University of Idaho
Lewis-Clark State College
Eastern Idaho Technical College
College of Southern Idaho
North Idaho College
College of Western Idaho

1.13 ***Institution Plan Contributions*** means contributions made by the Institution under this Plan.

1.14 ***Limitation Year*** means a calendar year.

1.15 ***Normal Retirement Age*** means age 65.

1.16 ***Participant*** means any Eligible Employee of the Institution participating in this Plan.

1.17 ***Participant Plan Contributions*** means contributions made by a Participant under this Plan. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2). The pick-up amounts cannot be received directly by the Participant and are required to be made.

1.18 ***Plan*** means the Idaho State Board of Education Optional Retirement Plan as set forth in this document, and pursuant to Idaho Code §33-107A and 33-107B.

1.19 ***Plan Contributions*** means the combination of Participant Plan Contributions and Institution Plan Contributions.

1.20 ***Plan Entry Date*** means the later of the Effective Date of the Plan or the Eligible Employee's Date of Employment or Reemployment.

1.21 ***Plan Year*** means January 1 through December 31.

1.22 ***Year of Service*** means a 12-month period (computation period) during which the Eligible Employee completes 1,000 or more Hours of Service.

Article II: Establishment of Plan

2.1 ***Establishment of Plan.*** The Idaho State Legislature authorized the Board to establish the Plan as of July 1, 1990.

This Plan document sets forth the provisions of this Code Section 401(a) Plan. The Plan was restated as of November 1, 2001. Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2).

It is intended that this Plan will not be subject to the requirements of ERISA under Department of Labor Regulation Section 2510.3-2(f).

Article III: Eligibility for Participation

3.1 ***Eligibility.*** An Eligible Employee must, as a condition of employment, begin participation in this Plan on the Plan Entry Date following employment at the Institution.

3.2 ***Notification.*** The Institution will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.

3.3 ***Enrollment in Plan.*** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date.

3.4 ***Reemployment.*** A former employee who is reemployed by the Institution will be eligible to participate upon meeting the requirements stated in the "Eligibility" section of Article III. A former employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.

3.5 ***Termination of Participation.*** A Participant will continue to be eligible for the Plan until one of the following conditions occur:

- he or she ceases to be an Eligible Employee;
- the Plan is terminated.

Article IV: Plan Contributions

4.1 ***Plan Contributions.*** Plan Contributions will be made for Eligible Employees who have satisfied the requirements of Article III as follows:

Each Institution shall contribute the percentage indicated below of the Compensation of that Institution's Participants, reduced by the amount necessary, if any, to provide contributions to a total disability program, but in no event less than five percent (5%) of each Participant's Compensation:

NIC, CSI, CWI and EITC: an amount equal to the Public Employee Retirement System of Idaho (PERSI) contributions rates;

UI, BSU, ISU, LCSC and the Office of the State Board of Education: nine and thirty-five one hundredths percent (9.35%); and

Each Participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of his or her Compensation.

Plan Contribution rates are defined in Idaho Code §33-107A and §33-107B and are subject to change as those sections are amended.

Plan Contributions are considered to be credited to Participants no later than the last day of the Plan Year for which the Plan Contributions are made.

4.2 ***When Contributions Are Made.*** Plan Contributions will begin when the Institution has determined that the Participant has met or will meet the requirements of Article III. Any part of a year's Plan Contributions not contributed before this determination will be included in contributions made for that year after the determination. Plan Contributions will be forwarded to the Fund Sponsor(s) in accordance with the procedures established by the Institution. Institution Plan Contributions will be forwarded to the Fund Sponsor(s) at least annually. Participant Plan Contributions will be forwarded by the Institution to the Fund Sponsor(s) as soon as it is administratively feasible for the Institution to segregate contributions, but in any event, within the time required by law.

4.3 ***Allocation of Contributions.*** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) according to the administrative procedures of the Fund Sponsor(s). A Participant may direct contributions to only one Fund Sponsor at any given time. However, a Participant may change Fund Sponsors once per calendar year by completing the appropriate forms provided by the Institution.

4.4 ***Leave of Absence.*** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution. No Plan Contributions will be made during an unpaid leave

of absence.

4.5 ***Transfer of Funds from Another Plan.*** The Fund Sponsor shall accept contributions that are transferred directly from any other plan qualified under sections 401(a) or 403(a) of the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable.

4.6 ***Rollovers from other Plans.***

(a) Direct Rollovers. The Plan will accept a direct rollover of an eligible rollover distribution from:

(i) A qualified plan described in section 401(a) or 403(a) of the Code including after-tax employee contributions.
(ii) A tax sheltered annuity plan described in section 403(b) of the Code, excluding after-tax employee contributions.
(iii) An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(b) Participant Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an eligible rollover distribution from:

(i) A qualified plan described in section 401(a) or 403(a) of the Code.
(ii) A tax sheltered annuity plan described in section 403(b) of the Code.
(iii) An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(c) Participant Rollover Contributions from IRAs. The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

4.7 ***Military Service.*** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided to the extent required by Code section 414(u).

(a) Effective January 1, 2009, for purposes of applying the limitations of Code section 415 as described in section 4.8 of the Plan, compensation includes

differential wage payments. A "differential wage payment" is a payment which (1) is made by the Institution with respect to a period during which an individual is on active military duty for a period of more than 30 days, and (2) represents all or a portion of the wages the individual would have received from the Institution if the individual were performing service for the Institution, all as defined by Code section 3401(h)(2).

(b) Effective January 1, 2007, to the extent required by Code section 401(a)(37), if a Participant dies while performing qualified military service (within the meaning of Code section 414(u)(5)), the Participant shall be treated as having terminated employment with the Institution due to his death for purposes of any additional benefits (other than contributions relating to the period of qualified military service) provided under the Plan.

(c) Effective December 12, 1994, a Participant who returns to employment with the Institution as an Eligible Employee during the period within which reemployment rights are guaranteed by law may elect to contribute to the Plan all or a part of the contributions the Participant would have made to the Plan if the Participant had remained continuously employed by the Institution throughout the period of the Participant's qualified military service. The amount of contributions the Participant may make according to this subsection 4.7(c) shall be determined on the basis of the Participant's Compensation in effect immediately before the qualified military service and the terms of the Plan at that time. A Participant may make such contributions during a period beginning on the Participant's reemployment with the Institution and lasting for the shorter of five years or three times the Participant's period of qualified military service. To the extent the Participant makes contributions permitted by this subsection 4.7(c), the Participant's Accumulation Account will receive Institution contributions that would have been made during the same period.

4.8 ***Maximum Plan Contributions.*** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

Maximum Annual Addition. The annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:

(a) $40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or

(b) 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(f)(2) of the Code), if any, otherwise treated as an annual addition.

Article V: Funding Vehicles

5.1 ***Funding Vehicles.*** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors are:

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

(b) Variable Annuity Life Insurance Company (VALIC)

Participants may choose any Funding Vehicle offered by a Fund Sponsor. The Institution's current selection of Fund Sponsors isn't intended to limit future additions or deletions of Fund Sponsors. Any additional accounts offered by a Fund Sponsor will automatically be made available to Participants in accordance with the procedures established by the Institution and the Fund Sponsor.

5.2 ***Fund Transfers.*** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles.

Article VI: Vesting

6.1 ***Plan Contributions.*** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

Article VII: Benefits

7.1 ***Retirement Benefits.*** A Participant who has terminated employment may elect to receive retirement benefits under any of the forms of benefit, as provided below.

Forms of Benefit. The forms of benefit are the benefit options offered by the Funding Vehicles available under this Plan. These forms are equally available to all Participants choosing the Funding Vehicle. The forms of benefit available under this Plan include:

(a) Single life annuities as provided under the Funding Vehicle contract.
(b) Joint and survivor annuities as provided under the Funding Vehicle contract.
(c) Cash withdrawals to the extent the Funding Vehicle permits.
(d) Fixed period annuities, as permitted by the Funding Vehicle contract.
(e) Retirement Transition Benefit.
(f) Such other annuity and withdrawal options as provided under the Funding Vehicle contract.

7.2 ***Retirement Transition Benefit.*** Unless the Minimum Distribution Annuity, or the Limited Periodic Withdrawal Option is elected, a Participant may elect to receive a one-time lump-sum payment of up to 10 percent of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one sum payment from each TIAA contract and/or CREF account(s) doesn't exceed 10 percent of the respective Accumulation Account(s) being converted to retirement income.

7.3 ***Survivor Benefits.*** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary (ies) under the options offered by the Funding Sponsors. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).

7.4 ***Application for Benefits.*** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary (ies) by the Fund Sponsor.

7.5 **Minimum Distribution Requirements.** No payment option may be selected by the Participant (or a Beneficiary) unless it satisfies the requirements of Code section 401(a)(9) (including the incidental death benefit requirements of Code section 401(a)(9)(G). and Treasury Regulations 1.409(a)(9)-1 through 1.401(a)(9)-8), all as applicable to governmental plans. The requirements of this section shall take precedence over any inconsistent provisions of the Plan. All distributions shall begin not later than the April 1 immediately following the

calendar year in which the Participant reaches age 70 ½ or in which the Participant subsequently retires from employment with the Institution ("Required Beginning Date").

7.6 ***Direct Rollovers.*** This section applies to distributions made on or after December 31, 2001. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

For this section, the following definitions apply:

(a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and, for any distributions after 12/31/99, any hardship distribution described in Code Section 401(k)(2)(b)(i)(iv).

(b) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement described in section 408(b) of the Code, or a qualified retirement plan described in Code Section 401 (a) or 403 (a) of the Code, that accepts the distributee's eligible rollover distribution, a tax sheltered annuity plan described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in Code section 408A, subject to

the adjusted gross income limits of Code section 408A(c)(3)(B), if applicable, and subject to the distribution rules of Code section 408A(d)(3). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

(c) Distributee: A distributee includes an employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(d) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

7.7 ***Distribution to IRA of Nonspouse Beneficiary.*** A Participant's nonspouse Beneficiary may elect payment of any portion of the deceased Participant's account in a direct trustee to trustee transfer to an individual retirement account or annuity described in section 402(c)(8)(B)(i) or (ii) of the Code that is established to receive the Plan distribution on behalf of the Beneficiary. For purposes of this section, a trust maintained for the benefit of one or more designated beneficiaries may be the Beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Participant dies after the Participant's Required Beginning Date as defined in section 7.5, the required minimum distribution in the year of death may not be transferred according to this section. The requirements of section 402(c)(11) of the Code apply to distributions under this section.

7.8 ***Mandatory Distributions.*** The Plan shall make a mandatory distribution of a Participant's Account which is valued at $1,000 or less at the time of distribution. Participant or Beneficiary consent to a mandatory distribution shall not be required. A mandatory distribution shall be made no earlier than 30 days from the date the Plan provides notice of the right to elect payment in a direct rollover, pursuant to Code section 402(f), and no later than an administratively feasible date following the end of the Plan Year in which the Participant's employment with the Employer terminates. Mandatory distributions shall be paid in a single lump sum cash payment.

Article VIII: Administration

8.1 ***Plan Administrator.*** The Idaho State Board of Education, located at 650 W. State Street Boise, Idaho 83720, is the administrator of this Plan and has designated the following as responsible for enrolling Participants, sending Plan contributions for each Participant to the Fund Sponsor(s) selected by a Participant, and for performing other duties required for the operation of the Plan:

Chief Fiscal Officer
Office of the Idaho State Board of Education

Vice President for Finance and Administration
Boise State University

Vice President for Finance and Administration
Idaho State University

Vice President for Finance and Administration
University of Idaho

Vice President for Finance and Administration
Lewis-Clark State College

Vice President for Finance and Administration
Eastern Idaho Technical College

Financial Vice President
College of Southern Idaho

Financial Vice President
North Idaho College

Vice President for Finance and Administration
College of Western Idaho

8.2 ***Authority of the Institution.*** The Institution has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Institution shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Institution will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Institution may employ attorneys, agents, and accountants, as it finds necessary or advisable to assist it in carrying out its

duties. The Institution, by action of the Board, may designate a person or persons other than the Institution to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.

8.3 ***Action of the Institution.*** Any act authorized, permitted, or required to be taken by the Institution under the Plan, which has not been delegated in accordance section 8.2 "Authority of the Institution," may be taken by a majority of the members of the Board, by vote at a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Institution under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by the Board, as having authority to execute the documents on its behalf, or ii) a person who becomes authorized to act for the Institution in accordance with the provisions of section 8.2 "Authority of the Institution." Any action taken by the Institution that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Institution, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Institution.

8.4 ***Indemnification.*** Subject to the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et. seq., The Institution will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Institution is delegated pursuant to section 8.2 "Authority of the Institution" (other than the Fund Sponsors) arising out of any action (or inaction) relating to this plan. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement.

8.5 ***No Reversion.*** Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made, at the option of the Institution.

8.6 ***Statements.*** The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons

claiming an interest in or derived from the contribution's payment.

8.7 ***Reporting.*** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.

Article IX: Amendment and Termination

9.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Institution reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of its Board. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Institution will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.

9.2 ***Limitation.*** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:

(a) No amendment will be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made. Also, Plan Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.

(b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

Article X: Miscellaneous

10.1 ***Plan Non-Contractual.*** Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.

10.2 ***Claims of Other Persons.*** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, entity, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

10.3 ***Merger, Consolidation, or Transfers of Plan Assets.*** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.

10.4 ***Finality of Determination.*** All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of his or her employment.

10.5 ***Non-Alienation of Retirement Rights or Benefits.*** No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.

10.6 ***Governing Law.*** Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Idaho.

Article XI: Trust Provisions

11.1 ***Establishment of Trust.*** The Institution shall establish a Trust, pursuant to applicable law, to hold the assets of the Trust Fund (as defined below). By signing below, the Trustees agree to hold the assets of the Trust Fund, as constituted from time to time, in trust, and to administer the Trust Fund in accordance with the terms and conditions of the Trust provisions in this Article XI. The Trustees shall, at the direction of the Institution as named fiduciary of the Plan, be the owner of the custodial account pursuant to which mutual funds shall be made available under the Plan as investment options. The Trustees shall follow the proper directions of the Institution, as named fiduciary of the Plan, with respect to the investment and withdrawal of assets in the mutual funds provided such directions are made in accordance with the terms of the Plan and are not contrary to ERISA. The shares of such mutual funds in the custodial account shall constitute the "Trust Fund." TIAA-CREF annuity contracts or certificates (and any other annuity contracts that satisfy the requirements of §401(f) of the Code) shall not be part of the Trust Fund. It shall be prohibited at any time for any part of the Trust Fund (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan Participants and Beneficiaries except as otherwise permitted under the Code and ERISA.

11.2 ***Nontransferability or Alienation of Benefits.*** No right or interest of a Plan Participant or Beneficiary shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code and ERISA. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) or to a lien or levy on behalf of the Internal Revenue Service.

11.3 ***Trustees' Authority and Powers over Trust Fund.*** Subject to any limitations imposed by § 4975 of the Code and § 406 of ERISA related to prohibited transactions:

(a) The Trustees shall have the exclusive authority and custody over all Plan assets deposited in the Trust, except to the extent otherwise provided herein.

(b) The Trustees shall have the authority and power to make, execute, acknowledge and deliver any instruments that may be necessary or appropriate to carry out their powers.

(c) The Trustees shall have the authority to vote by proxy on any mutual fund shares constituting the Trust Fund. In voting such proxies, the Trustees shall follow the instructions of Plan Participants and their Beneficiaries. If no instructions for voting proxies applicable to mutual fund shares are

received, the Trustees shall not exercise the voting rights for such shares and will not be responsible for the failure to vote or instruct the vote of such shares.

(d) The Trustees shall have full authority and power to do all acts whether or not expressly authorized which may be deemed necessary or proper for the protection of the Trust Fund including the exercise of any conversion privilege and/or mutual fund subscription rights.

(e) The Trustees shall have full authority and power to sell, dispose, purchase, exchange or transfer any Trust Fund shares pursuant to the instructions of the Institution, including a return of Plan contributions to the Institution that is permitted under ERISA and the Plan. No provision of this Trust shall be construed to prevent the transfer of funds at the direction of Participants or Beneficiaries among the Plan Allocation Accounts.

(f) The Trustees shall apply for beneficial ownership of the custodial account pursuant to the instructions of the Institution as named fiduciary under the Plan.

11.4 ***Standard of Care.*** The Trustees shall discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. No Trustee shall cause the Trust to engage in any prohibited transaction under ERISA.

11.5 ***Payment of Benefits.*** The Trustees shall take such actions as may be necessary to distribute Plan assets held in the Trust to Participants or Beneficiaries in accordance the instructions of the Institution under the Plan. Except as provided in the following sentence, the Trust shall not retain any part of the Accumulation Account due a Participant or Beneficiary. If the Trustees receive any claim to assets held in the Trust which is adverse to a Participant's interest or the interest of his or her Beneficiary, and the Institution as named fiduciary under the Plan, in its absolute discretion, decides the claim is, or may be, meritorious, the Institution may direct the Trustees, and the Trustees shall agree, to withhold distribution until the claim is resolved or until instructed by a court of competent jurisdiction. As an alternative, the Institution may direct the Trustees and the Trustees shall agree, to deposit all or any portion of the Participant's or Beneficiaries' interest in the Trust into the court. Deposit with the court shall relieve the Trustees of any further obligation with respect to the assets deposited. The Trustees have the right to be reimbursed from the Institution for legal fees and costs incurred.

11.6 ***Reliance on Trustees as Owner.*** No one dealing with the Trustees shall be bound to see to the application of any money paid or property transferred to or

upon the order of the Trustees, or to inquire into the validity or propriety of anything the Trustees may purport to do.

11.7 ***Reliance on Institution.*** The Trustees may consult with the Institution or counsel designated by the Institution with respect to the meaning or construction of any provision of the Plan, a funding instrument which is an asset of the Trust, the Trustees' obligations or duties under this Article XI or with respect to any action or proceeding arising hereunder. To the extent permitted by law, the Trustees shall be fully protected both with respect to any action taken or omitted in good faith pursuant to the advice of the Institution or its counsel and in reliance upon any statement of fact made by the Institution.

11.8 ***Accounting of the Trustees.*** Within a reasonable period of time after the end of each Plan Year, and/or upon termination of the Trust, the Trustees shall submit to the Institution sufficient information requested by the Institution which is necessary for the Institution to carry out its respective duties under ERISA with respect to the Plan.

11.9 ***Trustees' Records.***

(a) The Trustees shall keep accurate and detailed accounts of all investments (if any), Plan assets, receipts, disbursements, and other transactions involving the Trust Fund (if any), not otherwise prepared by the custodian/record-keeper of the custodial account. All accounts, books and records relating to such transactions shall be open to inspection at all reasonable times by any person designated by the Institution.

(b) The Trustees shall submit copies of any statements or written communications received pertaining to the investment of any Plan assets constituting the Trust Fund to the Institution contemporaneously with their receipt by the Trustees.

11.10 ***Annual Valuation.*** The Trustees shall cause a valuation of the Trust Fund to be made as of the last day of each Plan Year and shall provide the Institution with a written report of such valuation within a reasonable period of time after the valuation is performed. On each valuation date the earnings and losses shall be allocated to the Accumulation Account of each Participant with interest in such asset in the ratio that the Participant's interest bears to the fair market value of the asset and the Institution shall receive written notice of the value of each Participant's account held in such asset. Such report shall be prepared by the custodian/record-keeper of the custodial account.

11.11 ***Compensation of Trustee.*** The Trustees shall receive such reasonable compensation for services as agreed to in writing by the Trustees and the Institution, except that no compensation shall be paid to an employee of the Institution or its subsidiaries for service as a Trustee.

11.12 ***Expenses.*** All expenses incurred in connection with the administration of the Plan, including but not limited to Trustees' fees, fees of appraisers and accountants (if any), and legal fees shall be paid by the Institution. All expenses of the Trust Fund (if any), shall be paid by the Institution.

11.13 ***Removal or Resignation of Trustee.*** Any person may be removed as Trustee by the Institution at any time by notice in writing to such Trustee. Any person acting as Trustee hereunder may resign at any time upon 30 days notice in writing to the Institution. A resigning or removed Trustee shall transfer and deliver to the Institution all records of the Trust in his or her possession and shall deliver to their successor Trustees (or the Institution if there are no successor Trustees) all instruments of transfer or assignment, whereupon such Trustee shall have no further duties hereunder; provided, however, that nothing herein shall prevent any Trustee at any time from filing a judicial settlement and accounting with a court of competent jurisdiction. The only parties to such action shall be the Trustees and the Institution. A successor Trustee shall have no duty to examine the accounts, records, investments, or acts of any previous Trustee.

11.14 ***Appointment of Successor and Additional Trustees.*** The Institution may at any time and from time to time appoint successor Trustees and/or additional Trustees. The appointment of a successor and/or an additional Trustee shall become effective upon such Trustee's written acceptance of such appointment agreeing to be bound by the provisions of this Article XI. Upon acceptance of the appointment, each successor and/or additional Trustee shall have all the powers and duties of a Trustee. Except to the extent otherwise provided under ERISA, no successor or additional Trustee shall be personally liable for any act or omission which occurred prior to the time he or she became a Trustee.

11.15 ***Actions of Trustees.*** Except as otherwise provided herein, when there are two Trustees, both must join in taking an action. When more than two Trustees are serving hereunder, all powers of the Trustees shall be by the act of a majority of such persons. Notwithstanding the foregoing, a Trustee may in a signed writing delegate his power to one or more of the other Trustees. No delegation of power may be irrevocable. Notwithstanding the delegation of a power, any Trustee who releases a power shall be liable as a result of the exercise or non-exercise of said power in the same manner as if the power had not been delegated.

11.16 ***Trustees Liability and Protection.*** To the extent permitted by applicable law:

(a) The Trustees shall not be responsible for the adequacy of the Trust Fund to meet and discharge any and all payments and liabilities under the Plan or Trust. The Trustees shall be fully protected in acting upon any instrument, certificate, or payment believed to be genuine and to be signed or presented by the proper person or persons, and the Trustees shall be under no duty to make any investigation or inquiry as to any

statement contained in any such writing but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained. Except as otherwise provided in Section 405 of ERISA, each Trustee shall be liable only for his or her own acts of fraud, negligence or willful misconduct and for losses or diminution in value that results from his or her own acts of fraud, negligence or willful misconduct.

(b) The responsibilities of the Trustees shall be limited to those duties specifically imposed upon them under the terms of this Article XI, and the Trustees shall not be personally liable for the acts or omissions of any other fiduciary of the Plan, except as provided in ERISA.

(c) Except to the extent otherwise provided in this Article XI, the Trustees shall not be responsible for the investment of any property delivered to, or held in the Trust. The Trustees shall not be liable for any losses sustained by the Trust Fund by reason of the purchase, sale, retention, transfer or exchange of any investment in accordance with the provisions of the instrument or instructions of the Institution, Plan Participants and Beneficiaries under the terms of the Plan.

(d) To the extent permitted by law, the Trustees shall be fully protected in relying upon the advice of legal counsel or the Institution with respect to their duties under the Trust.

(e) In addition to whatever rights of indemnification the Trustees may be entitled to under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement, the Institution will satisfy any liability actually and reasonably incurred by any Trustee, including expenses, attorney's fees, judgments, fines, and amounts paid in settlement or in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise of any of the powers, authority, responsibilities, or discretion of the Trustee as provided in this Article XI or which is reasonably believed by the Trustee to be provided hereunder or any action taken by such Trustee in connection with such reasonable belief.

11.17 ***Documentation.*** Any action by the Institution pursuant to this Article XI may be evidenced by writing over the signature of a person designated by the Institution in writing and the Trustees shall be fully protected in acting in accordance with such writing. Any action of the Trustees may be evidenced by a writing signed by such Trustee, and any party shall be fully protected in acting in accordance with such writing. Except to the extent otherwise provided, any notice to be given under this Article XI will be considered effective when received.

11.18 ***Amendment.*** The Institution may amend any provisions of this Article XI by submitting a copy of the amendment to each Trustee provided that no such

amendment which affects the rights, duties or responsibilities of any Trustee may be made without his or her written consent.

11.19 ***Termination.*** The Trust shall continue in full force and effect for such time as may be necessary to accomplish the purposes for which it is created. If the Plan is terminated by the Institution, the Trust shall remain in existence until such time as all assets held in the Trust Fund have been distributed in accordance with the terms of the Plan.

11.20 ***No Bond.*** No original, successor or additional Trustee shall be required to furnish any bond except to the extent required by ERISA and other applicable law.

11.21 ***Governing Law.*** This Trust shall be construed and enforced according to the laws of the State of domicile of the Institution, and all provisions hereof shall be administered according to the laws of such State except to the extent such laws are superseded by ERISA. The determination that any provision of this Trust is not enforceable in accordance with its terms in a particular jurisdiction shall not affect the validity or enforceability of the remaining provisions of this Trust generally or in any other jurisdiction or as to any other parties, but rather such unenforceable provisions shall be stricken or modified in accordance with such determination only as to such parties and this Trust, as so modified, shall continue to bind the specific parties involved therein and otherwise all other parties in unmodified form.

IN WITNESS WHEREOF, the Board has caused this instrument to be executed by its duly authorized representative on this 18th day of October 2012.

Name: Michael Rush

Signature: Mike Rush

Title: Executive Director, State Board of Education