

# **NAGDCA / ARTHUR N. CAPLE FOUNDATION, INC.**

## **BYLAWS**

### **ARTICLE I – NAME**

The name of this organization is NAGDCA / Arthur N. Caple Foundation, Inc. (the “Foundation”).

### **ARTICLE II – OBJECTIVE AND PURPOSE**

Section 1. The Foundation will be the premier foundation for creating, funding, maintaining and servicing scholarships, and for furthering education and improvement of public sector retirement programs.

### **ARTICLE III – MEMBERSHIP**

Section 1. The Foundation shall have no members.

### **ARTICLE IV – VOTING**

Section 1. A majority of the Executive Board members then holding office shall constitute a quorum for the transaction of any business at any meeting of the Executive Board; provided that, if less than a quorum of the Executive Board is present at any meeting, then a majority of such members present may adjourn the meeting without further notice. The act of a majority of the Executive Board members present at a meeting at which a quorum is present shall be the act of the Executive Board, except as otherwise provided by applicable law. The presiding officer will vote only in the case of a tie vote.

Section 2. The Executive Board may designate official procedures for conducting business (e.g. Robert’s Rules of Order).

### **ARTICLE V – EXECUTIVE BOARD**

Section 1. “Section 1. The affairs of the Foundation shall be managed by an Executive Board composed of (i) those same individuals who are then serving as members of the Board of Directors of National Association Of Government Defined Contribution Administrators, Inc., a Kentucky, nonprofit corporation (NAGDCA), each of whom shall serve for a term equal to his/her term with NAGDCA; and each change in the board membership of NAGDCA shall immediately and automatically constitute a like change in the board membership of the Foundation, without any action required by the Foundation Board or the affected Foundation Board members, except that the Foundation Board shall ratify each such change at its next scheduled Board meeting; (ii) two industry representatives, each of whom shall serve for a one-year term, and (iii) one representative

from the International Foundation of Retirement Education who shall serve for a one-year term.

Section 2. The Executive Board shall be an administrative body for the direction of the Foundation's policies and affairs, and may appropriate funds from the net balance in the treasury in carrying on the work of the Foundation.

Section 3. At each annual meeting, the Executive Board shall report to the Foundation on actions, decisions, and proceedings of its meetings, mail ballots, and other Foundation projects/initiatives.

Section 4. The Executive Board may appoint and supervise an Administrative Officer. The Officer's duties, remuneration, benefits and payment of expense account will be set by the Executive Board. The officer shall employ and supervise such personnel as the Board shall approve.

- a) The Administrative Officer shall be appointed or contracted by the Executive Board. The Officer shall be an ex-officio member of the Foundation and Executive Board without voting privileges.

Section 5. The Executive Board officers shall be the President, Vice President, and Secretary/Treasurer.

Section 6. Terms of office for Executive Board officers shall take place prior to or during the Foundation's regular annual meetings.

Section 7. Nomination and Election of Executive Board Members

- a) The Nominating Committee shall consist of: the Immediate Past President as chairperson and five members representing different programs selected by the Past President and ratified by the Executive Board. If the Immediate Past President ceases to be a member of the Executive Board, the President shall appoint a member of the Nominating Committee to succeed as Chairperson.
- b) The Nominating Committee shall convene prior to the business session of the annual meeting to make its selections.
- c) Following the Nominating Committee Chairperson's report at the annual meeting, the President shall allow for additional nominations from the floor. Nominations from the floor must comply with the requirements of Article V, Section 9. The election shall proceed by secret ballot if nominations are made from the floor.
- d) A nominee must be a representative who has communicated a willingness to serve in writing to the Nominating Committee in care of Foundation. In

addition, the following qualifications must be met prior to seeking nominations to the Executive Board:

- (i) For the office of Secretary/Treasurer - must have demonstrated expertise in the defined contribution industry and must have experience volunteering for two years in a national association in the defined contribution industry or have served as the Foundation's Member-At-Large.
  - (ii) For the Member-at-Large position - must have demonstrated expertise in the defined contribution industry and have experience volunteering for at least one year in a national association in the defined contribution industry.
  - (iii) For the two Industry positions – must have demonstrated expertise in the defined contribution industry and have experience volunteering for at least one year in a national association in the defined contribution industry
- e) The President shall appoint representatives to act as tellers, designating one teller to report results of the balloting. Should no nominee receive a majority of votes, secret ballots shall be cast on the two persons receiving the most votes.
  - f) The annual election process for the Secretary/Treasurer, Member-at-Large, and Industry positions shall be conducted as follows:
    - (i) The Nominations Committee shall interview potential candidates for the Secretary/Treasurer, Member-at-Large, and Industry positions and recommend one nominee for each to the Executive Board at the Annual Meeting.

#### Section 8. Order of Succession

- a) In the event the President should resign or be unable to complete the term of office, the Vice President shall succeed the President.
- b) A vacancy in the offices of Vice President or Secretary/Treasurer, created for any reason whatsoever (including succession to another office) may be filled by the President, upon approval of the Executive Board, from among other officers.
- c) A vacancy in any position on the Executive Board other than the Vice President or Secretary/Treasurer, created for any reason (including succession to another office) may be filled by the President, upon approval

of the Executive Board, from among individuals who meet the minimum requirements for the vacant position.

Section 9. Ethics/Removal From Office

The existence of any one or more of the following events during status as a member of the Executive Board shall be grounds for such person's removal as a member of the Executive:

- (a) such person is convicted of a felony or is the subject of a pending criminal felony proceeding;
- (b) such person is guilty of conduct or business practices that could adversely affect the Foundation's industry; and
- (c) such person's professional conduct is unacceptable or such person has misused or abused his or her position with the Foundation.

**ARTICLE VI- OFFICERS**

Section 1. Duties of the Officers

- a) The President shall preside at all business sessions of the Foundation and Executive Board.
- b) The Vice President shall preside in the absence of the President, and as requested by the President.
- c) The Secretary/Treasurer shall maintain minutes of all business sessions of the Foundation and the Executive Board, and be responsible for records of all receipts, expenditures, and a quarterly financial report to the Executive Board. A fiscal year financial report shall be presented to the membership at the annual business meeting.

**ARTICLE VII – MEETINGS**

Section 1. The Annual Meeting of the Foundation, if one is to be held, as determined by the Executive Board, shall be held at a place, time and date as may be fixed by the Foundation's Executive Board, and the Executive Board shall provide at least thirty (30) days prior written notice of the time and place, and the agenda for, the Annual Meeting to all officers and directors of the Foundation.

Section 2. The programs and agendas for the Foundation's Annual Meetings shall be arranged by the Executive Board.

Section 3. The Executive Board shall hold a regular Executive Board Meeting immediately prior to the commencement of, and in conjunction with, the Annual Meeting of the Foundation. Special meetings of the Executive Board may be called by the President or other Officer upon thirty (30) days prior written notice to all members of the Executive Board. Actions at any special meeting of the Executive Board shall be limited to the subjects stated in the notice therein. At any meeting, one or more of the sessions may be executive sessions, if directed by the Executive Board, meaning that attendance at such sessions is limited to members of the Executive Board.

### **ARTICLE VIII – COMMITTEES**

Section 1. Standing, special and ad hoc/task force committees may be created or terminated by action of the President and/or Executive Board.

Section 2. The President and/or Executive Board shall designate the volunteer chairpersons and the membership of all standing committees and of all special advisory committees or task forces.

Section 3. Rules Governing Official Actions. Each committee of the Foundation shall study substantive matters within its assigned jurisdiction. Foundation approval or Executive Board verification shall be required prior to publication of a proposed position. There shall be no publication of a position that varies with a resolution adopted pursuant to Article X.

Section 4. Executive Board and Committee reports and related material will be made available to the Executive Board.

### **ARTICLE IX – FINANCES**

Section 1. The fiscal year of the Foundation shall be the calendar year.

Section 2. The Foundation shall be financed by contributions and/or grants.

### **ARTICLE X – RESOLUTIONS**

Section 1. For each regular meeting, the President may appoint a Resolution Committee, which Committee shall report to a business session scheduled for consideration of resolutions.

Section 2. At regular annual meetings, any proposal for the expressions of a policy position by the Foundation may be prepared in the form of a resolution.

- a) If the subject matter addressed by any resolution would cause such resolution to come within the scope and subject matter covered by any of the Foundation's Standing or Special Committees, such resolution shall be submitted to the appropriate Standing or Special Committees for its consideration and action; and upon favorable recommendation by that Standing or Special Committee shall be brought to the floor for action by the Foundation at the time designated for the report of that Standing or Special Committee.
- b) If the subject matter addresses by a resolution would not cause such resolution to come within the scope and subject matter covered by any of the Foundation's Standing or Special Committees, such resolution shall be submitted to a Resolutions Committee, which as been appointed by the President (see Section 1), for its consideration ad action; and upon favorable recommendation by the Resolutions Committee, shall be brought to the floor for action by the Foundation at a time designated for the report to Resolutions Committee.
- c) Resolutions submitted to a Standing or Special Committee or to the Resolutions Committee, but not reported favorable by such Committee, may be brought before the Foundation for its consideration and action if a majority of the members of the Foundation present and voting consent.
- d) Resolutions not submitted to a Standing or Special Committee or to the Resolutions Committee at the regular annual meeting may be brought before the Foundation for its consideration and action by unanimous consent. Resolutions may be brought before special meetings if at least 75 percent of those members present consent.

## **ARTICLE XI – AMENDMENTS TO THE CONSTITUTION**

Section 1. Notice of amendments to these Bylaws must be duly given to the Executive Board at least thirty days prior to a call for vote. A majority (50% plus one) of Directors must respond for an official vote to be recorded to amend these Bylaws. The act of the majority shall be the act of the Foundation.

Sections 2. Amendments for which a 30-day notice has not been give may be tentatively adopted by similar vote at any properly called meeting.

## **ARTICLE XII–INDEMNIFICATION OF DIRECTORS, OFFICERS AND AGENTS**

Section 1. The Foundation shall, to the fullest extent permitted by, and in accordance with the provisions of, the Kentucky law (or corresponding provisions of any subsequent

state laws), indemnify each director, officer and agent of the Foundation against expenses (including reasonable attorney's fees), judgments, taxes, fines and amounts paid in settlement incurred by such person in connection with, and shall advance expenses (including reasonable attorney's fees) incurred by such person in defending, any threatened, pending or completed action, suit or proceeding (whither civil, criminal, administrative or investigative) to which such person is, or is threatened to be made, a party by reason of the fact that such person is or was a director, officer of agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, member, partner, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust or other enterprise. Advancement of expenses shall be made upon receipt of an undertaking, with such security, if any, as the indemnification to repay amounts advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Foundation as authorized herein.

Section 2. The indemnification provided for by the Article XII shall not be deemed exclusive of any other right to which directors, officers or agents of the Foundation may be entitled under any statute, agreement or action of the Executive Board of the Foundation, or otherwise, and shall continue as to a person who has ceased to be a director, officer or agent of the Foundation, and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 3. The Foundation may purchase and maintain insurance on behalf of any person who is or was a director, officer or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, member partner, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in such capacity or arising out of such person's status as such, whether or not the Foundation would have the power or be obligated to indemnify such person against such liability under provisions of the Article XII or Kentucky Revised Statutes.

### **ARTICLE XIII – MISCELLANEOUS PROVISIONS**

Section 1. Confidentiality. Members of the Executive Board and committees of the Foundation, may, from time to time, have access to confidential and proprietary information belonging to the Foundation and others. Each person must maintain such information in strict confidence at all times.

Section 2. Conflict of Interest. Any director, officer, or member having a direct or indirect interest in a transaction with the Foundation shall make a prompt, full and frank written disclosure of his or her interest to the Executive Board prior to the date the Foundation undertakes the transaction. For purposes of the Section, an indirect interest in a transaction shall exist if (i) another entity in which the director, officer or employee has a material financial interest or which he or she is a general partner or is a party to the transaction, or (ii) another entity of which the director, officer or employee is a director, officer or trustee is a party to the transaction and the transaction is or should be

considered by the Executive Board of the corporation. For the purposes of this Section, any transaction in which a director, officer or employee has a direct or indirect interest shall be deemed to be a conflict of interest transaction. A conflict of interest transaction shall be void at the discretion of the Executive Board unless (i) the material facts of the transaction and the conflict of interest were disclosed or known to the Executive Board prior to its action on the transaction, and the Executive Board authorized, approved or ratified the transaction; or (ii) the transaction was fair to the Foundation.

Section 3. Status As a Non-Profit, Tax-Exempt Entity. Notwithstanding any other provision of the Constitution, the Foundation shall take no action contrary to the provisions of the Foundation's Articles of Incorporation or contrary to the Foundation's status as a non-profit, tax-exempt entity.

Section 4. Action by Consent. Unless prohibited by applicable law, any and all actions to be taken under these Bylaws at a meeting of the Foundation or of the Executive Board and other boards and committees of the Foundation may be taken by unanimous written consent.

Section 5. Forms of Notice. Whenever written notice is required by these Bylaws, such notice may be accomplished either in the form of written or e-mail or facsimile transmission. Such notice shall be deemed to be delivered when deposited in the US mail, postage prepaid and addressed to the last known address for the person receiving the notice; or when faxed by facsimile transmission to the last known fax number for the person receiving the notice; or when e-mailed to the last known e-mail address for the person receiving the notice.

#### **ARTICLE XIV – EFFECTIVE DATE**

These Bylaws are effective as of September 25, 2006.