

Plan Document

for the

**DEFERRED COMPENSATION PLAN FOR
EMPLOYEES OF THE STATE OF NEW
YORK AND OTHER PARTICIPATING
PUBLIC JURISDICTIONS**

Amended and Restated as of

April 25, 2017

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PURPOSE

The purpose of the Plan is to encourage Employees to make and continue careers with the State and other Public Employers by providing Employees with a convenient way to save on a regular and long-term basis and thereby provide for their retirement as set forth herein. A Participant's benefit under the Plan is limited to the Plan Benefit, and the value of the Plan Benefit will depend upon the investment results achieved by the Investment Options in which the Participant chooses to invest. Each Participant shall be 100 percent vested at all times in his or her Plan Benefit in accordance with the terms of the Plan.

In accordance with Section 457 of the Code, all amounts of Compensation deferred or contributed under the Plan, all property and rights purchased with such amounts and all income attributable to such amounts, and all other property and rights are held in trust for the exclusive benefit of Participants and their Beneficiaries and Alternate Payees pursuant to the Trust Agreement or pursuant to the terms of any group trust adopted by the Board as part of the Plan in accordance with Section 11.4.

The Plan and the Trust Agreement are intended to satisfy the requirements for an eligible deferred compensation plan under Section 457 of the Code applicable to governmental employers described in Section 457(e)(1)(A) of the Code, and shall be construed and administered accordingly. To the extent that any term of the Plan is inconsistent with the provisions of Section 457 of the Code applicable to governmental employers, the inconsistent term shall, to the fullest extent possible, be treated for all purposes of the Plan as amended or reformed to conform to the applicable provisions of Section 457 of the Code.

Except as otherwise provided herein, this amendment and restatement of the Plan is effective as of the Effective Date.

SECTION 1 DEFINITIONS

When used herein, the following terms shall have the following meanings:

- 1.1 “Account” means each separate account established and maintained for an Account Participant under the Plan, including, as applicable, each Before-Tax Deferral Account, Roth Account, Rollover Account, Alternate Payee Account and Beneficiary Account.
- 1.2 “Account Participant” means each Participant, Beneficiary, Surviving Spouse, Alternate Payee or other individual with an Account.
- 1.3 “Administrative Service Agency” means an Administrative Service Agency as defined in the Regulations selected by the Board to provide services in respect of the Plan.
- 1.4 “Alternate Payee” means any spouse, former spouse, child or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the Plan Benefit with respect to such Participant.
- 1.5 “Alternate Payee Account” means the Account established for an Alternate Payee pursuant to a Qualified Domestic Relations Order.
- 1.6 “Amounts Deferred or Contributed” means the aggregate of Compensation deferred or contributed by a Participant pursuant to Sections 3.1 and 3.2, including Before-Tax Deferrals and Roth Contributions.
- 1.7 “Before-Tax Deferral Account” means the Account or Accounts established under the Plan to record a Participant’s Before-Tax Deferrals, and the income, gains and losses credited thereto. A Beneficiary Account or Alternate Payee Account corresponding to the deceased or relevant Participant’s Before-Tax Deferrals may also be referred to as a Before-Tax Deferral Account.
- 1.8 “Before-Tax Deferrals” means that part of a Participant’s Compensation which is deferred into the Plan and is not includable in the Participant’s taxable income which, in the absence of a Participant’s election to defer such Compensation under Section 3.1, would have been paid to the Participant and would have been includable in the Participant’s taxable income.
- 1.9 “Beneficiary” means the beneficiary or beneficiaries designated by a Participant or Surviving Spouse of a Participant pursuant to Section 9 to receive the amount, if any, payable under the Plan upon the death of such Participant or Surviving Spouse.
- 1.10 “Beneficiary Account” means the Account established for a Beneficiary in accordance with Section 6.2.
- 1.11 “Board” means the Deferred Compensation Board of the State of New York, established by Section 5 of the State Finance Law.

1.12 “Business Day” means, subject to Section 4.4(b), any day (measured in accordance with State time) on which the New York Stock Exchange is open for the trading of securities.

1.13 “Code” means the Internal Revenue Code of 1986, as now in effect or as hereafter amended, and the applicable Treasury Regulations and rulings thereunder. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.14 “Compensation” means:

(a) all compensation for services to the Employer, including salary, wages, fees, commissions and overtime pay that is includible in the Employee’s gross income for each Plan Year under the Code;

(b) any differential wage payments defined in Code Section 3401(h)(2) pursuant to the HEART Act; and

(c) any accumulated sick pay, accumulated vacation pay and back pay paid to a Participant by his or her Employer, provided that such accumulated sick pay, accumulated vacation pay and back pay is received by the Plan in accordance with the timing requirements of the Treasury Regulations promulgated under Section 457 of the Code.

1.15 “Designated Roth Employer” means an Employer that permits (in accordance with any applicable procedures as may be required by the Board) Participants who are its Employees to make Roth Contributions pursuant to Section 3.1(c).

1.16 “Distributee” means (a) an Employee or former Employee, (b) the Surviving Spouse of an Employee or former Employee and (c) the spouse or former spouse of an Employee or former Employee, but only to the extent such spouse or former spouse is an Alternate Payee under a Qualified Domestic Relations Order and only with regard to the interest of such spouse or former spouse.

1.17 “Earliest Retirement Date” means the earlier of (a) the date on which the Participant Severs from Employment or (b) the date the Participant attains age 50.

1.18 “Effective Date” means January 1, 2011.

1.19 “Eligible Retirement Plan” means:

(a) an individual retirement account described in Section 408(a) of the Code;

(b) an individual retirement annuity described in Section 408(b) of the Code;

(c) a qualified trust under Section 401(a) or 401(k) of the Code;

(d) an annuity contract or custodial account described in Section 403(b) of the Code;

(e) an eligible deferred compensation plan described in Section 457 of the Code that is maintained by a state, political subdivision of a state, any agency or instrumentality of a state or political subdivision of a state; and

(f) a Roth IRA.

1.20 “Eligible Rollover Distribution” means all or any portion of the balance of the Plan to the credit of a Distributee or a Beneficiary of a Participant, except that an Eligible Rollover Distribution shall not include (a) any distribution that is (i) 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 Beneficiary or (ii) for a specified period of ten years or more, (b) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code, or (c) any distribution due to an Unforeseeable Emergency.

1.21 “Employee” means any individual who receives Compensation for services from the Employer, including (a) any elected or appointed officer or employee of the Employer, (b) an officer or employee of an institution under the management and control of Cornell or Alfred University (inasmuch as such entities are acting as representatives of the Board of Trustees of the State University), and (c) any employee who is included in a unit of employees covered by a negotiated collective bargaining agreement that specifically provides for participation in the Plan. An Employee shall not include an independent contractor, a consultant or any other individual classified by the Employer as not eligible to participate in the Plan.

1.22 “Employer” means the State and each Participating Employer, or any of them.

1.23 “Enrollment Date” means, with respect to an Employee who is eligible to enroll or be enrolled in the Plan, any payroll date on which such Employee receives Compensation, or such other date or dates as the Administrative Service Agency may establish either in lieu of, or in addition to, such dates.

1.24 “Financial Organization” means a Financial Organization as defined in the Regulations selected by the Board to provide services in respect of the Plan.

1.25 “HEART Act” means the Heroes Earnings Assistance and Relief Tax Act of 2008.

1.26 “Includible Compensation” means “includible compensation” as defined in Section 457(e)(5) of the Code.

1.27 “Investment Fund” means each of the investment funds made available by the Board through the Plan in accordance with Section 6.5(b).

1.28 “Investment Option” means each of the Investment Funds and each other investment option made available by the Board through the Plan in accordance with Section 6.5(b).

1.29 “Normal Retirement Age” means any age designated by a Participant within the following parameters: (i) beginning (A) no earlier than the earliest age at which the Participant has the right to retire under the basic pension plan, if any, in which the Participant participates in

connection with his or her service to the Employer and to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later age specified in such basic pension plan or, (B) in the case of a Participant who does not participate in such basic pension plan, no earlier than age 65, and (ii) ending no later than age 70½. Notwithstanding the previous sentence, a Participant who is a qualified police officer or firefighter (as defined under Section 415(b)(2)(H)(ii)(I) of the Code) may designate a Normal Retirement Age that is earlier than the earliest Normal Retirement Age described above, but in no event may such Normal Retirement Age be earlier than age 40. Notwithstanding anything in the Plan to the contrary, a Participant's designation of a Normal Retirement Age shall not control the date that payment of such Participant's benefits shall commence pursuant to Section 8.

1.30 “Participant” means an Employee or former Employee who is not deceased and who has an Account or Rollover Account under the Plan.

1.31 “Participating Employer” means any Public Employer, the governing body of which has adopted the Plan by appropriate resolution or other legal action with the consent of the Board and, in any case where a resolution or other legal action of such governing body is required by law to be approved by any other body or officer, with the written approval of such other body or officer.

1.32 “Participation Agreement” means an agreement in writing or in such other form approved by the Board pursuant to which the Employee elects to reduce his or her Compensation for future Enrollment Dates and to have amounts deferred or contributed into the Plan on his or her behalf in accordance with the terms of the Plan.

1.33 “Plan” means the Deferred Compensation Plan for Employees of the State of New York and Other Participating Public Jurisdictions, as the same may be amended from time to time.

1.34 “Plan Benefit” has the meaning set forth in Section 6.5.

1.35 “Plan Year” means the calendar year.

1.36 “Public Employer” means a Public Employer as defined in Section 5 of the State Finance Law.

1.37 “Qualified Domestic Relations Order” means any judgment, decree or order, including approval of a property settlement agreement, that has been determined by the Administrative Service Agency to meet the requirements of a qualified domestic relations order within the meaning of Section 414(p) of the Code.

1.38 “Qualified Roth Contribution Program” means a qualified Roth contribution program as defined in Section 402A of the Code.

1.39 “Regulations” means the rules and regulations promulgated by the Board pursuant to Section 5 of the State Finance Law, as the same may be amended from time to time.

1.40 “Required Beginning Date” means April 1 of the calendar year following the later of the calendar year in which the Participant: (a) attains age 70 ½, or (b) Severs from Employment.

1.41 “Review Committee” means the committee designated to review claims to rights or benefits under the Plan in accordance with Section 11.8 and requests for Unforeseeable Emergency withdrawals under Section 7.

1.42 “Rollover Account” means the Account or Accounts established and maintained in respect of a Participant or a Beneficiary who is a Participant’s Surviving Spouse or, if applicable, by a spousal Alternate Payee, pursuant to Section 5.2(c).

1.43 “Rollover Contribution” means the amount contributed by a Participant or a Beneficiary to a Rollover Account or, if applicable, by an Alternate Payee to an Alternate Payee Account, in accordance with Section 5.2, that the Administrative Service Agency has determined would qualify as an Eligible Rollover Distribution, other than a distribution consisting of contributions to a Roth IRA, and which the Administrative Service Agency has determined may be contributed.

1.44 “Roth Account” means the Account or Accounts established under the Plan to record a Participant’s Roth Contributions, and the income, gains and losses credited thereto. A Beneficiary Account or Alternate Payee Account corresponding to the deceased or relevant Participant’s Roth Contributions may also be referred to as a Roth Account.

1.45 “Roth Contributions” means amounts contributed pursuant to Section 3.1 by a Participant who is an Employee of a Designated Roth Employer, which amounts are:

(a) designated irrevocably by the Participant at the time of the contribution election as Roth Contributions that are being made from Compensation pursuant to Section 3.1(c); and

(b) treated by the Designated Roth Employer as includible in the Participant’s income at the time the Participant would have received that amount in Compensation.

1.46 “Roth IRA” has the meaning set forth in Section 408A of the Code.

1.47 “Roth Program” means a Qualified Roth Contribution Program within the Plan.

1.48 “Section 457 Transfer” means a transfer made into an Account pursuant to Section 5.1.

1.49 “Severance from Employment” or “Severs from Employment” means a severance from employment with an Employer within the meaning of Section 457 of the Code.

1.50 “Staff” means employees hired by the Board pursuant to Section 5(2)(f) of the State Finance Law who serve as full-time or part-time staff of the Board. For the avoidance of doubt, Staff shall not mean any individual who performs work for or on behalf of the Plan pursuant to an agreement between the Board and an Administrative Service Agency, Trustee, Financial Organization, or any other entity that provides services to the Board.

1.51 “State” means the State of New York.

1.52 “Surviving Spouse” means the survivor of a deceased Participant to whom such Participant was legally married on the date of the Participant’s death.

1.53 “Treasury Regulations” means the regulations promulgated by the Treasury Department under the Code, as now in effect or as hereafter amended. All citations to sections of the Treasury Regulations are to such sections as they may from time to time be amended or renumbered.

1.54 “Trust Agreement” means an agreement entered into in respect of the Plan between the Board and one or more Trustees pursuant to which all cash and other rights and properties and all income attributable to such cash and rights and properties are held in trust, as such agreement may be amended from time to time.

1.55 “Trust Fund” means the assets of the Plan, including cash and other rights and properties arising from Amounts Deferred or Contributed, Section 457 Transfers and Rollover Contributions which are held and administered by the Trustee pursuant to the Trust Agreement.

1.56 “Trustee” means the trustee or trustees acting as such under the Trust Agreement, and any successors thereto.

1.57 “Unforeseeable Emergency” means (i) a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or Beneficiary, the Participant’s or Beneficiary’s spouse, or the Participant’s or Beneficiary’s dependent, (ii) a loss of the Participant’s or Beneficiary’s property because of casualty, or (iii) other similar extraordinary or unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary.

1.58 “Unit” means a unit measuring the value of an Account Participant’s proportionate interest in an Investment Fund.

1.59 “USERRA” means the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 contained in chapter 43 of title 38 of the United States Code.

1.60 “Valuation Date” means each Business Day unless otherwise provided in the Plan or in an agreement between the Board and a Financial Organization.

SECTION 2 PARTICIPATION

2.1 Enrollment.

(a) Eligibility and Enrollment. Each Employee shall be eligible to participate in the Plan as of any Enrollment Date following the date he or she becomes an Employee, and shall commence such participation in the Plan by duly filing a Participation Agreement and any enrollment forms or other pertinent information concerning the Employee and his or her Beneficiary with the Administrative Service Agency in a manner as prescribed by the Board. With the exception of Participation Agreements filed on or before an Employee's first day of service, no Participation Agreement shall be effective before the first Enrollment Date in the calendar month following the month in which the Participation Agreement is filed with the Administrative Service Agency.

(b) Initial Enrollment and Subsequent Changes. Each Employee enrolling in the Plan shall provide to the Administrative Service Agency, in a complete and timely manner, at the time of initial enrollment and thereafter if there are any changes, with such information that the Administrative Service Agency determines is necessary or advisable for the administration of the Plan or to comply with applicable law. With the exception of Participation Agreements filed on or before an Employee's first day of service, no Participation Agreement or amendment or modification thereto shall be effective before the first Enrollment Date in the calendar month following the month in which the Participation Agreement or such amendment or modification is filed with the Administrative Service Agency.

2.2 Voluntary Participation. Participation in the Plan by Employees shall be voluntary.

2.3 Cessation of Participation. The participation of an Account Participant shall cease upon payment to the Account Participant of the entire value of his or her Plan Benefit or upon the Account Participant's death prior to such payment.

2.4 Corrective Action. If an individual is erroneously included or excluded from participation, corrective action will be taken as soon as administratively practicable to correct such erroneous inclusion or exclusion.

SECTION 3
AMOUNTS DEFERRED OR CONTRIBUTED

3.1 Participant Deferral and Contribution Authorization.

(a) Initial Authorization. A Participant may elect to defer or contribute Compensation under the Plan by authorizing, on his or her Participation Agreement, regular payroll deductions that do not individually or in the aggregate exceed the limitations of Section 3.2. Unless otherwise designated under Section 3.1(c), any Amounts Deferred or Contributed under this Section 3.1(a) shall be treated as Before-Tax Deferrals. Any initial deferral election shall be effective as soon as administratively practicable, subject to the timing requirements set forth in Sections 2.1(a) and 2.1(b).

(b) Modifications. A Participant may increase or decrease the rate of deferral or contribution of his or her Compensation, and may make separate elections with respect to the increase or decrease of the rate of his or her Before-Tax Deferrals and Roth Contributions, within the limitations set forth in Section 3.2, as of any Enrollment Date by duly filing a new or modified Participation Agreement, or such other form authorized for such purpose by the Board, with the Administrative Service Agency, which shall be effective as soon as administratively practicable, subject to the timing requirements set forth in Sections 2.1(a) and 2.1(b).

(c) Roth Contributions. Prior to January 1, 2011, and thereafter until the Board declares effective its establishment of a Roth Program, Participants may not make Roth Contributions. Upon the Board's declaring effective its establishment of a Roth Program, a Participant who is an Employee of a Designated Roth Employer shall be permitted to make Roth Contributions from his or her Compensation by designating a percentage of his or her initial authorization or modified authorization described in Sections 3.1(a) and 3.1(b) as Roth Contributions, which designation shall be effective as soon as administratively practicable for all future payroll periods until modified or suspended, subject to the timing requirements set forth in Sections 2.1(a) and 2.1(b).

(d) Discontinuance or Suspension. A Participant may discontinue or temporarily suspend his or her deferrals or contributions, and may make separate elections with respect to the discontinuance or suspension of his or her Before-Tax Deferrals and Roth Contributions, as of any specified Enrollment Date by giving notice thereof to the Administrative Service Agency. The Administrative Service Agency shall discontinue or suspend the deferral or contribution of Compensation as soon as administratively practicable, subject to the timing requirements set forth in Sections 2.1(a) and 2.1(b).

(e) Deferrals and Contributions After a HEART Act Distribution. A participant's deferrals and contributions will be suspended for a period of six months following a distribution pursuant to Section 414(u)(12)(B)(ii) of the Code.

3.2 General Deferral and Contribution Limitations and Catch-Up Limitations.

(a) In General. The aggregate amount of Before-Tax Deferrals and Roth Contributions that may be deferred or contributed by a Participant for any Plan Year shall be a minimum of \$260 and shall not exceed the lesser of:

- (i) An amount as may be permitted pursuant to Section 457(e)(15) of the Code, and
- (ii) 100% of the Participant's Includible Compensation for the Plan Year;

provided, however, the maximum amount that a Participant may defer or contribute for any Plan Year may be calculated after accounting for mandatory and permissive payroll deductions, as reasonably determined by the Employer.

(b) 457 Catch-Up. Notwithstanding the limitation in Section 3.2(a), a Participant may file an election in the manner required by the Administrative Service Agency to have the catch-up limitation as set forth in Section 3.2(b) apply to the determination of the maximum amount that may be deferred or contributed during one or more of the last three Plan Years ending before attainment of the Participant's Normal Retirement Age. If the catch-up limitation is elected, the maximum aggregate amount of Before-Tax Deferrals and Roth Contributions that may be deferred or contributed for each of the Plan Years covered by the election shall not exceed the lesser of:

- (i) twice the dollar amount set forth in Section 3.2(a); and
- (ii) the sum of the limitations provided for in Section 3.2(a) for each of the Plan Years the Participant was eligible to participate in the Plan, minus the aggregate amount actually deferred or contributed for such Plan Years (disregarding any amounts deferred or contributed pursuant to Section 3.2(c)).

A Participant may not elect to have Section 3.2(b) apply more than once, whether or not the Participant rejoins the Plan after a Severance from Employment.

(c) Age 50 Catch-Up. All Participants who have attained age 50 before the close of a Plan Year and who are not permitted to defer or contribute additional Compensation pursuant to Section 3.2(b) for such Plan Year, due to the application of any limitation imposed by the Code or the Plan, shall be eligible to make additional catch-up contributions in the form of Before-Tax Deferrals, Roth Contributions or a combination thereof in accordance with, and subject to, the limitations of Section 3.2(c) of the Plan and Section 414(v) of the Code. Age 50 catch-up contributions pursuant to Section 3.2(c) shall not exceed the lesser of:

- (i) the excess of 100% of Participant's Includible Compensation for the Plan Year, over the sum of any other Amounts Deferred or Contributed by the Participant for such Plan Year; and
- (ii) an amount as may be permitted by Section 414(v)(2)(B) of the Code.

(d) Dual Eligibility. Notwithstanding anything in Sections 3.2(b) and (c) to the contrary, if a Participant who is eligible to make an additional catch-up contribution under Section 3.2(c) for a Plan Year in which the Participant has elected to make a catch-up contribution under Section 3.2(b), such Participant is entitled to the greater of:

- (i) the 457 catch-up contribution amount under Section 3.2(b); and

(ii) the age 50 catch-up contribution amount under Section 3.2(c).

(e) USERRA. Notwithstanding the limitation provided for in Section 3.2(a), any Participant who is entitled to reemployment rights pursuant to USERRA and who is so reemployed in accordance with the provisions of such law may elect to make such additional deferrals or contributions as are permitted or required by USERRA.

(f) Excess Deferrals and Contributions. In the event that any Amounts Deferred or Contributed under the Plan for any Plan Year exceed the limitations provided for in Section 3.2, any such excess deferrals or contributions shall be distributed to the Participant, with allocable net income, in the following order (unless otherwise directed by the Participant): first, from Before-Tax Deferrals and second, from Roth Contributions, as determined in accordance with methods and procedures established by the Administrative Service Agency, as soon as practicable after the Administrative Service Agency determines that the amount was an excess deferral or contribution. Distributions under Section 3.2(f) will be reportable as taxable income to the extent required by applicable law.

SECTION 4
INVESTMENT OF AMOUNTS DEFERRED OR CONTRIBUTED AND ROLLOVER CONTRIBUTIONS

4.1 Remittance of Deferrals and Contributions. All Amounts Deferred or Contributed in accordance with Section 3 shall be paid by the applicable Employer as promptly as possible, but in no event later than two Business Days from the applicable payroll date, to the Trust Fund. Thereafter, Amounts Deferred or Contributed shall be invested by the Trustee, in accordance with the investment instructions received by the Trustee from the Administrative Service Agency, within two Business Days following receipt by the Trust Fund of such Amounts Deferred or Contributed (or, if later, on the first Business Day coincident with or immediately following receipt by the Trustee of the investment instructions from the Administrative Service Agency related to such Amounts Deferred or Contributed). All such Amounts Deferred or Contributed shall be invested by the Trustee (in accordance with the investment instructions received from the Administrative Service Agency) in the Investment Options provided by one or more Financial Organizations appointed by the Board in accordance with the Regulations, and shall be held, managed, invested and reinvested in accordance with the applicable agreement entered into by the Board or the Trustee with each such Financial Organization.

4.2 Allocation of Deferrals and Contributions. A Participant who has enrolled in the Plan pursuant to Section 2 shall, by filing a direction with the Administrative Service Agency in writing or in such other manner as the Board may authorize, specify the percentage (in multiples of one percent) of his or her Amounts Deferred or Contributed that shall be allocated to each Investment Option made available by the Board. A Participant's investment allocation elections shall be applied in the same manner to both Before-Tax Deferrals and Roth Contributions. All such deferrals and contributions shall be invested by the Trustee in the Investment Options in accordance with such direction(s) as soon as administratively practicable.

4.3 Continuation of Deferral and Contribution Allocation. Any deferral and contribution allocation direction given by a Participant shall be deemed to be a continuing direction until changed by the Participant. A Participant may change his or her deferral and contribution allocation direction with respect to future Amounts Deferred or Contributed, as of any Enrollment Date, by giving notice in writing or in such other manner as the Board may authorize to the Administrative Service Agency prior to any Enrollment Date. Any change to a Participant's deferral and contribution allocation direction shall be applied in the same manner to both Before-Tax Deferrals and Roth Contributions. All such future deferrals and contributions shall be invested by the Trustee in the Investment Options in accordance with such changed direction.

4.4 Transfer of Assets Among Investment Options.

(a) Transfer of Assets. As of any Valuation Date, an Account Participant may direct the Administrative Service Agency, by giving notice in writing or in such other manner as the Board may authorize, to liquidate his or her interest in any of the Investment Options and transfer the proceeds thereof to one or more other Investment Options in the proportions directed by such Participant. Account Participants may make separate transfer directions for their Before-Tax Deferral Accounts (and Accounts relating to Rollover Contributions involving before-tax

deferrals) and their Roth Accounts (and Accounts relating to Rollover Contributions involving Roth contributions). Such direction must be made in accordance with the requirements and procedures established by the Board and in effect at the time and in a multiple of one percent or one dollar increments of the Account Participant's interest in the applicable Investment Option.

(b) Board's Right to Reduce or Deny Transfer Request. If the Trustee or any Financial Organization appointed by the Board advises the Board, or the Board otherwise determines, that it is not reasonably able to prudently liquidate the necessary amount and transfer it from one of the Investment Options to another, the amount to be transferred with respect to each Account Participant who duly requested such a transfer may be reduced in proportion to the ratio which the aggregate amount that the Trustee or the Financial Organization has advised the Board may not prudently be so transferred bears to the aggregate amount that all Account Participants have duly requested be so transferred. Regardless of any Account Participant's investment direction, no transfer between Investment Options may be made in violation of any restriction imposed by the terms of the agreement between the Board or the Trustee and a Financial Organization providing any Investment Option or of any applicable law. Notwithstanding anything in this Section 4.4(b) or the Plan to the contrary, the Board, the Trustee or the Financial Organization shall have the right, without prior notice to any Account Participant, to suspend, for a limited period of time, daily transfers between and among Investment Options for one or more days if the Board, the Trustee or the Financial Organization determines that such action is necessary or advisable (i) in light of unusual market conditions, (ii) in response to technical or mechanical problems with the Plan's or the Administrative Service Agency's record keeping systems, (iii) in connection with any suspension of normal trading activity on the New York Stock Exchange or other major securities exchange, (iv) as a result of strikes, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or other similar events, losses or interruptions of power, other utility outages or malfunctions, or malfunctions in communications or computer services, in each case, that make it necessary or advisable to suspend trading activity, or (v) in accordance with Section 4.10.

4.5 Administrative Actions with Regard to Investment Directions. The Administrative Service Agency shall have the right to decline to implement any investment direction upon its determination that: (i) the person giving the direction is legally incompetent to do so; (ii) implementation of the investment direction would be contrary to the Plan or applicable law or governmental ruling or regulation, including Treasury Regulations; (iii) implementation of the investment direction would be contrary to a court order, including a Qualified Domestic Relations Order; (iv) implementation of the investment direction would be contrary to the rules, regulations or prospectuses of the Investment Funds; or (v) implementation of the investment direction would be contrary to the investment guidelines or terms of any agreements applicable to the Stable Value Fund or any similar Investment Fund then available under the Plan.

4.6 Account Participant Responsibility for Deferrals, Contributions and Investment Allocations. Each Participant is solely responsible for the allocation of his or her Amounts Deferred or Contributed, and each Account Participant is solely responsible for the investment allocation of his or her Account, in each case, in and among the Investment Options. Each Account Participant shall assume all risk in connection with the allocation of amounts in and among the Investment Options and for any losses incurred or deemed to be incurred as a result of

the Account Participant's allocation or failure to allocate any amount to an Investment Option or any decrease in the value of any Investment Option. Neither the Board, any Trustee, any Employer nor the Administrative Service Agency is empowered to advise a Participant as to the manner in which the Account Participant's Account shall be allocated among the Investment Options. The fact that a particular Investment Option is available to Participants for investment under the Plan shall not be construed by any Account Participant as a recommendation for investment in such Investment Option. If the Board elects to make available investment guidance services or investment advice services to Account Participants, such services shall be utilized only at the voluntary election of the Account Participant and shall not limit the Account Participant's responsibility under Section 4.6 for the allocation of his or her Accounts in and among the Investment Options.

4.7 Investment Allocation of Alternate Payee Accounts. Notwithstanding any other provision of the Plan, during any period when an Alternate Payee Account is created and segregated on behalf of an Alternate Payee pursuant to a Qualified Domestic Relations Order from the Accounts of the related Participant, the Alternate Payee shall be entitled to direct the allocation of investments of such Alternate Payee Account in accordance with Sections 4.2 and 4.4, as applicable, and shall be subject to the provisions of Sections 4.5 and 4.6, but only to the extent provided in such order. In the event that an Alternate Payee fails to specify an investment direction on the date of creation of the Alternate Payee Account pursuant to Section 4.9, such Alternate Payee's Alternate Payee Account shall be invested in the same manner as the relevant Participant's corresponding Before-Tax Deferral Account, Roth Account and Rollover Accounts on such date and, except as otherwise provided by the Qualified Domestic Relations Order, shall remain invested in accordance with such initial allocation until the Alternate Payee directs otherwise or until such time as the Alternate Payee ceases to have an Alternate Payee Account under the Plan by reason of distribution or otherwise.

4.8 Investment Allocation of Beneficiary Accounts. Notwithstanding any other provision of the Plan, during any period following the death of a Participant and prior to distribution of the entire Plan Benefit of such Participant, such Participant's Beneficiary shall be entitled to direct the allocation of investments of such Plan Benefit in accordance with Section 4.4, or, as applicable, his or her proportional interest in such Plan Benefit, in accordance with Section 4.4 and shall be subject to the provisions of Sections 4.5 and 4.6. In the event that a Beneficiary fails to specify an investment direction on the date of creation of the Beneficiary Account pursuant to Section 4.4, such Beneficiary's Beneficiary Account shall be invested in the same manner as the relevant Participant's corresponding Before-Tax Deferral Account, Roth Account and Rollover Accounts on such date.

4.9 Initial and Ongoing Investment Allocation with respect to Rollover Contributions and Section 457 Transfers. Unless otherwise directed by the Account Participant, the same deferral and contribution allocation direction applicable to an Account Participant pursuant to Section 4.2 or 4.3, as applicable shall apply to all Section 457 Transfers and Rollover Contributions. Notwithstanding the foregoing, in accordance with procedures established by the Administrative Service Agency, an Account Participant may make an alternative initial allocation election in accordance with the procedures set forth in Section 4.4 for any applicable Section 457 Transfer or Rollover Contribution. Thereafter, such Account Participant may direct the Administrative Service Agency to liquidate his or her interest in any of the Investment Options and transfer the

proceeds thereof to one or more other Investment Options in accordance with Section 4.4 (in each case subject to the limitations set forth in Sections 4.5 and 4.6). All Rollover Contributions shall be invested by the Trustee in the Investment Options in accordance with such directions as soon as administratively practicable.

4.10 Fund Mapping or Similar Activity. Notwithstanding anything in Section 4 to the contrary, if the Board eliminates one or more of the Investment Funds or Investment Options or undertakes similar activity on behalf of the Plan, the Board shall be authorized to liquidate without an Account Participant's consent and without the need for prior notice to the Account Participant the portion of each Account invested in such eliminated Investment Fund or Investment Option and direct the proceeds of such liquidation in one or more remaining or replacement Investment Funds or Investment Options in accordance with such liquidation and transfer procedures as the Board may determine to be necessary or advisable in connection with such elimination.

SECTION 5 ROLLOVERS

5.1 Transfer from Another Governmental 457 Plan. Compensation previously deferred or contributed by (or contributed on behalf of) a Participant, a Beneficiary or a spousal Alternate Payee pursuant to another eligible deferred compensation plan under Section 457 of the Code maintained by another employer described in Section 457(e)(1)(A) of the Code shall be accepted for a plan-to-plan transfer to the Plan by the Trustee in the form and in the manner prescribed by the Board. All such Section 457 Transfers shall be credited to the applicable Account Participant's corresponding Before-Tax Deferral Account or Roth Account (or a combination thereof) and shall be invested in accordance with Section 4.9.

5.2 Acceptance of Assets from an Eligible Retirement Plan.

(a) Rollover Contributions in General. Amounts previously deferred or contributed by (or contributed on behalf of) a Participant, a Beneficiary or a spousal Alternate Payee under another Eligible Retirement Plan (other than a Roth IRA) that (i) are distributed to the Participant, the Beneficiary or the spousal Alternate Payee or (ii) are directly rolled over to the Plan as an eligible rollover distribution from such Eligible Retirement Plan, may be accepted as a Rollover Contribution by the Trustee in the form and in the manner specified by the Administrative Service Agency; *provided*, that Rollover Contributions of amounts from a Qualified Roth Contribution Program must be directly rolled over to the Plan. Notwithstanding the foregoing, other than Rollover Contributions from a Qualified Roth Contribution Program as described in the preceding sentence, the Administrative Service Agency shall not accept any Rollover Contribution, or any portion thereof, that represents deferrals or contributions under another Eligible Retirement Plan that were made from compensation that was included in the Participant, Beneficiary or spousal Alternate Payee's gross income in the year the amounts were deferred or contributed. The Administrative Service Agency may require such documentation from the distributing Eligible Retirement Plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an Eligible Retirement Plan.

(b) Written Request; Acceptance of Assets. The Administrative Service Agency, in accordance with the Code and procedures established by the Board, shall, as soon as practicable following its receipt of the written request of a Participant, a Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee, determine whether the Rollover Contribution shall be accepted by the Plan. Any written request filed by a Participant, a Beneficiary who is a Participant's Surviving Spouse or a spousal Alternate Payee pursuant to Section 5.2(a) shall set forth the fair market value of such Rollover Contribution and a statement in a form satisfactory to the Administrative Service Agency that the amount to be transferred constitutes a Rollover Contribution. In the event the Administrative Service Agency permits the transfer of the Rollover Contribution, the Trustee shall accept such Rollover Contribution and the transfer of such Rollover Contribution shall be deemed to have been made on the Valuation Date next following the date on which it was paid to the Trust Fund.

(c) Rollover Account. The Rollover Contribution shall be maintained in a separate, fully vested Rollover Account for the benefit of the contributing Participant or the Beneficiary

and, in the case of a spousal Alternate Payee, the Alternate Payee Account, and shall be invested in accordance with the investment direction of the applicable Account Participant pursuant to Section 4.9. All amounts so transferred shall be credited to the Account Participant's Rollover Account or Alternate Payee Account and shall be available for distribution at any time during the Plan Year. No other contributions shall be allocated to the Rollover Account. Any Rollover Contributions of amounts from a Qualified Roth Contribution Program shall be segregated and held in a separately designated and maintained Rollover Account from those amounts not from a Qualified Roth Contribution Program. At the election of the Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee, any Rollover Contributions or 457 Transfers from an eligible deferred compensation plan under Section 457(b) of the Code may be held in separately designated and maintained Rollover Accounts for 457(b) Rollover Contributions; *provided* that any such amounts from a Qualified Roth Contribution Program and any such amounts not from a Qualified Roth Contribution Program shall be segregated and held in separately designated and maintained 457(b) Rollover Accounts.

5.3 Form of 457 Transfer or Rollover Contribution. Each 457 Transfer and Rollover Contribution shall consist only of (i) cash and (ii) solely with respect to 457 Transfers and Rollover Contributions from another eligible deferred compensation plan under Section 457 of the Code maintained by a Public Employer, any outstanding loan to the applicable Account Participant under the transferring or distributing 457 plan, *provided* that (A) such outstanding loan will be subject to the same terms and conditions as in place under the transferring or distributing 457 plan, (B) an Account Participant may not make a Rollover Contribution that includes an outstanding loan unless the entire amount of such Account Participant's plan benefit under the transferring or distributing 457 plan is contributed into the Plan, (C) the source of the outstanding loan disbursement under the transferring or distributing 457 plan must have been from before-tax deferrals, and (D) the Account Participant does not have a loan outstanding, or a defaulted loan that has not yet been repaid, under the Plan at the time of the 457 Transfer or Rollover Contribution.

5.4 Rollover of Assets to Purchase Retirement Service Credit. With respect to trustee-to-trustee transfers, a Participant or Beneficiary may elect, in accordance with procedures established by the Board, to have all or any portion of the value of his or her Account transferred to the trustee of a defined benefit governmental plan as described in Section 414(d) of the Code; *provided, however*, that such transfer is for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan or a repayment of contributions and earnings with respect to a forfeiture of service under such plan.

SECTION 6
ACCOUNTS AND RECORDS OF THE PLAN

6.1 Participant Accounts.

(a) In General. The Administrative Service Agency shall establish and maintain one or more Accounts for each Participant, including a Before-Tax Deferral Account, a Roth Account (to the extent applicable) and, as necessary, one or more Rollover Accounts (including a segregated Rollover Account relating to contributions from a Qualified Roth Contribution Program) with respect to each Participant. Each Account shall record the value of the portion of the Participant's Plan Benefit allocable to that Account, the value of the portion of his or her Plan Benefit, if any, that is invested in each Investment Option (both in the aggregate and by Account) and other relevant data pertaining thereto. With respect to each Participant, all Amounts Deferred or Contributed, all Section 457 Transfers and all Rollover Contributions shall be credited to his or her Before-Tax Deferral Account, Roth Account or Rollover Account, as applicable.

(b) Written Statement. Each Account Participant shall be furnished with a written statement of his or her Accounts (including the value of the interest he or she has, if any, in each Investment Option and the amount of and explanation for each allocation to or deduction from his or her Accounts) at least quarterly, which statement shall be delivered in a manner prescribed by the Board.

6.2 Beneficiary Accounts. The Administrative Service Agency shall establish and maintain one or more Beneficiary Accounts, including, as applicable, separate Before-Tax Deferral Accounts, Roth Accounts, and Rollover Accounts with respect to each Beneficiary of a deceased Participant. Each such Account shall record the value of the portion of the deceased Participant's Plan Benefit allocable to each of the Beneficiary's Accounts, the value of the portion of the Plan Benefit, if any, that is invested in each Investment Option (both in the aggregate and by Account) and other relevant data pertaining thereto. Each Beneficiary shall be furnished with a written statement of his or her Accounts in the same manner set forth in Section 6.1(b).

6.3 Alternate Payee Accounts. The Administrative Service Agency shall establish and maintain one or more Alternate Payee Accounts, including, as applicable, separate Before-Tax Deferral Accounts, Roth Accounts, and Rollover Accounts with respect to each Alternate Payee. The Alternate Payee Account shall separately account for all amounts received (i) from the Participant's Rollover Account and (ii) from all amounts rolled into the Plan by a spousal Alternate Payee, pursuant to Section 5.1 or 5.2. Each such Account shall record the value of the portion of the Participant's Plan Benefit allocable to the Alternate Payee's Account, the value of the portion of the Plan Benefit, if any, that is invested in each Investment Option (both in the aggregate and by Account) and other relevant data pertaining thereto. Each Alternate Payee shall be furnished with a written statement of his or her Alternate Payee Accounts in the same manner set forth in Section 6.1(b).

6.4 Allocations and Credits. The establishment and maintenance of, or allocations and credits to, the Account of any Account Participant shall not vest in such Account Participant or

Beneficiary of a Participant any right, title or interest in and to any Trust Fund assets or Plan benefits, except at the time or times and upon the terms and conditions and to the extent expressly set forth in the Plan and the Trust Agreement and, in the case of an Alternate Payee Account, the express terms of the Qualified Domestic Relations Order.

6.5 Plan Benefit and Trust Fund.

(a) Plan Benefit Defined. As of the close of each Valuation Date, the Plan Benefit of an Account Participant shall equal the aggregate value of his or her Accounts as of such Valuation Date. As of any date that is not a Valuation Date, a Participant's Plan Benefit shall be calculated in accordance with the previous sentence as of such date, but based upon the value of the Account Participant's Accounts as of the close of the most recent Valuation Date. The value of an Account as of a Valuation Date shall be calculated as of each Valuation Date in accordance with a methodology established by the Board and reasonably and consistently applied to all similarly situated Account Participants and shall be based upon an Account Participant's aggregate deferrals and contributions to the Trust Fund and distributions and withdrawals from the Trust Fund, the investment performance of the Investment Options in which each Account has been allocated, and any fees, credits or debits allocable to each Account. As of each Valuation Date, each Account shall be adjusted to reflect all Units or dollars credited and Units or dollars distributed, withdrawn or deducted therefrom in accordance with the terms of the Plan and the Trust Agreement. The aggregate Plan Benefit of all Account Participants shall in no event exceed the value of the assets of the Trust Fund and may be less than such value to the extent of any unallocated expense, reserve or similar account maintained as part of the Trust Fund.

(b) Investment Options and Investment Funds. The Trust Fund shall be invested at the direction of Account Participants, in accordance with Section 4, in and among the Investment Options made available through the Plan from time to time by the Board. Investment Options may include (i) one or more Investment Funds, (ii) a brokerage account or similar investment window through which Account Participants may direct the investment of their Accounts into Mutual Funds (as defined below) or other available investment products that the Board designates as available for investment through such window, (iii) an individual participant loan fund to record the value of an outstanding loan made to a Participant in accordance with Section 7.3, and (iv) any other investment alternative that the Board may make available through the Plan. Investment Funds may consist of open-end investment companies registered under the Investment Company Act of 1940, as amended ("Mutual Funds"), separately managed accounts, unregistered commingled funds, group or commingled trusts, or any combination thereof as approved from time to time by the Board for the investment of the assets of the Trust Fund.

SECTION 7
WITHDRAWALS FOR UNFORESEEABLE EMERGENCIES; WITHDRAWALS OF
SMALL AMOUNTS; LOANS

7.1 Distribution for an Unforeseeable Emergency.

(a) Amount of Distribution for an Unforeseeable Emergency. Upon a showing by a Participant of an Unforeseeable Emergency, the Administrative Service Agency may permit a payment to be made to the Participant in an amount which does not exceed the lesser of (i) the amount reasonably needed to meet the financial need created by such Unforeseeable Emergency, including estimated income taxes and (ii) an amount which, together with any prior distribution or withdrawal, does not exceed the value of the Participant's Plan Benefit determined as of the most recent Valuation Date. Any such payment shall be made from the Trust Fund by the Trustee upon the direction of the Administrative Service Agency and shall be withdrawn by the Trustee *pro rata* from the Investment Funds in which the Participant has an interest, unless the Participant specifies in the request for such a payment the portion of the total amount to be withdrawn by the Trustee from each Investment Fund. The Participant shall designate the amount of the distribution that will come from his or her Before-Tax Deferral Account and from his or her Roth Account in accordance with procedures established by the Administrative Service Agency. All payments shall be made in one lump cash sum within sixty days after approval of the request.

(b) Evidence of Other Relief. A Participant must provide evidence that the amount requested for an Unforeseeable Emergency may not be fully relieved (i) through reimbursement or compensation by insurance or otherwise, (ii) by liquidation of a Participant's other non-Plan assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or (iii) by cessation of deferrals and contributions under the Plan.

7.2 Distribution from a Small Inactive Account. An Account Participant with a Plan Benefit, not including the amount in the Participant's Rollover Accounts, of \$5,000 or less (or such greater amount as may be permitted by Section 401(a)(11) of the Code) may elect at any time to receive a lump sum distribution, not to exceed \$5,000, of his or her Account and Rollover Account, which distribution will be made in accordance with procedures established by the Administrative Service Agency, *provided* that both of the following conditions have been met:

(a) there has been no Amount Deferred or Contributed by such Participant during the two-year period ending on the date of distribution; and

(b) there has been no prior distribution made to such Participant pursuant to this Section 7.2.

7.3 Loans.

(a) Eligibility. Participants who are active Employees, and, if the Board shall determine, Participants who are on an approved leave of absence from their Employer, shall be eligible to request a Plan loan. Each Participant shall have only one outstanding Plan loan at any time. Upon the request of a loan-eligible Participant, the Administrative Service Agency may, on such terms and conditions prescribed herein, direct the Trustee to make a Plan loan to such loan-eligible Participant.

(b) Loan Amount. The principal amount of any Plan loan shall be for an amount equal to at least \$1,000, or such other amount as the Board shall determine, and shall not exceed the lesser of:

(i) 50% of the value of the sum of the Participant's Accounts (including his or her Before-Tax Deferral Account and Roth Account); and

(ii) \$50,000 reduced by the highest value in the last twelve months of any loans by the Participant from the Plan and other Eligible Retirement Plans sponsored by the Employer or in which the Employer participates.

(c) Repayment Period. All Plan loans, other than those for the purpose of acquiring the dwelling unit which is, or within a reasonable time shall be, the principal residence of the Participant, shall be repaid over a non-renewable repayment period of five years. A Plan loan made for acquiring a principal residence shall be repaid over a non-renewable repayment period of up to 15 years, or such shorter term as the Board shall determine. Any Plan loan shall be repaid in substantially equal installments of principal and accrued interest that shall be paid at least monthly, subject to the methods and procedures as shall be determined by the Administrative Service Agency.

(d) Rate of Interest. Each Plan loan granted shall bear a rate of interest equal to one percentage point above the prime interest rate as published in the Wall Street Journal on the last Business Day of the month preceding the application for the loan, or such other reasonable rate of interest as the Board shall determine.

(e) Source of Loans; Security.

(i) Effective October 22, 2012 through the date hereof, a Plan loan shall be made, as determined by the Administrative Services Agency, either (A) entirely from such Participant's Before-Tax Deferral Account and, if applicable, Rollover Accounts relating to Rollover Contributions of before-tax deferrals or (B) pro-rata (based on the balance in the Before-Tax Deferral Account and Rollover Accounts relating to Rollover Contributions of before-tax deferrals) from (I) the Before-Tax Deferral Account or, if applicable, the Rollover Accounts relating to Rollover Contributions of before-tax deferrals and (II) the Roth Account. This Section 7.3(e)(i) shall apply solely to Plan loans that were granted between October 22, 2012 and the date hereof.

(ii) Effective as of the date hereof, a Plan loan shall be made, at the election of the Participant, (A) pro-rata (based on the balance in the Before-Tax Deferral Account and Rollover Account relating to Rollover Contributions of before-tax deferrals) from (I) the Before-Tax Deferral Account or, if applicable, the Rollover Accounts relating to Rollover Contributions of before-tax deferrals and (II) the Roth Account or (B) by Participant election, entirely from such Participant's Before-Tax Deferral Account and, if applicable, Rollover Accounts relating to Rollover Contributions of before-tax deferrals.

(iii) All Plan loans shall be made from the Trust Fund and notes evidencing such obligations shall be considered assets of the Trust Fund and shall be treated as a separate loan investment fund for purposes of determining the value as of any Valuation Date of a Participant's Accounts. All Plan loans shall be secured, as of the date of the Plan loan, by the sum of (x) the Participant's Before-Tax Deferral Account and Roth Account and (y) the Participant's Rollover Accounts, if applicable, *provided, however*, that no more than 50% of the aggregate value of such Participant's Accounts shall be used as security for the Plan loan.

(f) Default. If a Participant fails to make any scheduled repayment of his or her Plan loan within 90 days of its due date, or such other period as the Administrative Service Agency shall determine, such Participant shall be considered in default and the Administrative Service Agency shall declare a deemed distribution to have occurred with respect to such Plan loan, effective as of the date of the default and shall reduce the value of the Participant's Plan Benefit by the amount of the deemed distribution. Notwithstanding anything in Section 7.3 to the contrary, a Participant who has defaulted on a loan made under the Plan shall not be eligible to obtain another loan hereunder until the defaulted loan and accrued interest has been repaid, and the new loan shall be subject to any other limitations required under Section 1.72(p) of the Treasury Regulations.

(g) Outstanding Loans. An outstanding loan shall include (i) any loan that is being repaid in compliance with Section 7.3 until repaid in full and (ii) any loan that is considered in default until subsequently repaid in full.

(h) Administration and Fees. The Board may establish or change from time to time the standards or requirements for making any Plan loan, including assessing an administrative fee against the Participant or the Participant's Account for such Plan loan.

7.4 Death Prior to Distribution of Proceeds. If a Participant dies prior to the payment of any withdrawal for an Unforeseeable Emergency, distribution of a small inactive account or disbursement of the proceeds of any Plan loan, the Participant's withdrawal, distribution or loan request shall be void as of the date of death and no withdrawal, distribution or disbursement shall be made by operation of Section 7 to the Participant's Beneficiary or estate.

SECTION 8
DISTRIBUTIONS FROM THE PLAN AND OTHER ELIGIBLE
RETIREMENT PLANS

8.1 Distributions to Participants.

(a) Eligibility for Distribution. A Participant will become eligible to receive a distribution of his Plan Benefit upon the occurrence of any of the following events: (i) the Participant's Severance from Employment with the Employer; or (ii) the Participant's attainment of age 70½; provided, however, that for purposes of this Section SECTION 8, a Participant will be deemed to have had a Severance from Employment during any period he or she is performing service in the uniformed services described in Section 3401(h)(2)(A) of the Code . Except as otherwise provided in Section 7, a Participant may not receive distribution of his or her Plan Benefit at any time prior to the occurrence of one of the foregoing events.

(b) Distributions to Participants. Upon a Participant's eligibility for a distribution pursuant to Section 8.1(a), the Participant shall be entitled to receive his or her Plan Benefit, which shall be paid in cash by the Trustee from the Trust Fund in accordance with one of the methods described in Section 8.1(c) and as of the commencement date elected by the Participant in accordance with the procedures prescribed Section 8.1(e).

(c) Distribution Options. Subject to Section 8.6, any payment made under this section shall be made in one of the following methods, as the Participant (or, in the case of the death of a Participant, his or her Beneficiary) may elect any of the following:

(i) A total or partial lump sum payment. Any partial lump sum payment shall be an amount of at least \$100 (or such other amount as the Board may determine) and no more than twelve partial lump sum payments may be made per Plan Year (or such number as the Board may determine).

(ii) Periodic monthly, quarterly, semi-annual or annual installment payments; *provided, however*, that a Participant (or, in the case of the death of a Participant, his or her Beneficiary) may elect to receive (A) an initial installment payment in a specified amount and (B) the balance of his or her Account in periodic monthly, quarterly, semi-annual or annual installment payments. Any installment payment made pursuant to Section 8.1(c)(ii) shall be at least \$100, or such other amount as the Board may determine. If the balance of the Participant's Account and Rollover Account is less than such amount, then the payment will equal the total amount of the Participant's Account and Rollover Account. Installment payments may consist of (A) fixed amounts paid on each payment date as designated by the Participant (or in the case of the death of a Participant, his or her Beneficiary), or (B) formulaic amounts determined by the Administrative Service Agency, based on a fixed period designated by the Participant (or in the case of the death of a Participant, his or her Beneficiary), calculated by dividing the Plan Benefit on the date of the payment by the number of payments remaining during the fixed period.

(iii) A Participant who elects to receive installment payments or who is currently receiving installment payments pursuant to Section 8.1(c)(ii) may elect, subject to any limitations set forth by the Board and in accordance with procedures established by the Administrative Service Agency, to receive a portion of his or her Account distributed in a lump sum; *provided, however*, that no lump sum payment shall be less than \$100, or such other amount as the Board shall determine; and *provided further*, that such elections shall not be made more than twelve times per Plan Year, or such other number as the Board shall determine. Such lump sum payments shall not result in a discontinuation of subsequent installment payments; *provided, however*, that such subsequent payments may be redetermined in accordance with methods and procedures established by the Administrative Service Agency.

(iv) A Participant who is an eligible retired public safety officer, as defined in Section 402(l) of the Code, may elect, at the time and in the manner prescribed by the Administrative Service Agency, to have up to \$3,000 per year (or such greater amount as may be permitted under applicable guidance issued by the Internal Revenue Service) of amounts from his or her Before-Tax Deferral Account distributable under the Plan used to pay qualified health insurance premiums for an accident or health plan or long-term care insurance contract covering the Participant and his or her spouse and dependents. Such amounts are excludible from the Participant's gross income to the extent the qualified health insurance premiums are paid directly to the provider of the accident or health plan or long-term care insurance contract (determined in accordance with Section 402(l) of the Code) by deduction from a distribution to the Plan.

(v) For each distribution election under Section 8.1(c), a Participant shall designate the percentage of each distribution that will come from his or her Before-Tax Deferral Account and the percentage that will come from his or her Roth Account. For the avoidance of doubt, for purposes of the limitations and restrictions described in this Section 8.1(c), each distribution election made by a Participant and each payment made in accordance thereto shall be deemed to be one election and one payment, even if payment is made both from the Participant's Before-Tax Deferral Account and from his or her Roth Account.

Notwithstanding the foregoing, a Participant may not elect an installment period extending beyond the longest of (A) his or her life expectancy, (B) if his or her designated Beneficiary is his or her Spouse, the life expectancy of the Participant and his or her Spouse and (C) if his designated Beneficiary is not his or her Spouse, the life expectancy determined using the applicable table contained in the applicable Treasury Regulation.

(d) Calculation of Payments.

(i) If a Participant elects a total lump sum payment pursuant to Section 8.1(c)(i), the Participant's Plan Benefit shall be determined as of the Valuation Date coincident with or last preceding the date on which the Plan

Benefit is withdrawn from the Investment Options and liquidated for distribution. Such liquidated amount (i) shall be held in the Trust Fund in a payment account maintained by the Trustee for this purpose and (ii) shall not be credited with interest or investment gains or losses following the date of liquidation.

(ii) If a Participant elects to receive a partial lump sum payment pursuant to Section 8.1(c)(i) or (iii), installment payments pursuant to Section 8.1(c)(i), or payment of qualified health insurance premiums for an accident or health plan or long-term care insurance contract covering the Participant and his or her spouse and dependents pursuant to paragraph Section 8.1(c)(iv), any remaining balance in such Participant's Accounts shall continue to participate in the investment performance of the Investment Options in which such amounts are invested and to bear its allocable share of administrative and investment expenses, until the Valuation Date coincident with or last preceding the date on which such Plan Benefit amounts are withdrawn from the Investment Funds and liquidated for distribution; *provided, however*, that the amount of the installments need not be redetermined to reflect changes in the value of the Account more frequently than annually. All such redeterminations shall be made by the Administrative Service Agency in accordance with procedures of uniform application. Any amount liquidated for purposes of an installment payment (i) shall be held in the Trust Fund in a payment account maintained by the Trustee for this purpose and (ii) shall not be credited with interest or investment gains or losses following the date of liquidation.

(e) Distribution Election. In the case of the Participant's Severance from Employment with the Employer, a distribution election made by the Participant shall specify the form of payment as provided in Section 8.1(c) and the date on which payments shall commence; *provided, however*, that any such payments that would result in an account balance of less than \$500 may not commence earlier than forty-five days, or such time period as the Board shall determine, following the Participant's Severance from Employment; *provided, further* that the timing of any distribution must be in compliance with Section 8.6. Subject to Section 8.6, a Participant who is receiving distributions under the Plan may change both the timing and the method of payment elected subject to any limitations set forth by the Board and in accordance with procedures established by the Administrative Service Agency.

(f) Rollover Accounts. Notwithstanding any other provision of Section 8.1, a Participant who has one or more Rollover Accounts shall be permitted to withdraw all or any portion of such Rollover Accounts at any time during a Plan Year; *provided* that such withdrawal shall be paid pursuant to a method of payment elected by the Participant in accordance with Section 8.1(c) and the value of such Rollover Accounts shall be determined in accordance with Section 8.1(d).

8.2 Distributions to Beneficiaries. If a Participant dies before distribution of his or her Plan Benefit has commenced, a distribution election made by the Beneficiary shall specify the form of payment as provided in Section 8.1(c) and the date on which payments shall commence. If a Participant dies at any time before his or her entire Plan Benefit has been distributed, then the Participant's Beneficiary may make subsequent distribution elections as provided in Section

8.1(c). Notwithstanding the foregoing, any distribution to a Beneficiary shall be made in accordance with the provisions of Section 401(a)(9) of the Code and subject to Sections 8.6(d) and (e).

8.3 Distributions to Alternate Payees. A distribution to an Alternate Payee may be paid in a single lump sum as soon as practicable following the qualification of the Qualified Domestic Relations Order and the close of all appeals to the Qualified Domestic Relations Order if the Alternate Payee consents to such lump sum distribution. In the event that the Alternate Payee does not consent to receive his or her distribution in a single lump sum as soon as practicable following the qualification of the Qualified Domestic Relations Order, the Alternate Payee may make an election to receive a distribution any time after the Earliest Retirement Date, subject to any requirements of Section 401(a)(9) of the Code and Section 8.6, by filing a distribution election specifying the form of payment as provided in Section 8.1(c) and the date on which payments shall commence.

8.4 Eligible Rollover Distributions.

(a) Participant Rollover Distributions. In connection with a Participant's Severance from Employment, the Distributee may elect, at the time and in the manner prescribed by the Administrative Service Agency, to have all or any portion of the Participant's Accounts that qualifies as an Eligible Rollover Distribution paid directly to the trustee of an Eligible Retirement Plan; *provided* that such other plan provides for the acceptance of such amounts by the trustee. The Plan shall provide written information to Distributees regarding Eligible Rollover Distributions to the extent required by Section 402(f) of the Code.

(b) Beneficiary Rollover Distributions. Upon a Participant's death, a Beneficiary may elect, at the time and in the manner prescribed by the Administrative Service Agency, to have all or any portion of the Participant's Accounts that qualifies as an Eligible Rollover Distribution paid directly to the trustee of an individual retirement arrangement (as defined in Section 7701(a)(37) of the Code) that is established for the purpose of receiving the distribution on behalf of such Beneficiary.

(c) Roth IRA Rollover Distribution. In connection with a Participant's Severance from Employment or upon a Participant's death, as the case may be, a Participant or a Beneficiary may elect, at the time and in the manner prescribed by the Administrative Service Agency, to have all or any portion of the Participant's Accounts that qualifies as an Eligible Rollover Distribution rolled over to a Roth individual retirement plan (as defined in Section 7701(a)(37) of the Code, and designated as a Roth plan at the time of its establishment).

8.5 Withholding. The Trustee shall withhold or cause to be withheld from any amounts withdrawn or distributed all federal, state, city or other taxes as shall be required pursuant to any law or governmental ruling or regulation, including Treasury Regulations.

8.6 Required Minimum Distributions.

(a) In General. Notwithstanding any other provision of the Plan to the contrary (except Section 8.6(b)), all distributions under the Plan shall be in accordance with the minimum distribution and timing requirements of Section 401(a)(9) of the Code (including the incidental

death benefit requirements of Section 401(a)(9)(G) of the Code) and the final Treasury regulations under Sections 1.401(a)(9)-2 through 1.401(a)(9)-9, which are incorporated herein by reference. Such provisions shall override any distribution options in the Plan that may be inconsistent with Section 401(a)(9) of the Code. Any distributions made pursuant to this Section 8.6 in order to comply with Section 401(a)(9) of the Code shall be charged against the Account or Accounts of the Account Participant in such manner as designated by the Account Participant in accordance with procedures established by the Administrative Service Agency; *provided, however,* that if no such designation is made, such distributions shall be charged first against the Before-Tax Deferral Account, second against the Roth Account, third against the Rollover Account or Rollover Accounts not relating to Rollover Contributions of amounts from a Qualified Roth Contribution Program, and fourth against the Rollover Account or Rollover Accounts relating to Rollover Contributions of amounts from a Qualified Roth Contribution Program

(b) 2009 Waiver. Notwithstanding anything to the contrary in Section 8.6, an Account Participant who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s Beneficiary, or for a period of at least 10 years, will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

(c) Distributions During Participant’s Life. The Plan Benefit of a Participant shall be distributed (or commence to be distributed) to such Participant as soon as practicable after the Required Beginning Date. If the Participant has not made an election pursuant to Section 8.1(c) prior to such Required Beginning Date, then the Plan Benefit shall be distributed in the form of installment payments commencing on the Required Beginning Date.

(d) Death of a Participant Before the Required Beginning Date.

(i) If a Participant dies before his Required Beginning Date, the remaining portion (if any) of such Participant’s Plan Benefit shall be distributed to his or her Beneficiary (or if the Participant has no Beneficiary, his or her Surviving Spouse or estate, as determined under Section 9.2) no later than December 31 of the calendar year containing the fifth anniversary of the Participant’s death (determined without regard to 2009), except as set forth in Sections 8.6(d)(i)(a) or (a) as follows:

(a) The Beneficiary may elect to receive a distribution of the Plan Benefit over a period not exceeding the life expectancy of the Beneficiary; *provided* that the distribution commences no later than December 31 of the calendar year immediately following the calendar year in which the Participant dies; or

(b) If the sole Beneficiary is the Participant's Surviving Spouse, such Surviving Spouse may elect to receive a distribution of the Account over a period not exceeding the life expectancy of the Surviving Spouse (determined as of the date such payments commence); *provided* that the distribution commences on or before the later of December 31 of the calendar year immediately following the calendar year in which the Participant dies or December 31 of the calendar year in which the Participant would have attained age 70 ½; *provided, further*, that if the Surviving Spouse dies after the Participant but before distributions to the Surviving Spouse commence, Section 8.6(d) (with the exception of Section 8.6(d)(i)(a)) shall apply as if the Surviving Spouse were the Participant.

(ii) The Beneficiary may elect to receive payment of the Plan Benefit as a lump sum or in annual, monthly or quarterly installment payments.

(e) Death After Required Beginning Date and After Commencement of Distributions.

If a Participant dies on or after the Required Beginning Date, but before his or her entire Plan Benefit is distributed to him or her, the unpaid portion of his or her Plan Account shall be distributed as follows:

(i) If the Participant has a designated Beneficiary, the longer of the remaining life expectancy of the Participant's Beneficiary and the remaining life expectancy of the Participant determined in accordance with Section 1.409(a)(9)-5 of the Treasury Regulations; or

(ii) If the Participant does not have a designated Beneficiary, the remaining life expectancy of the Participant determined in accordance with Section 1.409(a)(9)-5 of the Treasury Regulations;

provided, however, that if a Beneficiary so elects, the Participant's remaining Plan Benefit may be paid to the Beneficiary at any time in a lump sum so long as the entire Plan Benefit is paid at least as rapidly as it would be paid under Section 8.6(e)(i).

(f) Alternate Payee Accounts. In the case of any Alternate Payee Account, payments to the Alternate Payee must be made in accordance with the Plan and Section 401(a)(9) of the Code.

8.7 Special Proceeds. If the Plan receives Special Proceeds (as defined below) that are allocable to an Account Participant who has received a final distribution of his or her entire Plan Benefit, then the Plan shall distribute such Special Proceeds to the former Participant, Beneficiary, or Alternate Payee (or in accordance with Section 9.2, if the Participant is deceased and no Beneficiary designation was in effect at the time of the Participant's death, or to the estate of Beneficiary or Alternate Payee, as applicable, if such person is deceased) in a lump sum as soon as practicable after the Plan receives such Special Proceeds unless, at the time of such mandatory distribution, the value of such distribution would exceed \$1,000. For purposes of Section 8.7, "Special Proceeds" means amounts attributable to a settlement of any dispute or

controversy related to any of the assets previously attributable to any Account of the former Participant, Beneficiary, or Alternate Payee or any other amounts allocable under the Plan to a former Participant, Beneficiary, or Alternate Payee relating to an adjustment to the amount or value of any such Account.

8.8 In-Plan Rollover to Roth Account.

- (a) A Participant who has not severed employment or a spousal Alternate Payee would be permitted to have all or any portion of the Participant's Plan Benefit not otherwise distributable under the Plan, and not attributable to Roth Contributions or outstanding loans, directly rolled over into a separately maintained Account within his or her Roth Account. Any such amounts will be included in gross income as if the distribution had been made to such Participant or spousal Alternate Payee. After a Participant or spousal Alternate Payee has made an in-Plan rollover into a Roth Account, such Participant or spousal Alternate Payee may elect to take distributions from such Account in accordance with Sections 8.1 or 8.3.
- (b) Upon any distribution event pursuant to which a Participant, a Beneficiary who is a Participant's Surviving Spouse or a spousal Alternate Payee would be permitted to have all or any portion of the Participant's Plan Benefit that qualifies as an Eligible Rollover Distribution rolled over into another Eligible Retirement Plan, such Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee may elect to have the portion of such Eligible Rollover Distribution that is not attributable to Roth Contributions or outstanding loans directly rolled over into a separately maintained Account within his or her Roth Account. Any such amounts will be included in gross income as if the distribution had been made to such Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee. After a Participant, Beneficiary who is a Participant's Surviving Spouse or spouse Alternate Payee has made an in-Plan rollover into a Roth Account, such Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee may elect to take distributions from such Account in accordance with any of the distribution options set forth in Section 8.1(c).
- (c) The provisions in Section 8.8 shall be administered in accordance with procedures established by the Administrative Service Agency and shall be interpreted and administered in accordance with and subject to Section 402A(c)(4) of the Code and any rules, regulations or other guidance issued by the Internal Revenue Service in relation thereto.

SECTION 9 DESIGNATION OF BENEFICIARIES

9.1 Written Designation of Beneficiaries. Each Participant shall file with the Administrative Service Agency a written designation of one or more persons as the Beneficiary who shall be entitled to receive the Plan Benefit, if any, payable under the Plan upon his or her death. A Participant may from time to time revoke or change his or her Beneficiary designation without the consent of any prior Beneficiary by filing a new written designation with the Administrative Service Agency. The last such designation received by the Administrative Service Agency “in good order” shall be controlling; *provided, however*, that no designation or change or revocation thereof shall be effective unless received by the Administrative Service Agency in good order prior to the Participant’s death, and in no event shall it be effective as of a date prior to such receipt. For purposes of Section 9, a Beneficiary designation shall be deemed to be received in good order only if the Administrative Service Agency can reasonably identify the Beneficiary or Beneficiaries named in the designation.

9.2 No Beneficiaries Designated. (a) If no such Beneficiary designation is in effect at the time of a Participant’s death, or if no designated Beneficiary survives the Participant, or if no designated Beneficiary can be located with reasonable diligence by the Administrative Service Agency, the payment of the Plan Benefit, if any, payable under the Plan upon the Participant’s death shall be made by the Trustee from the Trust Fund to the Participant’s Surviving Spouse, if any, or if the Participant has no Surviving Spouse, or the Surviving Spouse cannot be located with reasonable diligence by the Administrative Service Agency, then to the deceased Participant’s estate. If the Administrative Service Agency is in doubt as to the right or entitlement of any person to receive such amount, the Administrative Service Agency shall inform the Board and the Trustee, and the Trustee may retain such amount, without liability for any interest thereon, until the rights thereto are determined, or the Trustee may pay such amount into any court of appropriate jurisdiction or to any other person pursuant to applicable law and such payment shall be a complete discharge of the liability of the Trustee, Plan, Board, Employer, Administrative Service Agency and Financial Organizations.

(b) If the Beneficiary so designated by the Participant dies after the death of the Participant but prior to receiving a complete distribution of the amount that would have been paid to such Beneficiary had such Beneficiary’s death not then occurred, then, for purposes of the Plan, the distribution that would otherwise have been received by such Beneficiary shall be paid to the Beneficiary’s estate.

9.3 Surviving Spouse. Notwithstanding Section 9.2, a Beneficiary who is a Surviving Spouse of the Participant may designate a subsequent Beneficiary, subject to the same filing requirements of Section 9.1, to the extent permitted under Section 401(a)(9) of the Code. To the extent such Surviving Spouse is not permitted or does not elect to designate a subsequent Beneficiary pursuant to the preceding sentence, and the Surviving Spouse dies prior to receiving a complete distribution of the amount that would have been paid to such Surviving Spouse had such Surviving Spouse’s death not then occurred, then, for purposes of the Plan, the distribution that would otherwise have been received by such Surviving Spouse shall be paid to the Surviving Spouse’s estate.

SECTION 10
QUALIFIED DOMESTIC RELATIONS ORDERS

10.1 Qualified Domestic Relations Order. Payments with respect to a Participant's Plan Benefit may be made by the Trustee from the Trust Fund to one or more Alternate Payees pursuant to the terms of a Qualified Domestic Relations Order. Upon segregation of the assets payable to an Alternate Payee in an Alternate Payee Account or the payment of such benefits to the Alternate Payee, any such amounts paid or segregated shall no longer constitute part of the Participant's Plan Benefit. No liability whatsoever shall be incurred by the Board, Staff, the Trustee, the Employer, the Administrative Service Agency, the Review Committee or any Financial Organization solely by reason of any act or omission undertaken in accordance with this section to comply with the terms of a Qualified Domestic Relations Order.

10.2 Suspension of Distributions During Claim Period. Subject to the discretion of the Administrative Service Agency or the Board, no distribution of any Plan Benefit shall be permitted in any period during which a purported Qualified Domestic Relations Order claim, against all or part of such Plan Benefit, is being reviewed in accordance with the provisions of Section 11.8. If the Administrative Service Agency reasonably believes that a purported Qualified Domestic Relations Order against all or part of any Plan Benefit is likely to be asserted, the Board may refuse to permit any distribution of all or part of such Plan Benefit pending determination of such claim.

SECTION 11 ADMINISTRATION

11.1 Plan Administration. Except as otherwise provided herein, the operation and administration of the Plan shall be the responsibility of the Board, and the Board shall have all of the broad, general authority necessary or advisable to operate and administer the Plan. The Board shall have the power and the duty to take all action and to make all decisions necessary or proper to carry out its responsibilities under the Plan. All determinations of the Board as to any question involving its responsibilities under the Plan, including interpretation of the Plan or as to any discretionary actions to be taken under the Plan, shall be solely in the Board's discretion and shall be final, conclusive and binding on all parties.

11.2 Board Powers and Duties. Without limiting the generality of the foregoing, the Board shall have the following powers and duties:

(a) to require any person to furnish such information as it may request for the purpose of the proper administration of the Plan as a condition to receiving any benefit under the Plan;

(b) to make and enforce such rules and regulations and prescribe the use of such forms as it shall deem necessary for the efficient administration of the Plan;

(c) to interpret the Plan and to resolve ambiguities, inconsistencies and omissions in the terms of the Plan or any document related to the Plan;

(d) to decide all questions concerning the Plan and the eligibility of any Employee or other individual to participate in the Plan;

(e) to determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan;

(f) to enlarge or diminish any applicable time period set forth in the Plan, subject to applicable law; and

(g) to determine the methods and procedures for the implementation and use of any automated telephone, computer, internet, intranet or other electronic or automated system adopted by the Board for purposes of Plan administration, including for receiving and processing enrollments and instructions with respect to the investment of assets allocated to an Account Participant's Accounts and for such other purposes as may be designated from time to time.

11.3 Limitation of Liability. Except as may be prohibited by applicable law, neither the Board, any member thereof, nor any Staff member, shall be liable for (a) anything done or omitted to be done by it or by them unless the act or omission claimed to be the basis for liability amounted to a failure to act in good faith or was due to gross negligence or willful misconduct; (b) the payment of any amount under the Plan; or (c) any judgment or reasonable mistake of fact made by it or on its behalf by a member of the Board or Staff. No member of the Board or any Staff member, shall be personally liable under any contract, agreement, bond or other instrument

made or executed by him or her or on his or her behalf in connection with the Plan or Trust Fund.

11.4 Trustee. The Trustee shall have responsibility for the custody and safekeeping of the assets of the Plan and the Trust Fund and the valuation of such assets in accordance with the terms of the Trust Agreement and, in conjunction with the Administrative Service Agency, shall be responsible for implementing the aggregated investment decisions of Participants and beneficiaries by allocating the Plan assets to the various Investment Options. The Board shall periodically review the performance and methods of the Trustee and the Board may, subject to the terms of the Trust Agreement, appoint and remove or change the Trustee at any time for any reason or for no stated reason. If the Trust Agreement so provides, the Trustee may also serve as the Administrative Service Agency and perform the record keeping services normally performed by a third party Administrative Service Agency or may provide the services normally provided by a Financial Organization, provided that the Trustee otherwise qualifies as an Administrative Service Agency or a Financial Organization, as the case may be. The Board may, in connection with the administration of the Plan and pursuant to its general authority to select trustees and financial organizations, (i) authorize the assets of the Plan to be commingled with the assets of other qualified retirement plans in one or more group trusts selected by the Board that satisfy the requirements of Revenue Ruling 81-100, as amended, and (ii) adopt some or all of the terms of such group trust as part of the Plan.

11.5 Financial Organizations. The Board shall have the power to appoint or remove one or more Financial Organizations and to delegate to such Financial Organization(s) authority and discretion to manage (including the power to acquire and dispose of) the assets of the Plan and Trust Fund in accordance with the Regulations and the Plan. The Board shall periodically review the performance and methods of such Financial Organization(s). The Board has the right to (i) replace any Financial Organization or Investment Option with a successor Financial Organization or Investment Option or (ii) to select any additional Financial Organization or Investment Option.

11.6 Delegation. The Board may delegate its general authority as it deems appropriate in accordance with the terms of the Plan and all applicable Code sections; *provided, however*, that such delegation shall be subject to revocation at any time at the discretion of the Board. Notwithstanding any other provision of the Plan, the Board's general authority shall include the right to review, revise, modify, revoke, or vacate any decision made or action taken by any party under the Plan to whom authority of the Board has been delegated or to whom authority with respect to the administration of the Plan or the custody and investment of the assets of the Trust Fund has been delegated or assigned under the terms of the Plan, by the Board or otherwise. The rights of the Board under Section 11.6 include the right to review, revise, modify, revoke, or vacate any decision of the Administrative Service Agency or the Review Committee.

11.7 Plan Expenses.

(a) Assessment Against the Trust Fund. Subject to 11.7(b), the expenses of administering the Plan, including (i) the fees and expenses of the Financial Organizations and Administrative Service Agency for the performance of their duties under the Plan, including any fees and expenses associated with a change, termination or addition of an Investment Option, (ii)

the fees, if any, of any member of the Board and any Trustee and the expenses incurred by the Board or any of its members or Staff or any Trustee in the performance of their duties under the Plan (including reasonable compensation for any legal counsel, certified public accountants, consultants, and agents, employees of the Board and cost of services rendered in respect of the Plan and the Trust Agreement (as provided therein)), and (iii) all other proper charges and disbursements of the Financial Organizations, Administrative Service Agency, the Board or its members (including settlements of claims or legal actions approved by counsel to the Plan) or any Trustee shall be allocated to and paid out of the assets of the Trust Fund in accordance with such allocation and payment procedures as the Board shall establish from time to time. The Board is authorized to levy a fee against the Accounts of Account Participants for the purpose of paying some or all of such expenses, except where such expenses are paid from State funds allocated for such expenses or the Employer elects to pay such expenses directly; *provided, however*, that any such fees shall be levied on a pro-rata basis from the Account Participant's various Accounts at any given time, including Before-Tax Deferral Accounts, Roth Accounts, Rollover Accounts not relating to Rollover Contributions of amounts from a Qualified Roth Contribution Program, and Rollover Accounts relating to Rollover Contributions of amounts from a Qualified Roth Contribution Program.

(b) Investment Expenses. Unless the Board determines otherwise, brokerage fees, transfer taxes and any other expenses incident to the purchase or sale of securities for any Investment Option shall be deemed to be part of the cost of such securities, or deducted in computing the proceeds therefrom, as the case may be. The Administrative Service Agency shall appropriately deduct any taxes assessed in respect of any assets held, income received, or transactions effected under any Investment Option proportionately against any Accounts that are invested in such Investment Option.

11.8 Review of Claims.

(a) Initial Claim of Rights or Benefits and Review. Any claim to rights or benefits under the Plan, including any purported Qualified Domestic Relations Order, or request for an Unforeseeable Emergency Withdrawal must be filed in writing with the Administrative Service Agency. Within sixty days after receipt of such claim, the Administrative Service Agency, shall notify the claimant and, if such claimant is not the Account Participant, any Account Participant against whose Plan Benefit the claim is made, that the claim has been granted or denied, in whole or in part. Notice of denial of any claim in whole or in part by the Administrative Service Agency, or by such other entity designated by the Administrative Service Agency, shall include the specific reasons for denial and notice of the rights granted by Section 11.8.

(b) Review of Decision. Any claimant or Account Participant who has received notice of denial or grant, in whole or in part, of a claim made in accordance with the foregoing Section 11.8(a) may file a written request within thirty days of receipt of such denial for review of the decision by the Review Committee. Within ninety days after receipt of such request for review, the Review Committee shall notify the claimant and, as applicable, the Account Participant, that the claim has been granted or denied, in whole or in part; *provided, however*, that the Review Committee may in its discretion extend such period by up to an additional 120 days upon notice to the claimant and, as applicable, the Account Participant, prior to expiration of the original ninety days that such additional period is needed for proper review of

the claim. Notice of denial of any claim in whole or in part by the Review Committee shall include the specific reasons for denial and shall be final, binding and conclusive on all interested persons for all purposes.

11.9 Advisers. The Board shall arrange for the engagement of legal counsel and certified public accountants, who may be counsel or accountants for the Employer, and other consultants, including an investment adviser, and make use of agents and clerical or other personnel, for purposes of this Plan. The Board and Staff may rely upon the written opinions of the State Attorney General and of such counsel, accountants and consultants, and upon any information supplied by the Trustee, a Financial Organization or Administrative Service Agency appointed in accordance with the Regulations.

11.10 Limitation on Board Power. No member of the Board shall be entitled to act on or decide any matters relating solely to such member or any of his or her rights or benefits under the Plan.

11.11 Public Meetings. All actions of the Board shall be taken at a public meeting in accordance with Article 7 of the Public Officers Law. The Board shall establish its own procedures and the time and place for its meetings and provide for the keeping of minutes of all meetings.

11.12 Defense of Claims. In the event of a claim or legal action, the Board shall be entitled to defense by the State Attorney General.

SECTION 12
ADOPTIONS BY AND WITHDRAWALS OF PARTICIPATING EMPLOYERS

12.1 Adoption by a Participating Employer.

(a) Effective Date of Adoption. Upon a Public Employer's adoption of the Plan, such Public Employer shall file with the Administrative Service Agency and the Board a certified copy of each resolution or other legal action, consent or approval through which the Public Employer adopted the Plan. Such Public Employer's adoption of the Plan shall be effective upon receiving an acknowledgment of receipt of such submission from the Administrative Service Agency.

(b) Board as Exclusive Agent. Any Public Employer which adopts the Plan shall be deemed thereby to appoint the Board its exclusive agent to exercise on its behalf all of the power and authority conferred hereby upon the Board. The authority of the Board to act as such agent shall continue until the Public Employer has withdrawn from the Plan pursuant to Section 12.2 and the Plan Benefits attributable to any Account Participants who are current or former Employees (or who are Beneficiaries or Alternate Payees of any current or former Employees) of such Public Employer, have been distributed or transferred to another eligible deferred compensation plan under Section 457 of the Code, as provided in the Plan.

12.2 Withdrawal of Participating Employer.

(a) Withdrawal by the Participating Employer. Any Participating Employer may terminate its adoption of the Plan by filing with the Administrative Service Agency and the Board a copy of a resolution or other legal action, adopted in the same manner as the resolution or other legal action adopted pursuant to Section 12.1(a), specifying a termination date which shall be no earlier than the last Business Day of a month at least three months subsequent to the date such notice is received by the Administrative Service Agency and the Board.

(b) Termination of Public Employer's Participation by the Board.

(i) The Board may terminate any Participating Employer's adoption of the Plan, as of any termination date specified by the Board, for the failure of the Participating Employer to comply with any provision of the Plan or the Regulations.

(ii) The Board may terminate a Participating Employer's adoption of the Plan upon complete and final discontinuance of deferrals and contributions.

(c) Treatment of Participants after Withdrawal. Upon termination of adoption of the Plan by any Public Employer that was formerly a Participating Employer, such Public Employer shall not permit any further deferrals or contributions of Compensation under the Plan and all Plan Benefits of Participants who are or were Employees of such Public Employer shall thereafter be transferred to a plan established by such Public Employer or if no successor plan is established, payable to or in respect of such Participants as provided in the Plan. Any distributions, transfers or other dispositions of such Plan Benefits as provided in the Plan shall constitute a complete discharge of all liabilities under the Plan with respect to such Public

Employer's previous adoption of the Plan and any Participant who is or was an Employee of such Public Employer. The rights of such Account Participants under the Plan shall be unaffected by the termination of the adoption of the Plan by such Public Employer with respect to deferrals and contributions made and Accounts in existence as of the effective date of the termination.

(d) Continued Obligations of Public Employers. Notwithstanding any other provision in Section 12.2 to the contrary, any Public Employer who was previously a Participating Employer and whose adoption of the Plan has been terminated pursuant to Section 12.2(a) or 12.2(b) shall cooperate with the Administrative Service Agency to provide any information or notifications needed for the continued administration of the Plan to Account Participants who had Accounts in existence as of the effective date of the termination, until such time as total the value of the Plan Benefits attributable to any Account Participants who are current or former Employees (or who are Beneficiaries or Alternate Payees of any current or former Employees) of such Public Employer, has been distributed or transferred to another eligible deferred compensation plan under Section 457 of the Code, as provided in the Plan.

SECTION 13
AMENDMENT OR TERMINATION

13.1 Power to Amend and Terminate. Subject to any requirements of State or federal law, the Board reserves the right at any time and with or without prior notice to any person to amend, suspend or terminate the Plan, to eliminate future deferrals and contributions for existing Participants, or to limit participation to existing Participants, in whole or in part and for any reason and without the consent of any Participating Employer, Employee, Account Participant, Beneficiary or other person. No amendment, suspension or termination of any provisions of the Plan or any deferrals or contributions thereunder, the Trust Agreement or any Investment Option may be made retroactively, unless such retroactivity is allowed under State law, the Code and other applicable law.

13.2 Termination of Plan. Upon any action by the Board to initiate a Plan termination, no Participating Employer may permit any further deferrals or contributions of Compensation under the Plan, and the Plan termination shall become effective upon the distribution of all Plan Benefits. After taking an action to initiate a Plan termination, the Board may distribute all Plan Benefits to Account Participants or the Board may provide that Plan Benefits and other interests in the Trust Fund shall continue to be payable as provided in the Plan. Any distributions, transfers or other dispositions of the Plan Benefits as provided in the Plan shall constitute a complete discharge of all liabilities under the Plan. The Board and the Trustee(s) shall remain in existence and the Trust Agreement and all of the provisions of the Plan that the Board determines are necessary or advisable for the administration and distribution, transfer or other disposition of interests in the Trust Fund shall remain in force.

13.3 Notice to Participating Employers. The Board shall give notice on a reasonably timely basis of any amendment, suspension or termination of the Plan to all Participating Employers.

SECTION 14 GENERAL LIMITATIONS AND PROVISIONS

14.1 Plan Binding on Account Participants. The Plan, as duly amended from time to time, shall be binding on each Account Participant and his or her Surviving Spouse, heirs, administrators, trustees, successors, assigns, and Beneficiaries and all other interested persons.

14.2 No Right to Employment. Nothing contained herein shall give any individual the right to be retained in the employment of the Employer or affect the right of the Employer to terminate any individual's employment. The adoption and maintenance of the Plan shall not constitute a contract between the Employer and any individual or consideration for, or an inducement to or condition of, the employment of any individual.

14.3 Incapacitation or Incompetence. If the Administrative Service Agency shall find that any person to whom any amount is payable under the Plan is unable to care for his or her affairs, is a minor, or has died, then any payment due to such person or his or her estate (unless a prior claim therefor has been made by a Beneficiary, Surviving Spouse or duly appointed legal representative or the time period during which a Beneficiary or Surviving Spouse could make a claim under the Plan has not elapsed) may, if the Administrative Service Agency so elects, be paid to his or her spouse, a child, a relative, or any other person maintaining or having custody of such person otherwise entitled to payment or deemed by the Trustee to be a proper recipient on behalf of such person. Any such payment shall be a complete discharge of all liability under the Plan therefor.

14.4 No Alienation of Plan Benefits. Except insofar as may otherwise be required by a Qualified Domestic Relations Order or applicable law, no amount payable at any time under the Plan shall be subject in any manner to alienation by anticipation, sale, transfer, assignment, bankruptcy, pledge, attachment, garnishment, charge or encumbrance of any kind, and any attempt to so alienate such amount, whether presently or thereafter payable, shall be void.

14.5 Notices to the Board. All elections, designations, requests, notices, instructions, and other communications from a Public Employer, an Employee, an Account Participant or any other person to the Board, Administrative Service Agency or the Employer required or permitted under the Plan shall be in such form as is prescribed by the Board, shall be mailed by first class mail or delivered electronically in such a form and to such location as shall be prescribed by the Board from time to time, and shall be deemed to have been given and delivered only upon actual receipt thereof at such location. Copies of all elections, designations, requests, notices, instructions and other communications from an Employee, a Participant, a Beneficiary, a Surviving Spouse or any other person to the Employer shall be promptly filed with the Administrative Service Agency in such a manner specified by the Administrative Service Agency.

14.6 Notices to Participants. All notices, statements, reports and other communications from a Public Employer, the Trustee or the Board to any Account Participant shall be deemed to have been duly given when delivered to, or when mailed by electronic delivery or other form of

delivery approved by the Board or by first class mail, postage prepaid and addressed to such Employee, Account Participant, Beneficiary, Surviving Spouse or other person at his or her address last appearing on the records of the Administrative Service Agency, the Board, the Trustee or the Public Employer

14.7 Trust Sole Source of Plan Benefits. The Trust Fund shall be the sole source of benefits under the Plan and, except as otherwise required by applicable law, neither the Board, Staff, the Employer nor any officer or employee of an Employer assume any liability or responsibility for payment of such benefits, and each Account Participant, his or her spouse or Beneficiary, or other person who shall claim the right to any payment under the Plan shall be entitled to look only to the Trust Fund for such payment and shall not have any right, claim or demand therefor against the Board or any member thereof, Staff, the Employer, or any officer or employee of an Employer. Nothing in Section 14.7 shall relieve an Employer of its obligation to defer or contribute Amounts Deferred or Contributed to the Trust Fund within two Business Days after the applicable payroll date, in the manner contemplated by Section 4.1.

14.8 Account Assets and Account Vesting

(a) Account Assets Held in Trust Fund. The entire value of each Account for each Account Participant shall be held in the Trust Fund pursuant to the Trust Agreement for the exclusive benefit of the applicable Account Participant and for paying reasonable expenses of the Plan and of the Trust Fund pursuant to Section 11.7, and no part of the Trust Fund shall revert to any Employer; *provided, however,* that the setting-aside of any amounts to be held in the Trust Fund is expressly conditioned upon the following: If an amount is set aside to be held in the Trust Fund by an Employer in a manner which is inconsistent with any of the requirements of Section 457(b) of the Code, such amount shall be returned to such Employer prior to the first day of the first Plan Year commencing more than 180 days after the date of notification of such inconsistency by the Secretary of the Treasury. Any amounts so returned to the Employer, and the earnings thereon, shall be remitted to the Participants on whose behalf such amounts were set aside.

(b) Vesting. Each Account Participant shall be 100 percent vested at all times in his or her Plan Benefit.

14.9 Several Liability. The duties and responsibilities allocated to each person under the Plan and the Trust Agreement shall be the several and not joint responsibility of each, and no such person shall be liable for the act or omission of any other person.

14.10 Interpretation. (i) The term “including” means by way of example and not by way of limitation, and (ii) the headings preceding the sections hereof have been inserted solely as a matter of convenience and in no way define or limit the scope or intent of any provisions hereof.

14.11 Construction. The Plan and all rights there under shall be governed by and construed in accordance with the Code and the laws of the State.