

**DEFERRED COMPENSATION PLAN
FOR ELIGIBLE EMPLOYEES AND INDEPENDENT CONTRACTORS
OF THE CITY OF NEW YORK
AND
RELATED AGENCIES AND INSTRUMENTALITIES**

Amended and restated effective January 1, 2018

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PURPOSE

The purpose of the Plan is to encourage individuals to make and continue careers with the City of New York and the Public Employers listed in Appendix A, by providing eligible Employees and Independent Contractors with a convenient way to save on a regular and long-term basis and thereby provide for their retirement as set forth herein. The Plan was originally established in 1986. Since then, it has been amended and restated on several occasions. This document amends and restates the Plan effective January 1, 2018.

The benefits provided to any Participant under the Plan will be based upon his or her aggregate Plan Balance and will depend upon the investment results achieved by the Financial Organizations appointed to invest the assets of the Plan allocated to each of the Plan's Investment Funds hereunder and the Participant's individual investment choices among the Plan's Investment Funds. Each Participant shall be one hundred percent (100%) vested at all times in his or her Plan Balance in accordance with the terms of the Plan.

In accordance with amendments made to Code Section 457 and other federal laws by the Small Business Job Protection Act of 1996, the Economic Growth and Tax Relief Reconciliation Act of 2001, the Job Creation and Worker Assistance Act of 2002, the Pension Protection Act of 2006, the Heroes Assistance and Relief Tax Act of 2008, the Worker, Retiree and Employer Recovery Act of 2008, and the Small Business Jobs Act of 2010, all amounts of Compensation deferred under the Plan, all property and rights purchased with such amounts and all income attributable to such amounts, property and rights are held in a Custodial Account as of the

Effective Date. The terms and provisions of the Plan in effect prior to the Effective Date, if any, shall govern with respect to periods prior to the Effective Date.

The Plan and the Custodial Agreement are intended to satisfy the requirements for an "eligible deferred compensation plan" under Code Section 457. The Plan is a governmental plan as defined in Section 3(32) of ERISA, and is thus specifically exempt from the provisions of ERISA. Therefore, the Plan and all rights thereunder shall be governed by and construed in accordance with the Code and the Treasury Regulations promulgated thereunder and the laws of the State.

SECTION 1. DEFINITIONS

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

1.1 "Account" means the Account established and maintained with respect to each Participant. The Plan Administrator may establish the following separate sub-accounts for each of the Participants:

- (a) Pre-tax Account;
- (b) Roth Account;
- (c) Rollover Account;
- (d) Beneficiary Account; and
- (e) Alternate Payee Account

References in this Plan to Account **shall not** include the Participant's Deemed IRAs which include the Deemed Traditional IRA or Deemed Roth IRA, unless otherwise stated throughout the Plan, or unless referring to a procedural aspect and not in contradiction to the applicable provisions of Sections 8, 9, and 10 of the Plan. No amounts other than those described in this Section 1.1, and properly attributable earnings or losses thereon, shall be credited to a Participant's Account.

1.2 **"Account Balance"** means the Account Balance computed by the Plan's recordkeeper on a daily basis which includes any deferrals, investment income, unrealized gains or losses, or distributions that have occurred in the 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. If the Custodial Agreement so provides, the recordkeeping services normally performed by an Administrative Service Agency may be performed by the Custodian, provided that the Custodian otherwise qualifies as an Administrative Service Agency.

1.4 **"Alternate Payee"** means any person who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to a 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"** means the amount of Compensation deferred by a Participant and contributed by the Employer on behalf of the Participant pursuant to Section 3.

1.7 **"Beneficiary"** means the person or persons designated by a Participant pursuant to Section 11 to receive the amount, if any, payable under the Plan, a Deemed Traditional IRA, or a Deemed Roth IRA, upon a Participant's death.

1.8 **"Beneficiary Account"** means the Account established for a Beneficiary upon the death of a Participant.

1.9 **"Board"** means the Deferred Compensation Board of the City of New York established on April 16, 1985, by Executive Order No. 81 of the Office of the Mayor. As of January 1, 2015, the Board is comprised of the following (i) the Mayor of the City of New York;

(ii) Comptroller of the City of New York; (iii) Commissioner, Office of Labor Relations (Chair); (iv) Director, Office of Management & Budget; (v) Commissioner, Citywide Administrative Services; (vi) Police Commissioner; (vii) Fire Commissioner; (ix) Uniformed Firefighters Association; (x) District Council 37, AFSCME; and (xi) Corporation Counsel, Counsel to the Board.

1.10 "Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the State of New York.

1.11 "Code" means the Internal Revenue Code of 1986, as amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.12 "Compensation" means all cash Compensation for services paid by the Employer to the Participant during the Plan Year, including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in the Participant's gross income for each Plan Year under the Code, plus amounts that would be cash Compensation for services to the Employer includible in the Participant's gross income for each Plan Year but for a Compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b) or 457(b). In addition, payments for regular salary and wages, and payments of accrued bona fide sick, vacation or other leave, which are paid by the later of 2 ½ months following (i) a Participant's Severance from Employment or (ii) the last day of the Plan Year during which the Severance from Employment occurred that are includible in the Participant's gross income for the applicable Plan Year under the Code and Treasury Regulations are Compensation. For purposes of Section 3.4(a), Compensation shall not include any amounts that are excludible from the Participant's gross income for each Plan Year pursuant to Code Section 457(e)(5).

1.13 "Custodial Account" means a Custodial Account, as described in Code Section 401(f), established to hold the assets of the Plan, including cash and other rights and properties arising from Amounts Deferred or contributed and Section 457 Transfers, which are held and administered by the Custodian pursuant to a Custodial Agreement. "Custodial Account" also means the assets held in a Deemed IRA, where applicable. The aggregate value of the Participant, Beneficiary, and Alternate Payee Accounts, Deemed Traditional IRA and Deemed Roth IRAs, and any reserve for expenses, if any, shall be equal to the value of the Custodial Account. Each Investment Fund shall be valued either in Units or in dollars.

1.14 "Custodial Agreement" means an agreement entered into in respect of the Plan between the Board and one or more Custodian(s) pursuant to which all Plan assets, all cash and other rights and properties purchased with Plan assets, and all income attributable to such assets, cash and rights and properties are held in a Custodial Account for the exclusive benefit of Participants and their Beneficiaries and Alternate Payees, as such agreement may be amended from time to time. Any and all rights or benefits accruing to any persons under the Plan shall be subject to the terms of the Custodial Agreement or any other funding instrument that is part of the Plan and the Custodial Account.

1.15 "Custodian" means the bank or trust company approved to serve as a Custodian for purposes of Code Section 401(f)(2) and appointed by the Board to hold title to Plan assets. The Custodian may be substituted if the Custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the federal regulations.

1.16 "Deferred Compensation Plan" means the Deferred Compensation Plan for eligible Employees and Independent Contractors of the City of New York and Related Agencies and Instrumentalities as the same may be amended from time to time.

1.17 "Deemed IRA" or "NYCE IRA" means the Deemed IRA program under Code Section 408(q) of the Code which include both a Deemed Traditional IRA and a Deemed Roth IRA. The provisions in this Plan shall apply to Deemed IRAs unless otherwise provided in Code Section 408(q) or Sections 8, 9, or 10 of the Plan.

1.18 "Deemed Roth IRA" means an individual retirement account described in Code Section 408A.

1.19 "Deemed Traditional IRA" is an individual retirement account described in Code Section 408.

1.20 "Designated Beneficiary" means the individual who is designated as the Beneficiary under Plan Section 11 and is the Designated Beneficiary under Code Section 401(a)(9) and Treas. Regs. Section 1.401(a)(9)-1, Q&A-4.

1.21 "Direct Rollover" means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee, as defined in Code Section 402(c).

1.22 "Distributee" means (a) a Participant or former Participant, (b) the Surviving Spouse of a Participant or former Participant and (c) the spouse or former spouse of a Participant or former Participant, 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. Effective January 1, 2007, a Designated Beneficiary who is not a Surviving Spouse is also a Distributee with regard to the interest of the Designated Beneficiary.

1.23 "Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 7.4. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

1.24 "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.

1.25 "Effective Date" means a date on or after January 1, 2007, unless otherwise stated.

1.26 "Eligible Retirement Plan" means:

- (i) A traditional IRA;
- (ii) An individual retirement annuity (IRA) described in Code Section 408(b);
- (iii) A deemed traditional individual retirement account or individual retirement annuity described in Code Section 408(q);
- (iv) An annuity plan described in Code Section 403(a);
- (v) A qualified trust under Code Section 401(a) that accepts Eligible Rollover Distributions;

- (vi) An annuity contract described in Code Section 403(b);
- (vii) An eligible deferred compensation plan described in Code Section 457(b);

or

- (viii) Effective January 1, 2008, a Roth IRA described in Code Section 408A.

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax Participant contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Sections 408(a) or (b), or by direct trustee-to-trustee transfer to a qualified trust for a plan described in Code Section 401(a) or to a 403(b) plan that provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

1.27 "Eligible Rollover Distribution" means:

- (i) A distribution of all or any portion of the balance to the credit of a Distributee,
- (ii) Any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (iii) Any distribution due to a hardship of the Distributee;
- (iv) The portion of any distribution that is not includible in gross income; and
- (v) Effective January 1, 2008, a qualified rollover contribution within the meaning of Code Section 408A(e).

An Eligible Rollover Distribution shall not include (a) any distribution that is:

(i) One of a series of substantially equal periodic payment (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;

1.28 "Employee" means, as of January 1, 2018, the following:

(a) For an employee of the City of New York, "Employee"

(i) shall include any person employed by the City of New York who receives Compensation for services from the City of New York, including any elected or appointed person of the City of New York;

(ii) but shall not include:

(A) any person receiving only a pension, severance pay, retainer, and/or a fee contract from the City of New York, and

(B) any employee whose title is certified to be covered by or represented by a collective bargaining representative pursuant to Article 14 of the Civil Service Law (the "Taylor Law") and Chapter 54 of the New York City Charter (the "New York City Collective Bargaining Law"), unless the collective bargaining agreement provides for coverage under the Plan.

(b) For an employee of a Public Employer, "Employee"

(i) shall include any person employed by a Public Employer, listed in Appendix A, who receives Compensation for services from a Public Employer, including any elected or appointed person of a Public Employer;

(ii) but shall not include:

(A) any person receiving only a pension, severance pay, retainer, and/or fee contract from the Public Employer, and

(B) any employee whose title is certified to be covered by or is represented by a collective bargaining representative pursuant to Article 14 of the Civil Service Law (the "Taylor Law") and Chapter 54 of the New York City Charter (the "New York City Collective Bargaining Law"), unless the collective bargaining agreement provides for coverage under the Plan.

(c) Notwithstanding Section 1.28(a) and 1.28(b), "Employee" shall not include any employee classified by the Employer as not eligible to participate in the Plan.

1.29 "Employer" means the City of New York and the Public Employers listed in Appendix A hereto.

1.30 "Enrollment Date" means, with respect to a Participant, each payroll date on which such Participant receives Compensation, or such other date or dates as the Board may establish either in lieu of, or in addition to, such dates.

1.31 "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

1.32 "Financial Organization" means a Financial Organization, as defined in the Regulations, selected by the Board to provide services in respect of the Plan. If the Custodial Agreement so provides, the financial services provided by a Financial Organization may be performed by the Custodian, provided that the Custodian otherwise qualifies as a Financial Organization.

1.33 "Includible Compensation" means, for purposes of the annual limitations on Amounts Deferred or contributed, Compensation within the meaning of Code Section 415(c)(3) and Section 1.11 of the Plan. Includible Compensation shall be subject to a maximum of \$200,000, as adjusted for cost-of-living expenses in accordance with Code Section 401(a)(17)(B).

1.34 "Independent Contractor" means any person who is not an employee under common law rules and whose coverage in this Plan is mandated by statute.

1.35 "Investment Fund" means each of the Investment Funds in which Accounts are invested as provided for in Section 4.2.

1.36 "Life Expectancy" means Life Expectancy as computed by the use of the Single Life Table in Treas. Reg. Section 1.401(a)(9).

1.37 "Local Employer" means a Local Employer as defined in Section 5 of the State Finance Law.

1.38 "Normal Retirement Age" means, for purposes of Section 3.4, any age designated by a Participant (i) beginning no earlier than the earliest age at which a Participant has the right to retire under the Employer's basic pension plan, if any, without the Employer's consent 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, in the case of a Participant who does not participate in such basic pension plan, age 65, and (ii) ending no later than age 70 ½ . Notwithstanding the previous sentence, a Participant who is a qualified police officer or firefighter (as defined under Code Section 415(b)(2)(H)(ii)(I)) 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. If the Participant is not in the

pension system, Normal Retirement Age may be any age chosen by the Participant in the range of ages from 65 to 70 ½. Effective for Plan Years prior to January 1, 2003, in the case of a Participant who continued to work beyond age 70 ½ and who, upon the attainment of age 70 ½, had not made the catch-up election provided for under Section 3.4(b), the Normal Retirement Age shall be the age designated by the Participant, which shall not be later than the age at which the Participant Severs from Employment with the Employer. Notwithstanding anything in the Plan to the contrary, the Participant's designation of a Normal Retirement Age under Section 3.4(b) shall not control the date that payment of such Participant's benefits shall commence pursuant to Section 7.

1.39 "Participant" means an Employee or Independent Contractor, who is currently deferring compensation, or who has previously deferred compensation under this Plan by salary reduction or by nonelective employer contributions, who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for an Employer, either as an Employee, who meets the requirements of Section 1.28, or as an Independent Contractor, who meets the requirements of Section 1.34, may defer compensation under the Plan.

1.40 "Participation Agreement" means an agreement between a Participant and the Employer, pursuant to which the Participant elects to reduce his or her Compensation and to have the Amounts Deferred or contributed to the Plan on his or her behalf in accordance with the terms of the Plan; provided, however, that in the case of a deferral of accumulated sick or vacation pay or back pay or similar payments due after a Severance from Employment, such Participation Agreement shall be entered into in accordance with the timing requirements of the Treasury Regulations promulgated under Code Section 457.

1.41 **"Plan"** means this Deferred Compensation Plan for eligible Employees and Independent Contractors of the City of New York and Related Agencies and Instrumentalities as the same may be amended from time to time.

1.42 **"Plan Administrator"** means the Board or, if applicable, the agent appointed by the Board that is responsible for the maintenance and management of the Deferred Compensation Plan.

1.43 **"Plan Balance"** means, with respect to a Participant, the interest of such Participant in the Custodial Account, including the Participant's Account, Deemed Traditional IRA and Deemed Roth IRA, excluding any portion of such interest payable to an Alternate Payee pursuant to a Qualified Domestic Relations Order.

1.44 **"Plan Year"** means the calendar year beginning January 1 and ending December 31, from and after the Effective Date.

1.45 **"Public Employer"** means any public corporation or public authority operating in whole within the City who has adopted the Plan, and is listed in Appendix A.

1.46 **"Qualified Domestic Relations Order"** means any judgment, decree or order, including, but not limited to, approval of a property settlement agreement, which has been determined by the Plan Administrator to meet the requirements of a Qualified Domestic Relations Order within the meaning of Code Section 414(p).

1.47 **"Regulations"** means the rules and Regulations promulgated by the Deferred Compensation Board of the State of New York pursuant to Section 5 of the State Finance Law, as the same may be amended from time to time.

1.48 "Required Beginning Date" means April 1 of the later of (a) the calendar year following the calendar year in which the Participant reaches the age of 70½ or (b) the calendar year in which the Participant Severs from Employment.

1.49 "Roth Account" means the Account established under the Plan effective April 1, 2011 to record a Participant's Roth Contributions, and the income, gains and losses credited thereto.

1.50 "Roth Contributions" means after-tax amounts allocated to a Participant's Roth Account. Effective April 1, 2011, the Plan will accept Roth Contributions made on behalf of Participants. Unless specifically stated otherwise, designated Roth Contributions will be treated as deferrals for all purposes under the Plan.

1.51 "Section 457 Transfer" means a transfer made into an Account pursuant to Section 7.7.

1.52 "Severance from Employment" or "Severs from Employment" means the date that the Employee dies, retires, or otherwise has a Severance From Employment with the Employer, as determined by the Plan Administrator (and taking into account guidance issued under the Code and the Regulations). An Independent Contractor is considered to have severed from employment with his or her Employer upon the expiration of the contract(s) under which services are performed for the Employer, if the expiration constitutes a complete termination of the contractual relationship, with no anticipation by the Employer of either a renewal of a contractual relationship or the employment of the Independent Contractor.

1.53 "State" means the State of New York.

1.54 "Surviving Spouse" means the survivor of a deceased Participant to whom such Participant was legally married, as determined pursuant to applicable state and federal law, on the date of the Participant's death.

1.55 "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 ("Treas. Regs.") are to such sections as they may from time to time be amended or renumbered.

1.56 "Unit" means the Unit measuring the value of a Participant's proportionate interest in an Investment Fund.

1.57 "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, as amended from time to time.

1.58 "Valuation Date" means each Business Day, except that, for purposes of an Investment Fund invested primarily in guaranteed investment contracts and synthetic guaranteed investment contracts, Valuation Date shall mean the last Business Day of each month of each Plan Year unless the Board shall, in its discretion, determine that the Valuation Date of such Investment Fund shall occur more frequently.

1.59 "Voluntary Participant Contributions" means any contribution (other than a mandatory contribution within the meaning of Code Section 411(c)(2)) that is made by the Participant and which the Participant has designated, at or prior to the time of making the contribution, as a contribution to the Plan. In addition, an individual who receives a qualified reservist distribution as defined in Code Section 72(t)(2)(G)(iii) may, at any time during the two-year period beginning on the day after the end of his active duty period, make one or more

contributions to a Deemed Traditional IRA or Deemed Roth IRA under Section 9 or 10 in an aggregate amount not to exceed the amount of his qualified reservist distribution, provided the contribution otherwise meets the requirements to be a Voluntary Participant Contribution. The annual dollar limitations otherwise applicable to Deemed Traditional IRAs or Deemed Roth IRAs shall not apply to any contribution made pursuant to the preceding sentence.

SECTION 2. PARTICIPATION

2.1 Eligibility. Each eligible Employee or Independent Contractor shall be eligible to participate in the Plan as of any Enrollment Date following the date he or she becomes an eligible Employee or Independent Contractor.

2.2 Enrollment. Participation in the Plan by eligible Employees or Independent Contractors shall be voluntary. Each eligible Employee or Independent Contractor may commence participation in the Plan by duly filing with the Plan Administrator in a manner prescribed by the Board. Generally payroll deductions will begin in the month following the Participant's enrollment. However, depending on payroll processing dates, deductions may take up to forty-five (45) days to go into effect. Each eligible Employee or Independent Contractor enrolling in the Plan may do so by visiting the Plan's Web site, or by completing an Enrollment form which can be downloaded from the Plan's Web site.

2.3 Cessation of Participation. Participation in the Plan will cease upon distribution of a Participant's entire Account Balance.

SECTION 3. AMOUNTS DEFERRED OR CONTRIBUTED

3.1 Participant Deferral and Contributions Elections

(a) **Initial Elections.** 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 in the aggregate exceed the limitations of Section 3.4. Such election shall be

effective the first day of the calendar month following the receipt of the new Participation Agreement by the Plan Administrator or at such later time as designated by the Participant.

(b) Contributions. Unless otherwise designated by the Participant any Amounts Deferred under this Section 3.1(b) shall be treated as pre-tax deferrals.

(c) Roth Contributions. Roth Contributions will be credited and debited to the Roth Account maintained for each Participant. The Plan will maintain a separate record of the amount of Roth Contributions in each Participant's Account. Gains, losses, and other credits or charges shall be separately allocated on a reasonable and consistent basis to each Participant's Roth Account and the Participant's other Accounts under the Plan. No contributions other than Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Account.

(d) Sick, Vacation, or Other Leave. A Participant may defer his Compensation that is attributable to bona fide accrued sick, vacation or other leave to be paid after his Severance from Employment only if a Participation Agreement providing for such deferral or contribution has been entered into before the Severance from Employment. Unless a Participation Agreement election is otherwise revised, if a Participant is absent from work by leave of absence, salary deferrals and/or Roth Contributions under the Plan shall continue to the extent that Compensation continues.

(e) Change in Deferrals. A Participant may increase or decrease the rate of deferral or contribution of his or her Compensation, within the limitations of Section 3.4, by duly filing a new Participation Agreement, or such other form and timing authorized for such purpose by the Board, with the Plan Administrator in accordance with Code Section 457(b)(4). The change shall be effective the first day of the calendar month following the receipt of the new

Participation Agreement by the Plan Administrator or at such later time as designated by the Participant.

(f) **Discontinuance and Suspense.** A Participant may discontinue, or temporarily suspend, his or her deferral or contribution of Compensation by giving written notice to the Plan Administrator. The Plan Administrator shall discontinue or suspend the deferral or contribution of Compensation as soon as administratively practicable.

3.2 Leave of Absence Rules. Unless a Participation Agreement election is otherwise revised, if a Participant is absent from work by leave of absence, salary deferrals and contributions under the Plan shall continue to the extent that Compensation continues.

3.3 Disability Rules. A disabled Participant who has not had a Severance from Employment may elect to make salary deferrals and contributions during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan.

3.4 General Deferrals and Contribution Limitations

(a) **Basic Limitations.** The aggregate amount of Amounts Deferred 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) Seventy-five percent (75%) of the Participant's Includible Compensation or such other lower percentage as the Board may determine; and

(ii) \$18,000 for calendar year 2017 (adjusted annually pursuant to Code Sections 457(b)(2)(A) and 457(e)(15)).

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) **Age 50 Catch-Up.** A Participant who will attain age 50 or older by the end of the Plan Year is permitted to make additional catch-up deferrals or contributions in accordance with, and subject to, the limitations of this section 3.4(b) and Code Section 414(v) and the Treas. Regs. thereunder. The maximum amount of the Age 50 catch-up contributions pursuant to this Section 3.4(b) shall not exceed the lesser of:

(i) the excess of one hundred percent (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 or such other lower percentage as the Board may determine; or

(ii) \$6,000 for 2017, adjusted annually, or such greater amount as may be permitted by Code Section 414(v)(2)(B).

(c) **Deferral Acceleration for Retirement ("DAR") (Special Catch-Up Provision)** effective on and after January 1, 2002. The DAR provides that, if the applicable year is one of the Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age, the Participant may contribute an additional amount that is the lesser of:

(i) Twice the applicable dollar amount in effect under Code Section 457(b)(2)(A) for the calendar year (i.e., the regular contributions plus DAR contributions), as set forth in Section 3.4(a)(i), for three consecutive calendar years; or

(ii) The sum of:

(A) an amount equal to (1) the limitations provided for in Section 3.4(a)(i) for all Plan Years beginning after December 31, 2001, including the current Plan Year, during which the Participant was eligible to participate in the Plan, or an “eligible deferred compensation plan” pursuant to Code Section 457, minus (2) the aggregate Amounts Deferred or contributed for such Plan Years, disregarding any Amounts Deferred or contributed pursuant to Section 3.4(c), plus

(B) an amount equal to (1) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978 and before January 1, 2002, during which the Participant was an eligible Employee or Independent Contractor (determined without regard to Section 3.4(a) or (b)), minus (2) the aggregate contributions to pre-2002 coordination plans for such years.

A Participant may not elect to have the special catch-up apply more than once, whether or not the Participant rejoins the Plan after Severance from Employment. If a Participant did not join the Plan as soon as he/she became eligible to join, or if he/she did not contribute the maximum amount each year, he/she has underutilized contributions. Uniformed and managerial Participants are eligible to “catch-up” for underutilized contributions dating back to 1986, as long as they were employed by the City for the years for which they wish to catch-up.

(d) Pre-2002 Coordination Plan. For purposes of this Section, “contributions to pre-2002 coordination plans” is defined as any Employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified plan or deferred arrangement, Code

Section 402(h)(1)(B) “simplified employee pension plan,” Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18). This includes plans, arrangements, or accounts maintained by the Employer or any Employer for whom the Participant performed services. However, the deferrals and contributions for any calendar year are only taken into account for purposes of this Section to the extent that the total of such deferrals and contributions do not exceed the aggregate limit referred to in Code Section 457(b)(2) for that year.

For purposes of this Section, an individual is treated as not having made deferrals or contributions under an eligible plan for a prior taxable year to the extent that excess deferrals under the plan are distributed. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

(e) Dual Eligibility. Notwithstanding anything in the Plan to the contrary, if a Participant who is eligible to make an additional catch-up contribution under Section 3.4(b) for a Plan Year in which the Participant has elected to make a catch-up contribution under Section 3.4(c), such Participant is entitled to the greater of:

- (i) The age 50 catch-up contribution amount under Section 3.4(b); or
- (ii) The DAR special catch-up amount under Section 3.4(c).

(f) Aggregation of Plans. If a Participant is or has been a Participant in one or more eligible plans within the meaning of Code Section 457(b), then this Plan and all such other plans shall be considered as one Plan for the purposes of applying the foregoing limitation of this Section. For this purpose, the Plan Administrator shall take into account any other such eligible

plan maintained by an Employer and shall also take into account any other eligible plan for which the Plan Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(g) **USERRA Provision.** Notwithstanding the limitation provided for in Section 3, 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.

3.5 Mistake of Fact Correction. If any deferral or contribution (or any portion of such an amount), including Deemed Traditional IRAs or Deemed Roth IRAs, is made to the Plan by a good faith mistake of fact, then within one year after the payment of the deferral contribution, and upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken deferral or contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Employer who is then responsible for any appropriate payments to the Participant.

3.6 Corrections. In the event that any Amounts Deferred or contributed under the Plan, including contributions under the Deemed Traditional IRA or Deemed Roth IRA, for any Plan Year exceeds the limitations provided for in Section 3.4, any such excess deferrals or contributions shall be distributed to the Participant, with allocable net income, as soon as practicable after the Plan Administrator determines that such amount was an excess deferral or contribution. Excess Amounts shall first be distributed from pre-tax deferrals, and second from Roth Contributions, as determined in accordance with methods and procedures established by the Board.

SECTION 4. INVESTMENT OF AMOUNTS

The provisions of this Section 4 shall also apply to Deemed IRAs unless otherwise provided in Sections 8, 9, or 10 of the Plan.

4.1 Deposits of Deferrals and Contributions. All Amounts Deferred or contributed shall be paid by the Employer as promptly as possible, but in no event later than two Business Days from the applicable payroll date, to the Custodian and shall be invested promptly in accordance with the investment directions of the Participant by the Plan Administrator (but in no event later than two Business Days following receipt thereof by the Custodian) in the Investment Funds provided by one or more Financial Organizations appointed by the Board in accordance with the Regulations, to be held, managed, invested and reinvested in accordance with the applicable agreement entered into by the Board with each such Financial Organization.

4.2 Investment of Accounts. A Participant shall, by filing a written direction or in such other form as the Board may authorize with the Administrative Service Agency, specify the percentage (in multiples of one-half of one percent (0.5%) or such other percentage as may be prescribed by the Board from time to time) of the Amounts Deferred or contributed in accordance with Section 3 or Section 457 Transfers to the Plan and credited to his or her Account in accordance with Section 4 that shall be allocated to each Investment Fund made available by the Board. A Participant may file a separate written direction or in such other form as the Board may authorize with the Administrative Service Agency, for the investment of his or her Deemed Traditional IRA or Deemed Roth IRA, otherwise it shall be invested the same as his or her Account.

4.3 Changes in Investment Direction. Any investment direction given by a Participant shall be deemed to be a continuing direction until changed. A Participant may change his or her investment direction with respect to future Amounts Deferred or contributed,

as well as future Section 457 Transfers, as of any Enrollment Date by giving notice in writing or in such other form as the Board determines.

4.4 Change in Existing Investments.

(a) **Transfer of Assets.** As of any Valuation Date during a Plan Year, a Participant may direct, by giving notice in writing or in such other form as the Board may authorize, to the Administrative Service Agency that all, or any multiple of one percent (1%) (or such other percent as may be prescribed by the Board from time to time), of his or her interest in any of the Investment Funds be liquidated and the proceeds thereof transferred to one or more other Investment Fund in the proportions directed by such Participant, subject to any transfer limitations as are contained in the contracts which comprise the applicable Investment Funds.

(b) **Board's Right to Reduce or Deny Transfer Request.** If the Custodian, the Administrative Service Agency or any Financial Organization appointed by the Board shall advise the Board that it is not reasonably able to prudently liquidate the necessary amount and transfer it from one of the Investment Funds to another, such amount may be reduced in a proportionate ratio. Regardless of any Participant's investment direction, no transfer between Investment Funds may be made in violation of any restriction imposed by the terms of the agreement between the Board or the Custodian and a Financial Organization providing any Investment Fund or of any applicable law. Notwithstanding anything in the Plan to the contrary, without prior notice to the Participant, the Custodian, the Administrative Service Agency or the Financial Organization may suspend, for a limited period of time, daily transfers between and among Investment Funds for one or more days, if the Custodian, Administrative Service Agency or the Financial Organization determines that such action is necessary or advisable. Notwithstanding anything in this Section to the contrary, without prior notice to Participants, the

Board may also limit the frequency of daily transfers between and among Investment Funds if the Board determines that such action is necessary or advisable due to excessive trading by Participants between specific Investment Funds.

4.5 Governance of Investment Directions. The Plan Administrator shall have the right to decline to implement any investment direction upon 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, but not limited to, Treas. Regs.; (iii) implementation of the investment direction would be contrary to a court order including, but not limited to, 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 Investment Funds then available under the Plan.

4.6 Investment Funds. Investment Fund options may include (i) pre-arranged portfolio; (ii) one or more Investment Funds; (iii) a brokerage account or similar investment window through which Participants may direct the investment of their Accounts into Mutual Funds (as defined below) or other available investment products that the Board designated as available for investment through such window; (iv) an individual Participant loan fund to record the value of an outstanding loan made to a Participant in accordance with Section 6; and (v) any other investment alternative that the Board may make available through the Plan. This may also 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.

4.7 Responsibility for Investments. Each Participant, Beneficiary or Alternate Payee is solely responsible for the investment and allocation of the Investment Funds in his or her Account. Each Participant, Beneficiary, or Alternate Payee shall assume all risk in connection with the allocation of amounts in and among the Investment Funds and for any losses incurred or deemed to be incurred as a result of the Participant's allocation or failure to allocate any amount to an Investment Fund or any decrease in the value of any Investment Fund. The Board, Custodian, Employer, or the Administrative Service Agency is not empowered to advise a Participant, Beneficiary or Alternate Payee as to the manner in which their Account should be allocated among the Investment Funds.

4.8 Investment Advice. The Board or the Plan Administrator may choose to offer investment advice from financial advisors to Participants in a manner consistent with the rules provided by Section 601 of the Pension Protection Act of 2006. Any such investment advice services provided by the Plan to Participants shall not be considered a violation of this Section 4. If the Board elects to make investment guidance services available to Participants, such services shall be utilized only at the voluntary election of the Participant and shall not limit the Participant's responsibility under Section 4.7 for the allocation of his or her Account in and among the Investment Funds.

4.9 Custodial Account Investment Funds. The entire value of Investment Funds, under the Plan shall be set aside and held in the Custodial Account.

4.10 Beneficiary Investment Direction. Notwithstanding any other provision of the Plan, during any period following the death of a Participant and prior to the distribution of the

entire Plan Benefit of such Participant, such Participant's Beneficiary shall be entitled to direct the investment of such Account, Deemed Traditional IRA, Deemed Roth IRA, or, as applicable, his or her proportional interest in such accounts, in accordance with this Section 4 as if he or she were the Participant. In the event that a Beneficiary fails to specify an investment direction on the date of creation of the Account, Deemed Traditional IRA, and/or Deemed Roth IRA pursuant to this section such Beneficiary's Account shall be invested in the same manner as the Participant's Account.

4.11 Power of Attorney Direction. No power of attorney, other than one properly executed in accordance with the Section 5-1501 of Title 15 of the General Obligations Law of the State, as such may be amended from time to time, shall be effective to permit an attorney in fact to make any investment direction on behalf of a Participant except upon specific determination by the Plan Administrator that the instrument expressly grants the power to act on behalf of the Participant regarding Account investment direction under this Plan.

4.12 Investment of Section 457 Transfers. Unless otherwise directed by the Participant, the same deferral and contribution allocation direction applicable to a Participant pursuant to Section 4.7, shall apply to all Section 457 Transfers. Notwithstanding the foregoing, a Participant may make an alternative initial allocation election for any applicable Section 457 Transfer. Thereafter, such Participant may direct the Administrative Service Agency to liquidate his or her interest in any of the Investment Funds and transfer the proceeds thereof to one or more other Investment Funds in accordance with this Section.

4.13 Mapping of Accounts. 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 an Account

without a Participant's consent and without the need for prior notice to the 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. ACCOUNTS AND RECORDS OF THE PLAN

The provisions in this Section 5 shall apply to Deemed IRAs unless otherwise provided for in Sections 8, 9, or 10 of the Plan.

5.1 Plan Accounts

(a) **Participant Accounts.** The Administrative Service Agency shall establish and maintain an Account in the name of each Participant. Each Account shall record the value of the portion of the Participant's Plan Balance allocable to that Account, the value of the portion of his or her Plan Balance that is invested in each Investment Fund (both in the aggregate and by Account) and other relevant data pertaining thereto.

(b) **Account Statements.** Each 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 Fund and the amount of and explanation for each allocation to or deduction from his or her Accounts) at the end of each quarter. The statement shall detail each plan in which the Participant participates and the Account Balance, including Participant contributions and investment gains and losses.

(c) **Interests.** The establishment and maintenance of, or allocations and credits to, the Accounts of any Participant shall not vest in such Participant or his or her Beneficiary any right, title or interest in and to any Custodial Account assets or 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 Custodial Agreement.

5.2 Expenses and Fees

(a) Expenses. The cost for administration of the Plan will be charged to the Participant's Account each quarter, deducted on a proportional basis from the Participant's investment option balances. As of January 1, 2015, administrative expenses are twenty dollars (\$20.00) per quarter. The Plan's Investment Funds are assessed an annualized asset based fee of 0.04%. The Board has the ability to change these charges from time to time.

(b) Fees/Taxes. Brokerage fees, transfer taxes and any other expenses incident to the purchase or sale of securities by the Financial Organizations for the Investment Funds shall be deemed to be part of the cost of such securities, or deducted in computing the proceeds therefrom, as the case may be. Taxes, if any, of any and all kinds whatsoever which are levied or assessed on any assets held or income received by the Custodial Account shall be allocated to and deducted from the Accounts and Alternate Payee Accounts in accordance with the provisions of this Section.

5.3 Vesting. Each Participant shall be one hundred percent (100%) vested at all times in the value of his or her Account, Deemed Traditional IRA, and/or Deemed Roth IRA in accordance with the terms of the Plan.

SECTION 6. WITHDRAWALS FOR UNFORESEEABLE EMERGENCIES; WITHDRAWALS OF SMALL ACCOUNTS; LOANS

6.1 Unforeseeable Emergency. A Participant may request a withdrawal for an Unforeseeable Emergency by submitting a written request to the Plan Administrator, accompanied by evidence that his or her financial condition warrants an advance release of funds due to an Unforeseeable Emergency which is beyond the Participant's control. The Plan

Administrator shall review the request and determine whether the payment of any amount is justified.

(a) **Definition of Unforeseeable Emergency.** An Unforeseeable Emergency is defined as a severe financial hardship of the Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Section 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code Section 152(b)(1), (b)(2), and (d)(1)(B)); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to the home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. This includes (i) the imminent foreclosure or eviction from the Participant's or Beneficiary's primary residence; (ii) the need to pay for medical expenses, including nonrefundable deductibles, as well as the cost of prescription drug medication; (iii) the need to pay for funeral expenses of a spouse or dependent (as defined in Code Section 152, and for taxable years beginning on or after January 1, 2005, without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B) of a Participant or Beneficiary may also constitute an unforeseeable emergency.

(b) **Evidence of Other Relief.** A distribution on account of an Unforeseeable Emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or funds from insurance or otherwise, by taking out a loan under this Plan, or by liquidation of the Participant's assets, to the extent taking a loan under the Plan or the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under

the Plan. The Board shall have the right to request and review all pertinent information necessary to assure that Unforeseeable Emergency withdrawal requests are consistent with the provisions of Code Section 457.

(c) **Distribution Necessary to Satisfy Emergency Need.** Distribution because of an Unforeseeable Emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution).

6.2 Withdrawals of Small Amounts

(a) **Voluntary Distribution.** A Participant whose total benefit payable under the Plan, not including the amount in the Participant's Rollover Accounts, is \$5,000 or less (or such greater amount as may be permitted by Code Section 411(a)(11)), 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 are met:

(i) There has been no Amounts Deferred or contributed by such Participant during the two year period ending on the date of distribution, and

(ii) There has been no prior distribution elected by such Participant pursuant to this Section 6.2.

(b) **Distributions of Former Eligible Participants.** With respect to a Participant or an Alternate Payee whose Account or Alternate Payee Account does not exceed \$1,000, the Board, at its discretion, may direct the Custodian to distribute the Participant's Account or the Alternate Payee's Account as soon as practicable following the Participant's Severance from Employment in accordance with the requirements and provisions of this Section 6.2.

6.3 Loans

(a) **Eligibility.** A Participant who is an active Employee or Independent Contractor may apply for and receive a loan from his or her Account pursuant to a loan policy executed by the Board or Custodian. Each Participant is eligible to have two outstanding Plan loans at a time. If not specified otherwise by the Board, the minimum loan amount shall be \$2,500, and shall be subject to a monthly repayment schedule of level installments at an interest rate of one percent (1%) above the Prime rate as published in the Wall Street Journal, as of the date of the loan, compounded on a monthly basis. A Plan loan shall be made from the Participant's pre-tax Account, and may not be made from the Participant's Roth Account or Deemed Traditional IRA. Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's Account invested in such loan.

(b) **Loan Agreements.** The Participant shall be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the Employer to make payroll deductions from his or her Compensation. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck.

(c) **Maximum Loan Amount.** No loan to a Participant may exceed the lesser of:

- (i) One-half (50%) of the Participant's vested Account value; or
- (ii) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made; or (ii) the highest outstanding balance of loans from all qualified Employer plans of the same Employer during the one-year period ending on the day before the date on which such loans is made (not taking into account any payments made during such one-year period).

(d) **Repayment Period.** All Plan loans shall be repaid over a non-renewable repayment period of a term not to exceed five (5) years. Any Plan loan shall be repaid in substantially equal installments of principal and accrued interest, which shall be paid at least quarterly.

(e) **Leave of Absence.** Participants who take a leave of absence without pay for a period of greater than one month, but not exceeding one year, may request that his or her loan repayments be suspended during the leave of absence. Interest will continue to accrue during the suspension period. Participants who take a leave of absence without pay for a period of one year or greater must continue to make loan payments, in accordance with the original loan repayment schedule.

(f) **Military Leave Repayment Period.** Alternative arrangements for repayment may apply in the event that the borrower is on a bona fide unpaid leave of absence for a period not to exceed (i) one year for leaves of absence other than a qualified military leave within the meaning of Code Section 414(u); or (ii) the duration of a qualified military leave, and shall be subject to the methods and procedures as shall be determined by the Board and the Administrative Service Agency.

(g) **Loan Default.** A Participant's loan shall be delinquent if any loan payment is not made on the date it is due and the Plan Administrator does not receive the payment by the last day of the calendar quarter in which it is due. The Plan Administrator shall notify the Participant if the loan is delinquent. If the Plan Administrator does not receive the delinquent loan payment(s) by the date set forth in the notice, the loan will be "defaulted" and the Participant shall receive a default notice. In the event of a defaulted loan, the entire outstanding balance of the loan, including accrued, but unpaid, interest up to the date of default will be a taxable

distribution and reported on Form 1099-R as gross income for such calendar year. The defaulted loan will continue to exist and interest will continue to accrue until the defaulted loan is fully repaid or the Participant experiences a distributable event. The Participant will be precluded from applying for future loans from the Plan, even if the defaulted loan is later repaid.

SECTION 7. BENEFIT DISTRIBUTIONS

7.1 Participant Distribution Provisions. Except as otherwise provided in Section 6, a Participant may not receive distribution of his or her Plan Balance at any time prior to the earlier of (i) such Participant's Severance from Employment with the Employer; or (ii) the Plan Year in which such Participant attains 70 ½. Upon a Participant's Severance from Employment with the Employer for any reason other than death or upon commencement of the Plan Year in which he or she attains age 70 ½, the Participant shall be entitled to receive an amount equal to the value of his or her Plan Balance, by a method described in Section 7.5 and as of the commencement date elected by the Participant in accordance with the procedures prescribed.

7.2 In-Service Distributions.

(a) **Age 70 ½ In-Service Distribution.** In the case of a Participant who continues in service with the Employer following his or her attainment of age 70 ½, such Participant may elect to commence the distribution of his or her Plan Balance and such election shall designate a method of payment in accordance with Section 7.5; provided, however, that payments may not commence earlier than forty-five (45) days, or such other period the Board shall determine, following the Participant's attainment of age 70 ½.

(b) **Trustee-to-Trustee Transfers.** A Participant or Beneficiary may elect, in accordance with procedures established by the Plan Administrator, to have all or any portion of the value of his or her Account transferred to the trustee of a defined benefit governmental plan within New York State as described in Code Section 414(d); provided, however, that such

transfer is for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under such plan or a repayment of contributions and earnings with respect to a forfeiture of service under such plan.

7.3 Latest Distribution Date. Notwithstanding anything in this Section 7 to the contrary, in accordance with the requirements of Code Section 401(a)(9), distributions shall commence no later than April 1st following the close of the Plan Year in which (i) the Participant attains age 70 ½, or (ii) the Participant Severs from Employment, whichever is later.

7.4 Death Distribution Provisions.

(a) If the Participant died prior to his or her Required Beginning Date:

(i) A spouse may elect required distribution payments over his or her Life Expectancy, using the single Life Expectancy table, but must begin receiving those payments no later than the year in which the Participant would have attained age 70 ½.

(ii) Other non-spousal Beneficiaries may elect required distribution payments over their Life Expectancy, using the single Life Expectancy table, but must begin receiving those payments no later than December 31st of the calendar year immediately following the calendar year in which the Participant died.

(b) If the Participant died after his or her Required Beginning Date:

(i) A spouse may elect required distribution payments over his or her Life Expectancy, using the single Life Expectancy table, but must begin receiving those payments no later than December 31st of the calendar year immediately following the calendar year in which the Participant died.

(ii) Other non-spousal Beneficiaries may elect required distribution payments over his or her Life Expectancy, using the single Life Expectancy table, but must begin

receiving those payments no later than December 31 of the calendar year immediately following the calendar year in which the Participant died.

7.5 Method of Payment

(a) Subject to the following provisions of this Section, 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) Full Withdrawal: a full lump-sum distribution of the entire Account Balance.

(ii) Amount Certain: a portion of the Account, specified by the Participant, that he would like distributed, which may not be less than \$1,000. There is a maximum of five (5) requests per year.

(iii) Periodic Payments: distributions taken over regular intervals (monthly, quarterly, semi-annually, or annually) totaling either the entire Account or a portion of the Account that the Participant specifies, but may not be less than one hundred dollars (\$100).

(iv) Amount Certain with Periodic Payments: an amount certain followed by distributions made over regular intervals totaling either the entire Account or a portion that he or she specifies.

(b) A Participant may determine the length of his or her distribution by selecting either (a) the number of payments he/she wants to receive; (b) the dollar amount of the payments; or (c) elect to have the distribution paid out over his or her Life Expectancy. However, in no event can a Participant's Account be distributed over a period of time that is longer than his or her Life Expectancy.

7.6 Distribution Election

(a) In the case of the Participant's Severance from Employment or death, a distribution election may be made by the Participant or his or her Beneficiary prior to or after, payments commence pursuant to the provisions of this Section 7. Such election shall be filed with the Plan Administrator and shall specify the method of payment elected and the date on which payments shall commence. However, the distribution may commence no sooner than 45 days after Severance from Employment. All distributions shall commence not later than the close of the Plan Year in which the later occurs: (a) such Participant terminates; or (b) such Participant attains age 70 ½. In the case of death, no later than the close of the Plan Year in which the Participant would have attained age 70 ½ (or in either case, on any date prescribed by the Treasury Regulations). If such Beneficiary who is also the Surviving Spouse dies after the Participant's death, but before distributions to such Beneficiary commence, this provision shall be applied to require payment of any further benefits as if such Surviving Spouse were the Participant.

(b) If a Participant dies before distribution of his or her Plan Balance has commenced, a distribution will be made to the Beneficiary pursuant to the Beneficiary's election duly filed with the Plan Administrator in accordance with the provisions of Section 7.4(a); provided, however, any distribution to a Beneficiary shall be made in accordance with the provisions of Code Section 401(a)(9). All distributions shall commence not later than the close of the Plan Year immediately following the Plan Year in which the Participant died, or in the event such Beneficiary is the Participant's Surviving Spouse, on or before the close of the Plan Year in which such Participant would have attained age 70 ½, if later (or in either case, on any date prescribed by the Treas. Regs.). If such Beneficiary who is also the Surviving Spouse dies after

the Participant's death but before distributions to such Beneficiary commence, this provision shall be applied to require payment of any further benefits as if such Surviving Spouse were the Participant.

7.7 Direct Rollover. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, and to the extent required by applicable provisions of the Code and the Treas. Regs., the Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have all or any portion of the Participant's Plan Balance that qualifies as an Eligible Rollover Distribution paid directly to the trustee of an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, provided that such other plan provides for the acceptance of such amounts by the trustee.

The definition of Eligible Retirement Plan shall apply to a Participant, a Surviving Spouse, or to a spouse or former spouse who is the Alternate Payee under a Qualified Domestic Relations Order, or to a named Beneficiary. The Plan shall provide written information to Distributees regarding Eligible Rollover Distributions to the extent required by Code Section 402(f).

(a) Effective January 1, 2007, and notwithstanding anything in the Plan to the contrary that would otherwise limit a Distributee's election under this Section, and to the extent allowed under the applicable provisions of the Code and the Treas. Regs., a Distributee who is a Designated Beneficiary, but not a Surviving Spouse, may elect, at the time and in the manner prescribed by the Plan Administrator, to have all or any portion of the Account that qualifies as an Eligible Rollover Distribution paid in a direct trustee-to-trustee transfer to an Eligible Retirement Plan that is an individual retirement plan described in clause (i) or (ii) of Code Section 402(c)(8)(B) established for the purpose of receiving the distribution. If such a transfer

is made, (i) the transfer shall be treated as an Eligible Rollover Distribution, (ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code Section 408(d)(3)(C), and (iii) Code Section 401(a)(9)(B) (other than clause iv thereof) shall apply to such individual retirement plan.

(b) **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 Plan Administrator, to have all or any portion of the Participant's Accounts that qualifies as an Eligible Rollover Distribution rolled over to a Roth IRA. Such amounts will be included in gross income as if the distribution had been made to such Participant or Beneficiary.

7.8 Payment of Qualified Health Insurance Premiums. The Plan Administrator may, in a nondiscriminatory manner, permit a Participant who is an Eligible Retired Public Safety Officer to elect to have the Plan pay Qualified Health Insurance Premiums directly to the provider of accident or health insurance or Qualified Long Term Care Insurance that provides coverage for the Eligible Retired Public Safety Officer and/or his or her spouse and dependents. Distributions under this Section 7 together with similar distributions under all other Eligible Retirement Plans maintained by the Employer shall not exceed \$3,000 in any year.

(a) For purposes of this Section:

(i) The term "Public Safety Officer" has the meaning provided by Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.

(ii) The term "Eligible Retirement Public Safety Officer" means a Public Safety Officer who by reason of disability or attainment of Normal Retirement Age severs from employment as a Public Safety Officer with the Employer.

(iii) The term “Qualified Health Insurance Premiums” has the meaning provided by Code Section 7702B(b).

(iv) The term Qualified Long Term Care Insurance has the meaning provided by Code Section 7702B(b).

(v) The Plan Administrator shall issue rules to implement this Section in accordance with Code Section 402(l) and applicable Regulations.

7.9 Section 457 Transfers. Compensation previously deferred by a Participant, a Beneficiary who is a Participant's Surviving Spouse or Alternate Payee pursuant to another “eligible deferred compensation plan” under Section 457 maintained by another Employer that is a state, political subdivision of a state, any agency or instrumentality of a state or political subdivision of a state shall be accepted for transfer by the Custodian in the form and in the manner specified by the Plan Administrator. All such Section 457 Transfers shall be credited to the Participant's Account or the Alternate Payee Account and shall be invested in accordance with the investment direction of the Participant, the Beneficiary who is a Participant's Surviving Spouse or Alternate Payee, such Section 457 Transfers are subject to all of the terms and conditions of the Plan.

7.10 Roth Rollover Contribution. Notwithstanding any other provisions in the Plan to the contrary, effective April 1, 2011, the Plan will accept a rollover contribution to the Participant's Roth Account only if it is a Direct Rollover from another Roth account under an applicable retirement plan in accordance with Code Section 402A(e)(1), and only to the extent the rollover is permitted under the rules of Code Section 402(c).

7.11 Minimum Distribution Requirements

(a) Notwithstanding any other Plan provision to the contrary, for Plan Years beginning with the 2002 calendar year, benefits for a Participant or Beneficiary shall commence no later than April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 ½ or the calendar year in which the Participant retires in accordance with Code Section 401(a)(9).

(b) Coordination with Minimum Distribution Requirements Previously in Effect. If the total amount of 2002 required minimum distributions under the Plan made to the Distributees prior to the Effective Date of this Section 7.11, equals or exceeds the required minimum distributions determined under this Section, then no additional distributions will be required to be made for 2002 on or after such date to the Distributees. If the total amount of 2002 required minimum distributions under the Plan made to the Distributees prior to the Effective Date of this Section 7.11 is less than the amount determined under this Section, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the Distributees will be the amount determined under this Section.

7.12 In-Plan Roth Transfers

(a) Effective January 1, 2015, any vested amount held in an Account for a Participant (other than an amount held in a Roth Account) is eligible for Direct Rollover to the Participant's Roth Account under the Plan, even if the vested amount is not otherwise distributable (pursuant to Code Section 402A(c)(4)(E)) under Section 7 of the Plan, and the transfer shall be treated as a qualified rollover contribution (within the meaning of Code Section 408A(e)) to such Account.

(b) A Participant's election under this Section shall be subject to the reasonable administrative procedures established by the Plan Administrator, Code Section 402A(c)(4) and the Regulations thereunder, and subsequent guidance from the Internal Revenue Service.

(c) The taxable portion of the Participant's Account transferred to a Roth Account under this Section 7.12 shall be included in the Participant's gross income in the tax year in which the transfer occurs.

(d) The Plan shall provide written information regarding in-plan Roth rollovers under this Section, for amounts that are otherwise distributable under this Section to the extent required by Code Section 402(f).

SECTION 8. SPECIAL RULES FOR DEEMED IRAs.

8.1 Funding of Deemed IRAs. Effective as of January 1, 2006, an Employee or former Employee may fund a Deemed Traditional IRA established under this Plan pursuant to Section 9. Effective as of January 1, 2006, an Employee or former Employee may fund a Deemed Roth IRA established under this Plan, pursuant to Section 10. The Deemed Traditional IRA and Deemed Roth IRA are referred to collectively in this Section as the "Deemed IRAs."

8.2 Accounting for Deemed IRAs. Each Employee or former Employee may make Voluntary Participant Contributions to the Employee's or Former Employee's Deemed Traditional IRA and/or Deemed Roth IRA established under the Plan. The Plan shall establish a separate Account for the Voluntary Participant Contributions of each Employee or former Employee to his or her Deemed Traditional IRA and/or his or her Deemed Roth IRA, and any earnings properly allocable to the contributions, and maintain separate recordkeeping with respect to each such Deemed IRA. Each Deemed Traditional IRA and Deemed Roth IRA is established for the exclusive benefit of the Employee or former Employee and/or his or her Beneficiaries.

8.3 Custody of Deemed IRAs. The Custodian shall be subject to the reporting requirements of Code Section 408(i) with respect to each Deemed Traditional IRA and Deemed Roth IRA that is established and maintained under the Plan.

8.4 Separation of Custody. Deemed IRAs established pursuant to this Section shall be held by the Custodian in a group trust or in a Custodial Account separate from the Custodial Account established under the Plan to hold contributions other than Deemed IRA contributions. In any event, the Custodian shall satisfy the applicable requirements of Code Sections 408 and 408A, which requirements are set forth in Sections 9 and 10.

8.5 Procedures for Deemed IRAs. Except as specifically provided by this Section 8, by Section 9 (Rules Applicable to Deemed Traditional IRAs) or by Section 10 (Rules Applicable to Deemed Roth IRAs), or by Code Sections 408 or 408A or by applicable Treas. Regs., all procedural provisions of this Plan shall apply to the Deemed IRAs.

8.6 Valuation of Deemed IRAs. The Employee's "value" in a Deemed Traditional IRA or Deemed Roth IRA includes the amount of any outstanding rollover, transfer and recharacterization under Treas. Regs. Section 1.408-8, Q&As-7 and -8.

8.7 Beneficiary of Deemed IRAs. With respect to Section 9 and Section 10 below, if the Beneficiary of a Deemed IRA, so designated by the Employee or former Employee, shall die after the death of the Employee or former Employee, but prior to receiving a complete distribution of the balance of his or her Deemed IRA amount that would have been paid to such Beneficiary had such Beneficiary's death not then occurred, the undistributed balance of the Deemed IRA that would otherwise have been received by such Beneficiary shall be paid to such person or persons as the Beneficiary shall have designated during his lifetime, or, if there is no such designation, to the Beneficiary's estate.

8.8 Authority Regarding Changes. The Plan Administrator is authorized to extend to Participants in a nondiscriminatory manner the benefit of any future amendment to the Code or Treas. Reg. with respect to increases in permitted contributions and changes in distribution rules.

8.9 Differential Pay. Differential pay as defined in Code Section 3401(h)(2) shall be treated as Compensation for purposes of allowing an Employee or former Employee to make a contribution to a Deemed IRA.

SECTION 9. SPECIAL RULES FOR DEEMED TRADITIONAL IRAs.

9.1 Limits on Deemed Traditional IRA. The Custodian will accept as a Deemed Traditional IRA contribution, for the exclusive benefit of the Employee or former Employee and his Beneficiaries, cash contributions only. Such contributions are limited to \$5,000 for tax years 2008 through 2013, and \$5,500 for tax years 2014 and thereafter (adjusted annually for cost-of-living increases). For Employees or former Employees who have reached the age of 50 before the close of the Plan Year, this contribution limit is increased to \$6,000 for tax years 2008 through 2013 and \$6,500 for tax years 2014 and thereafter (adjusted annual for cost-of-living increases). These contribution limits do not apply in the case of a rollover contribution as described in Code Sections 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), an Employer contribution to a "simplified employee pension plan" as described in Section 408(k) or a recharacterized contribution as described in Code Section 408A(d)(6).

9.2 Vesting. The Employee's or former Employee's interest in the balance of the Custodial Account that is allocable to his Deemed Traditional IRA is nonforfeitable.

9.3 Investment of Deemed Traditional IRAs.

(a) No part of the assets in the Custodial Account allocable to a Deemed Traditional IRA may be invested in life insurance contracts, or be commingled with other property, except in

a “common trust fund” or “common investment fund” (within the meaning of Code Section 408(a)(5)).

(b) No part of the Custodial Account funds allocable to a Deemed Traditional IRA may be invested in collectibles (within the meaning of Code Section 408(m)) except as otherwise permitted by Code Section 408(m)(3), which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.

(c) No contributions will be accepted under a SIMPLE IRA plan established by any Employer pursuant to Code Section 408(p). Also, no transfer or rollover of funds attributable to contributions made by a particular Employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, a Traditional IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the individual first participated in that Employer's SIMPLE IRA plan.

9.4 Distribution of Deemed Traditional IRA. Notwithstanding any provision in the Plan to the contrary, the distribution of the Employee's or former Employee's interest in the Custodial Account allocable to a Deemed Traditional IRA shall be made in accordance with the following requirements in this Section 9 and shall otherwise comply with Code Section 408(a)(6) and the Treas. Reg. thereunder, the provisions of which are herein incorporated by reference.

9.5 Valuation of Deemed Traditional IRA. The value of the Deemed Traditional IRA includes the amount of any outstanding rollover, transfer and recharacterization under Treas. Regs. Section 1.408-8, Q&As 7 and 8.

9.6 Spousal Provisions. To the extent permitted under Code Section 408(q) and the Treas. Regs. thereto, if the sole Designated Beneficiary is the individual's Surviving Spouse, the spouse may elect to treat the Deemed Traditional IRA as his or her own IRA. This election will

be deemed to have been made if such Surviving Spouse makes a contribution to the Deemed Traditional IRA or fails to take required distributions as a Beneficiary.

9.7 Reports for Deemed Traditional IRA. The Custodian shall furnish statements concerning the status of the Deemed Traditional IRA and such information concerning required minimum distributions as is prescribed by the IRS.

9.8 Construction. Notwithstanding any other sections which may be added or incorporated, the provisions of this Section 9 will be controlling with respect to each Deemed Traditional IRA created under the Plan. Any other provisions of this Plan inconsistent with Code Section 408(a)(6), the Treas. Regs., and other published guidance will be invalid with respect to a Traditional IRA.

SECTION 10. SPECIAL RULES FOR DEEMED ROTH IRAs.

10.1 General Rules for Roth IRA

(a) The Deemed Roth IRA accounts are established for the exclusive benefit of the Employee or former Employee or his or her Beneficiaries pursuant to Code Section 408(q).

(b) Except in the case of a qualified rollover contribution or a recharacterization (as defined below), no contribution will be accepted unless it is in cash and the total of such contributions to all the Employee's or former Employee's Deemed Roth IRAs for a taxable year does not exceed the applicable amount (as defined in (ii) below), or the Employee's or former Employee's Compensation (as defined in (viii) below), if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the Employee's or former Employee's Compensation is referred to as a "regular contribution." A "qualified rollover contribution" is a rollover contribution that meets the requirements of Code Section 408(d)(3), except the "one rollover per year" rule of Code Section 408(d)(3)(B) does not apply if the rollover contribution is from a Traditional IRA.

Beginning in 2006, a qualified rollover contribution also includes a rollover from a designated Roth account as described in Code Section 402A. Contributions may be limited under (i) through (iii) below.

(i) The applicable amount is determined under (A) or (B) below:

(A) If the Employee or former Employee is under age 50, the applicable amount is \$4,000 for any taxable year beginning in 2005 through 2007 and \$5,000 for any taxable year beginning in 2008 and years thereafter (adjusted annually for cost-of-living increases).

(B) If the Employee or former Employee is 50 or older, the applicable amount is \$4,500 for any taxable year beginning in 2005, \$5,000 for any taxable year beginning in 2006 through 2007 and \$6,000 for any taxable year beginning in 2008 and years thereafter (adjusted annually for cost-of-living increases).

(ii) If paragraphs (A) and/or (B) below apply, the maximum regular contribution that can be made to all the Employee's or former Employee's Deemed Roth IRAs for a taxable year is the lesser amount determined under (A) or (B).

(A) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," as defined in Code Section 408A(c)(3)(C)(i)).

If the Employee's or former Employee's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of \$10 and is not reduced below \$200.

(B) If the Employee or former Employee makes regular contributions to both the Deemed Roth IRA and Deemed Traditional IRA for a taxable year, the

maximum regular contribution that can be made to all of the Employee's or former Employee's Deemed Roth IRAs for that taxable year is reduced by the regular contributions made to the Employee's or former Employee's Deemed Traditional IRAs for the taxable year.

(iii) A rollover from a Traditional IRA cannot be made to this Deemed Roth IRA if, for the year the amount is distributed from the Traditional IRA unless: (1) the Employee or former Employee is married and files a separate return; (2) the Employee or former Employee is not married and has modified AGI beyond the allowable limit under the Code; or (3) the Employee or former Employee is married and together the Employee or former Employee and the Employee's or former Employee's spouse have modified AGI in excess of the allowable limit under the Code. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year. The Pension Protection Act of 2006 amended Code Section 408A(d)(3) to permit rollovers from Eligible Retirement Plans to Roth IRAs under the rules provided above for Deemed Traditional IRAs beginning in 2008. It also amended Code Section 408A(c)(3)(B) to eliminate the AGI based restrictions on all rollovers to Roth IRAs beginning in 2010. The Plan Administrator may issue rules to accept rollovers from Eligible Retirement Plans to Roth IRAs under the new rules beginning after 2007, and all rollovers to Roth IRAs under the new rules beginning after 2009 in accordance with the Code and the Treas. Regs.

(c) No contributions will be accepted under a SIMPLE IRA plan established by any Employer pursuant to Code Section 408(p). Also, no transfer or rollover of funds attributable to

contributions made by a particular Employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA; that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date individual first participated in that Employer's SIMPLE IRA plan.

(d) A regular contribution to a Deemed Traditional IRA may be recharacterized pursuant to the rules in Treas. Regs. Section 1.408A-5 as a regular contribution to this Deemed Roth IRA and subject to the limits in (iii) above.

(e) For purposes of (ii) above, an Employee's or former Employee's modified AGI for a taxable year is defined in Code Section 408A(c)(3)(C)(i) and does not include any amount included in adjusted gross income as a result of a rollover from a Traditional IRA (a "conversion").

(f) For purposes of paragraph (b) above, Compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, Compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Code Section 401(c)(2) (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Code Section 401(c)(2) shall be applied as if the term trade or business for purposes of Code Section 1402 included service described in Code Subsection 1402(c)(6). Compensation under this Section does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as "deferred compensation." The term

"Compensation" shall include any amount includible in the individual's gross income under Code Section 71 with respect to a divorce or separation instrument described in subparagraph (A) of Code Section 71(b)(2). In the case of a married individual filing a joint return, the greater Compensation of his or her spouse is treated as his or her own Compensation, but only to the extent that such spouse's Compensation is not being used for purposes of the spouse making a contribution to a Deemed Roth IRA or a deductible contribution to a Deemed Traditional IRA.

(g) If the Deemed IRA acquires collectibles within the meaning of Code Section 408(m) except as otherwise permitted by Code Section 408(m)(3), which provides an exception for certain gold, silver and platinum coins, coins issued under the laws of any state, and certain bullion.

(h) No part of the Deemed IRA will be invested in life insurance contracts.

(i) No amount is required to be distributed prior to the death of the Employee or former Employee for whose benefit the Deemed Roth IRA account was originally established.

(j) The Deemed Roth IRA accounts will comply with the minimum distribution rules as follows:

(i) Notwithstanding any provision of this Deemed Roth IRA to the contrary, the distribution of the Employee's or former Employee's interest in the Deemed Roth IRA shall be made in accordance with the requirements of Code Section 408(a)(6), as modified by Code Section 408A(c)(5), and the Treas. Regs. thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of Treas. Regs. Section 1.401(a)(9)-6 (taking into account Code

Section 408A(c)(5)), rather than the distribution rules in paragraphs (ii), (iii) and (iv) below.

(ii) Upon the death of the Employee or former Employee, his or her entire interest will be distributed at least as rapidly as follows:

(A) If the Designated Beneficiary is someone other than the Employee's or former Employee's Surviving Spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's or former Employee's death, over the remaining Life Expectancy of the Designated Beneficiary, with such Life Expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Employee's or former Employee's death, or, if elected, in accordance with paragraph (C) below.

(B) If the Employee's or former Employee's sole Designated Beneficiary is the Employee's or former Employee's Surviving Spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Employee's or former Employee's death (or by the end of the calendar year in which the Employee or former Employee would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with paragraph (C) below. If the Surviving Spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's Designated Beneficiary's remaining Life Expectancy determined using such Beneficiary's age as of his or her birthday in the year following the death of

the spouse, or, if elected, will be distributed in accordance with paragraph (C) below. If the Surviving Spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining Life Expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

(C) If there is no Designated Beneficiary, or if applicable by operation of paragraph (A) or (B) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Employee's or former Employee's death (or of the spouse's death in the case of the Surviving Spouse's death before distributions are required to begin under paragraph (ii) above).

(D) The amount to be distributed each year under paragraph (A) or (B) is the quotient obtained by dividing the value of the Deemed Roth IRA as of the end of the preceding year by the remaining Life Expectancy specified in such paragraph. Life Expectancy is determined using the Single Life Table in Treas. Regs. Section 1.401(a)(9)-9, Q&A-1. If distributions are being made to a Surviving Spouse as the sole Designated Beneficiary, such spouse's remaining Life Expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining Life Expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (A) or (B) and reduced by one (1) for each subsequent year.

(iii) The value of the Deemed Roth IRA includes the amount of any outstanding rollover, transfer and recharacterization under Treas. Regs. Section 1.408-8, Q&As-7 and 8 of Section 1.408-8.

(iv) To the extent permitted under Code Section 408(q) and the Treas. Regs. thereto, if the sole Designated Beneficiary is the Employee's or former Employee's Surviving Spouse, the spouse may elect to treat the Deemed Roth IRA as his or her own IRA. This election will be deemed to have been made if such Surviving Spouse makes a contribution to the Deemed Roth IRA or fails to take required distributions as a Beneficiary.

10.2 Participant Information

The Employee or former Employee shall agree to provide the Custodian with all information necessary to prepare any reports required by Code Sections 408(i) and 408A(d)(3)(E), Treas. Regs. Sections 1.408-5 and 1.408-6, or other guidance published by the Internal Revenue Service.

10.3 Custodian Records. The Custodian of a Deemed Roth IRA shall furnish annual calendar-year reports concerning the status of the Deemed Roth IRA and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.

10.4 Construction. Notwithstanding any other sections which may be added or incorporated, the provisions of Sections 10.1 through 10.6 and this sentence will be controlling with respect to each Deemed Roth IRA created under the Plan. Any additional sections inconsistent with Code Section 408A, the Treas. Regs., and other published guidance will be invalid.

10.5 Rollovers Into Deemed Roth IRA. Upon any distribution event pursuant to which an Employee or former Employee, a Beneficiary who is an Employee's or former Employee's Surviving Spouse, or a spousal Alternate Payee would be permitted to have all or any portion of the Employee's or former Employee's Plan Balance that qualifies as an Eligible Rollover Distribution rolled over into another Eligible Retirement Plan, such Employee or former Employee, Beneficiary who is an Employee's or former Employee's Surviving Spouse, or spousal Alternate Payee may elect to have the portion of such Eligible Rollover Distribution that is not attributable to contributions to the Deemed Roth IRA or outstanding loans directly rolled over into a separately maintained Account within his or her Deemed Roth IRA. Any such amounts will be included in gross income as if the distribution had been made to such Employee or former Employee, Beneficiary who is an Employee's or former Employee's Surviving Spouse, or spousal Alternate Payee.

10.6 Interpretation. The provisions in this Section 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 Code Section 408A and any rules, Treas. Regs. or other guidance issued by the Internal Revenue Service in relation thereto. 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 Treas. Regs.

SECTION 11. DESIGNATION OF BENEFICIARIES

The provisions of this Section 11 shall also apply to Deemed IRAs unless otherwise provided in Sections 8, 9, or 10 of the Plan.

11.1 Written Designation. Each Participant shall file with the Plan Administrator a written designation, of one or more persons as the Beneficiary. The Beneficiary shall be entitled

to receive the Participant's Account Balance upon the death of the Participant. 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 designation with the Plan Administrator. The last such designation received by the Plan Administrator shall be controlling; provided, however, that no designation or change or revocation thereof, shall be effective unless received by the Plan Administrator prior to the Participant's death, and in no event shall it be effective as of a date prior to such receipt.

11.2 Absence of Designation. (a) In the absence of a Designated Beneficiary, the Participant's Account Balance or remaining payments will be paid in the following order:

- (i) To the Participant's surviving primary Beneficiary(ies).
- (ii) If there are no surviving primary Beneficiary(ies), to the Participant's surviving contingent Beneficiary(ies).
- (iii) If there is no Surviving Spouse, to the Participant's estate.

If the Plan Administrator is in doubt as to the right of any person to receive such amount, it shall inform the Board and the Board may retain such amount, without liability for any interest thereon, until the rights thereto are determined. The Plan Administrator may also authorize the Custodian to 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 Custodian, the Board, the Employer, the Plan Administrator, Administrative Service Agency and Financial Organizations.

(b) If the Designated Beneficiary shall die 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.

11.3 Surviving Spouse Beneficiary. Notwithstanding anything in Section 11 to the contrary, a Beneficiary who is a Surviving Spouse of the Participant may designate a subsequent Beneficiary, subject to the same filing requirements of Section 11.1, to the extent permitted under Code Section 401(a)(9). 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 12. PLAN ADMINISTRATION

The provisions of this Section 12 shall also apply to Deemed IRAs unless otherwise provided in Sections 8, 9, or 10 of the Plan.

12.1 Administration. Except as otherwise provided in the Plan, the Plan Administrator shall be responsible for the general operation and administration of the Plan. The Board shall have general authority under 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, but not limited to, 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.

12.2 Board Powers. The decisions of the Board shall be final, binding and conclusive on all interested persons for all purposes. The Board may delegate its general authority to the

Plan Administrator, as it deems appropriate in accordance with the terms of the Plan and all applicable Code and Treas. Regs.; provided, however, that such delegation shall be subject to revocation at any time at the discretion of the Board. Notwithstanding any provision in the Plan to the contrary, 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. Without limiting the generality of the foregoing, the Board shall have the following powers and duties:

- (a) To control or manage the assets of the Plan and the Custodial Account.
- (b) To periodically review the performance and methods of the Custodian and the Financial Organizations.
- (c) To appoint, remove, or change the Custodian.
- (d) 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 the Custodial Account in accordance with Regulations.
- (e) 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;
- (f) 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;
- (g) To interpret the Plan and to resolve ambiguities, inconsistencies and omissions;
- (h) To decide all questions concerning the Plan and the eligibility of any Participants to participate in the Plan;

(i) To determine whether a domestic relations order constitutes a Qualified Domestic Relations Order;

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

(k) To direct the Custodian to make payments from the Custodial Account to Participants, Beneficiaries and such other persons as it may determine pursuant to the provisions of the Plan.

(l) To determine the methods and procedures for the implementation and use of any automated telephone system, computer, internet, intranet or other electronic or automated system adopted by the Board for the purposes of Plan administration.

The Board may, upon the recommendation of the Plan Administrator, enlarge or diminish the time periods specified under the Plan for any election, designation, request, notice, instruction or other communication from a Participant, or his or her Beneficiaries; provided such time period is not contrary to the applicable requirements of the Code and the Treas. Regs. and the Board determines that such action is necessary or desirable to facilitate the proper administration of the Plan; and provided further that in no case may a Participant's election to commence Compensation deferrals, or to modify existing Compensation deferrals, be effective until notice of such election is filed with the Plan Administrator.

12.3 Liability. Except as may be prohibited by applicable law, neither the Board nor any member thereof, nor any person, firm or corporation to whom may be delegated any duty or power in connection with administering, managing or supervising the administration or management of the Plan or Custodial Account, shall be liable for 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; nor for the payment of any amount under the Plan; nor for any mistake of judgment made by it or on its behalf by a member of the Board; nor for the neglect, omission of any member of the Board. No member of the Board, nor any delegate, 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 Custodial Account.

12.4 General Authority

(a) **Claims.** Any claim to rights or benefits under the Plan, including, without limitation, any purported Qualified Domestic Relations Order, or request for Unforeseeable Emergency withdrawal under Section 6 must be filed in writing with the Board, or with such other entity as the Board may designate. Within sixty (60) days after receipt of such claim, or such other reasonable amount of time that the Board may determine, the Board, or such other entity designated by the Board, shall notify the claimant and, if such claimant is not the Participant, any Participant against whose Plan Balance the claim is made, that the claim has been granted or denied, in whole or in part.

Within sixty (60) days after receipt by the claimant of notification of denial, the claimant shall have the right to present a written appeal to the Board. If such appeal is not filed within said sixty (60) day period, the decision of the Board shall be final and binding. The Board shall act as a fiduciary in making a full and fair review of such denial. The claimant or his/her duly authorized representative may review any Plan documents that are pertinent to the claim and may submit issues and comments to the Board in writing. A decision by the Board shall be made promptly and shall be final.

(b) Subject to the discretion of the Board or such other entity as the Board may designate to determine otherwise, no distribution of any Plan Balance shall be permitted during any period during which a claim, including without limitation, a purported Qualified Domestic Relations Order, against all or part of such Plan Balance is being reviewed in accordance with the provisions of this Section 12.5. If the Plan Administrator or its designee reasonably believes that a claim, including, without limitation, a purported Qualified Domestic Relations Order, against all or part of any Plan Balance is likely to be asserted, it shall be within the discretion of the Board or its designee to refuse to permit any distribution of all or part of such Plan Balance pending determination of such claim.

12.5 Engagement of Advisors. If the Board deems it necessary or advisable, it shall arrange for the engagement of legal counsel and certified public accountants, who may be counsel or accountants for the Employer, and other consultants, and make use of agents and clerical or other personnel, for purposes of this Plan. The Board may rely upon the written opinions of such counsel, accountants and consultants, and upon any information supplied by the Custodian, a Financial Organization or Administrative Service Agency appointed in accordance with the Regulations, and delegate to the Plan Administrator or any agent or to any member of the Board its authority or the authority of the Employer to perform any act hereunder.

12.6 Conflict of Interest. 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.

12.7 Board Meetings. Any action of the Board may be taken at a meeting. 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. A majority of the Board members shall be necessary to

constitute a quorum of the Board for the transaction of business at any meeting. If a quorum is present, a vote of a majority of the Board members shall constitute an act of the Board.

12.8 Federal Law. Notwithstanding any other provision in the Plan to the contrary, the Plan shall at all times be operated in accordance with the requirements of applicable law, including, without limitation, the Regulations, the Code and the Treas. Reg.

SECTION 13. AMENDMENT OR TERMINATION

The provisions of this Section 13 shall also apply to Deemed IRAs unless otherwise provided in Sections 8, 9, or 10 of the Plan.

13.1 Amendments to Plan

(a) Subject to Section 13.1(b) and any requirements of State or federal law, the Board reserves the right at any time and with or without prior notice to amend, suspend or terminate the Plan, any deferrals thereunder, the Custodial Agreement and any Investment Fund, in whole or in part and for any reason and without the consent of any Participant, Beneficiary, or other person. The Plan shall be terminated automatically upon complete and final discontinuance of all deferrals thereunder.

(b) Except as provided in Section 13.1(c), no amendment or modification shall be made which would (i) cause or permit any part of the Plan assets to be diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries; (ii) cause or permit any portion of such assets to revert to or become the property of the Employer; (iii) cause an impermissible reduction in the value of a Participant's Account theretofore credited to any Participant; or (iv) retroactively impair any individual's rights to any benefits under the Plan.

(c) Any amendment, suspension or termination of any provisions of the Plan, any deferrals thereunder, the Custodial Agreement or any Investment Fund may be made

retroactively if required to meet any applicable requirements of the Code or any other applicable law.

13.2 Termination of Plan. Upon termination of the Plan, no Employer may permit any further deferrals or contributions of Compensation under the Plan and all Plan Balance and other interests in the Custodial Account shall thereafter be payable as provided in the Plan. Any distributions, transfers or other dispositions of the Plan Balance as provided in the Plan shall constitute a complete discharge of all liabilities under the Plan. The Board and the Custodian shall remain in existence and the Custodial Agreement and all of the provisions of the Plan which in the opinion of the Board are necessary for the execution of the Plan and the administration and distribution, transfer or other disposition of interests in the Custodial Account shall remain in force until all assets of the Custodial Account have been transferred, distributed or disposed.

13.3 Notice. The Board shall give proper notice of any amendment, suspension or termination of the Plan.

SECTION 14. ANTI-ASSIGNMENT PROVISIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS

The provisions in this Section 14 shall apply to Deemed IRAs unless otherwise provided for in Sections 8, 9, or 10 of the Plan.

14.1 Anti-Assignment. 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.

14.2 Qualified Domestic Relations Orders.

(a) Qualified Domestic Relations Order. Notwithstanding anything in Section 14 to the contrary, if a final judgment, decree, or order that is related to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant (Alternate Payee) is made pursuant to the domestic relations law of any State and meets the requirements of Code Section 414(p), then such order shall be referred to as a Qualified Domestic Relations Order. If a Qualified Domestic Relations Order is duly filed and accepted by the Custodian, then the amount of the Participant's Account shall be paid to or segregated into a separate Account for the Alternate Payee as elected by the Alternate Payee. Payments to the Alternate Payee shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan.

(b) The Alternate Payee shall be entitled to make investment selections with respect thereto in the same manner as the Participant, except to the extent restricted by the Board or a specific investment option under the Plan. All costs and charges incurred in carrying out the investment selection shall be deducted from the Account created for the spouse, former spouse or child making the investment selection.

(c) Alternate Payee Investment Direction. Notwithstanding any other provision of the provision of the Plan, during any period when an Alternate Payee Account is created and the corresponding interest in the Custodial Account is segregated on behalf of an Alternate Payee pursuant to a Qualified Domestic Relations Order as provided in this Section 14.2, the Alternate Payee may be entitled to direct the investment of such interest in accordance with the terms of the Plan as if he or she were the Participant, to the extent provided in such order. In the event that an Alternate Payee fails to specify an investment direction, such Alternate Payee's interest in

the Custodial Account shall be invested in the same manner as the relevant Participant's Account as of the date of the creation of the Alternate Payee Account.

(d) **Alternate Payee Distributions.** The Alternate Payee may select from among the forms of payment available to Participants except a joint and survivor annuity naming the Alternate Payee and a subsequent spouse. Withholding and income tax reporting shall be done with respect to the Alternate Payee under the terms of the Code as amended from time to time. A distribution to an Alternate Payee prior to the Participant's Severance from Employment is available only if: (i) the order specifies distribution at that time; and (ii) the order specifies the form and manner in which the distribution is to occur. Nothing in this Section permits a Participant a right to receive a distribution at a time otherwise not permitted under the Plan nor does it permit the Alternate Payee to receive a form of payment not permitted under the Plan. An Alternate Payee who is the spouse or former spouse of the Participant shall be treated as a Participant of any distribution or payment made to the Alternate Payee, this includes any taxes or penalties.

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

14.3 Other Federal Orders. The Plan Administrator may pay from a Participant's, Beneficiary's or Alternate Payee's Account the amount that the Plan Administrator finds is

lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant, Beneficiary or Alternate Payee or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant, Beneficiary or Alternate Payee.

14.4 Garnishments. Notwithstanding anything in the Plan to the contrary, the Plan Administrator may pay from a Participant's, Beneficiary's, or Alternate Payee's Account the amount that the Plan Administrator finds is lawfully demanded under a federal restitution order or garnishment issued by the federal government with respect to that Participant, Alternate Payee or Beneficiary or is sought to be collected by the United States Government under a judgment against the Participant, Alternate Payee or Beneficiary.

SECTION 15. MILITARY SERVICE PROVISIONS

The provisions in this Section 15 shall apply to Deemed IRAs unless otherwise provided for in Sections 8, 9, or 10 of the Plan.

15.1 USERRA

(a) Notwithstanding any provision of the Plan to the contrary, contributions and benefits with respect to qualified military service shall be provided in accordance with Code Section 414(u) as amended from time to time.

(b) A Participant will become eligible to receive a distribution of his/her Plan Balance upon the Participant's absence from employment for qualifying military service as described in the HEART Act. A Participant's deferrals and contributions will be suspended for a period of six months following a distribution pursuant to the HEART Act.

(c) To the extent required by Code Section 414(u)(12), an individual receiving differential wage payments (as defined under Code Section 3401(h)(2)) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as

compensation for purposes of applying the limits on annual additions under Code Section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

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

SECTION 16. GENERAL LIMITATIONS AND PROVISIONS

The provisions in this Section 16 shall apply to Deemed IRAs unless otherwise provided for in Sections 8, 9, or 10 of the Plan.

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

16.2 No Employment Rights. 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.

16.3 Payment to Minors and Incompetents. To the extent the Employer or Plan Administrator determines that the following procedure meets applicable state or local law, if a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, benefits will be paid to such person as the Plan Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

16.4 Missing Participant. The Plan Administrator shall make all reasonable attempts to determine the identity and address of a Distributee entitled to benefits under the Plan. If the Plan Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits within three (3) years of the date he first becomes entitled to a distribution from the Trust, any amounts being held on his behalf shall be forfeited and returned to the Employer. If the Distributee is located subsequent to such forfeiture, the Employer shall reinstate the forfeited amount to the former Participant's Account, and the Plan Administrator shall distribute the Account to him in accordance with the Plan.

16.5 Delivery. All notices, statements, reports and other communications from the Plan Administrator, Employer, Custodian, Administrative Service Agency or the Board to any Participant, Beneficiary, Surviving Spouse or other person required or permitted under the Plan shall be deemed to have been duly given when delivered to, or when mailed by first class mail, postage prepaid and addressed to, such Participant, Beneficiary, Alternate Payee, or other person at his or her address last appearing on the records of the Employer and/or Plan Administrator.

16.6 Exclusive Purpose. The amounts set aside and held in the Custodial Account shall be for the exclusive purpose of providing benefits to the Participants and their Beneficiaries and Alternate Payees and defraying expenses of the Plan and Custodial Account administration and no part of the Custodial Account shall revert to any Employer; provided, however, that the setting-aside of any amounts to be held in the Custodial Account is expressly conditioned upon the following: if an amount is set aside to be held in the Custodial Account by an Employer in a manner which is inconsistent with any of the requirements of Code Section 457(b) , 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 distributed to the Participants on whose behalf such amounts were set aside.

16.7 Identity of Participants, Beneficiaries, and Alternate Payees. The Employer shall make all reasonable attempts to determine the identity and address of a Participant, Beneficiary, or Alternate Payee entitled to benefits under the Plan. If the Employer is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Employer shall continue to hold the benefits due such person.

16.8 Sole Source of Benefits. The Custodial Account shall be the sole source of benefits under the Plan and, except as otherwise required by applicable law, the Board, the Employer and the Custodian assume no responsibility for payment of such benefits, and each 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 Custodial Account for such payment and shall not have any right, claim or demand therefor against the Board, Plan Administrator, or any member thereof, the Employer, the Custodian, or any Participant or director thereof.

16.9 Severable Duties and Responsibilities. The duties and responsibilities allocated to each person under the Plan and the Custodial Agreement shall be the severable and not joint responsibility of each, and no such person shall be liable for the act or omission of any other person.

16.10 Captions. The captions 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.

**DEFERRED COMPENSATION BOARD OF
THE CITY OF NEW YORK**

By: _____

Name: Georgette Gestely

Title: Director, Employee Benefits Program

Date: March 7, 2018

APPENDIX A

- (A) The New York City Housing Authority
- (B) The New York City School Construction Authority
- (C) The New York City Water Finance Authority
- (D) The New York City Health and Hospitals Corporation
- (E) The New York City Department of Education