

**401(a) SAVINGS INCENTIVE PLAN  
FOR THE EMPLOYEES OF  
THE CITY OF NEW YORK  
AND  
RELATED AGENCIES AND INSTRUMENTALITIES**

**Effective January 1, 2013  
(except as otherwise herein provided)**

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# **401(a) Savings Incentive Plan for the Employees of the City of New York and Related Agencies and Instrumentalities**

## **PURPOSE**

The purpose of the Plan is to encourage Employees to make and continue careers with the City of New York and the Public Employers listed in Appendix A hereto and to provide eligible Employees with an incentive to save on a regular and long-term basis and thereby provide for their retirement.

The benefits provided to any Participant under the Plan will be based upon the value of the Participant's individual Plan Account and will depend upon the investment results achieved by the Financial Organizations appointed to invest the assets of the Plan in each of the Plan's Investment Funds selected by the Participant. Each Participant shall be 100 percent vested at all times in his or her Plan Account in accordance with the terms of the Plan.

The Plan was adopted effective January 1, 2007, pursuant to a Global Custody Agreement and subsequently amended and restated on January 1, 2013, to include all amendments made since the Plan's adoption. The most recent restatement is designed to reflect required changes made to Sections 401 and 415 of the Code and other federal laws by the Heroes Earnings Assistance and Tax Relief Act of 2008, the Worker, Retiree, and Employee Recovery Act of 2008, and the Pension Protection Act of 2006. All amounts contributed 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 for the exclusive benefit of Participants and their Beneficiaries and Alternate Payees pursuant to the Custodial Agreement.

This Plan is intended to be a defined contribution individual account plan that is qualified within the meaning of Code Section 401(a) and a governmental plan within the meaning of Code Section 414(d). It is also intended to be a money purchase pension plan within the meaning of

Code Section 401(a)(27) and Treas. Reg. § 1.401-1(b)(1)(i). This Plan shall be referred to as the 401(a) Savings Incentive Plan for the Employees of the City of New York and Related Agencies and Instrumentalities.

## SECTION 1: DEFINITIONS

As used in the Plan Document, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

1.1 "*Account*" means the account established and maintained with respect to each Participant pursuant to Section 4 to which the Participant's Employer Contributions, if any, and all earnings and losses and fees on those Employer Contributions shall be credited. If a Participant dies, a separate Account shall be established and maintained for each Beneficiary. A separate Account shall also be established and maintained for an Alternate Payee.

1.2 "*Account Balance*" means the Account balance as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year).

1.3 "*Administrative Service Agency*" means an entity duly authorized to do business in the State of New York and qualified to administer and maintain records and accounts of defined contribution plans which meet the requirements for qualification under the Code.

1.4 "*Alternate Payee*" means any spouse, former spouse, child or other dependent of a Participant who is recognized by a QDRO as having a right to receive all, or a portion of, the benefit payable under the Plan with respect to such Participant.

1.5 "*Beneficiary*" means the person or persons designated by a Participant pursuant to Section 10 to receive the amount, if any, payable under the Plan upon the Participant's death.

1.6 "*Board*" means the Deferred Compensation Board of the City of New York established by Executive Order 81 of 1985.

1.7 "***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.

1.8 "***Code***" means the Internal Revenue Code of 1986, as amended from time to time.

1.9 "***Compensation***" means all cash compensation for services paid by the Employer to the Employee during the Plan Year, including salaries, wages, fees, commissions, overtime pay, and any accumulated sick pay, accumulated vacation pay and back pay that is includible in the Employee's gross income for the applicable Plan Year under the Code and Treasury regulations. Compensation shall not include any Employer Contributions made under the Plan. Compensation shall include amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f)(4), 401(k), 403(b), or 457(b). However, to the extent required by Code Section 401(a)(17), Compensation of a Participant for a Plan Year shall not exceed \$200,000 (as increased pursuant to Code Section 401(a)(17)(B)).

1.10 "***Custodial Account***" means a custodial account, as described in Section 401(f) of the Code, established to hold Plan assets and other rights and properties under the Plan held and administered by the Custodian pursuant to a Custodial Agreement.

1.11 "***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 property and rights purchased with Plan assets, and all income attributable to such assets, property and rights 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.

1.12 "**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 all Plan assets, and any successors thereto.

1.13 "**Designated Beneficiary**" means the individual who is designated as the beneficiary under Section 10 and is the Designated Beneficiary under Code Section 401(a)(9) and section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

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

1.15 "**Distributee**" includes any Employee or former Employee. In addition, an Employee's or former Employee's Surviving Spouse, or an Employee's or former Employee's former spouse who is an Alternate Payee, are Distributees with regard to the interest of the Surviving Spouse or former Spouse. A Designated Beneficiary who is not a Surviving Spouse is a Distributee with regard to the interest of the Designated Beneficiary.

1.16 "**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 9.3(b). 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.

1.17 *"Effective Date of Plan"* means January 1, 2007, date the Plan became effective.

1.18 *"Eligible Retirement Plan"* means (i) an individual retirement account described in Section 408(a) of the Code, (ii) an individual retirement annuity described in Section 408(b) of the Code, (iii) a traditional deemed individual retirement account or individual retirement annuity described in Section 408(q) of the Code, (iv) an annuity plan described in Section 403(a) of the Code, or (v) a qualified trust under Section 401(a) of the Code that accepts Eligible Rollover Distributions. An Eligible Retirement Plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible deferred compensation plan described in Section 457(b) of the Code that is maintained by a state, political subdivision of a state, any agency or instrumentality of a state or political subdivision of a state. Effective January 1, 2008, an Eligible Retirement Plan shall also mean a Roth IRA described in Code Section 408A. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a Surviving Spouse, or to a spouse or former spouse who is the Alternate Payee under a QDRO.

1.19 *"Eligible Rollover Distribution"* means a distribution of all or any portion of the balance to the credit of a Distributee, except that 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; (b) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (c) any distribution due to a hardship of the Distributee; and (d) the portion of any distribution that is not includible in gross income;

*provided, however,* that a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of Employee after-tax contributions that are not includable in gross income. However, that after-tax portion may be transferred only (i) in a direct trustee-to-trustee rollover to a qualified trust under Section 401(a) or 403(a) of the Code that is part of a defined contribution or defined benefit plan, or to an annuity contract described in Section 403(b) of the Code, and such trust or annuity contract separately accounts for amounts so rolled over or (ii) to an Eligible Retirement Plan under Section 408 of the Code. Effective January 1, 2008, an Eligible Rollover Distribution shall also mean a qualified rollover contribution within the meaning of Code Section 408A(e).

1.20 "**Employee**" means any person or unit of employees employed by the City of New York, as defined in Appendix B, that is: (1) in a title not certified to or represented by a collective bargaining representative pursuant to Article 14 of the Civil Service Law (the "Taylor Law") and Chapter 54 of the Administrative Code of the City of New York (the "New York City Collective Bargaining Law") and who receives stated Compensation from the City of New York other than a pension, severance pay, retainer, or fee contract; or (2) included in a unit of employees covered by a negotiated collective bargaining agreement, if the collective bargaining agreement covering such employees provides for coverage under the Plan. With respect to any Participating Employer, "Employee" means any person or unit of employees, as defined in Appendix B, who receives Compensation for services from the Participating Employer, including any elected or appointed officer or employee of the Participating Employer, but excluding any employee who is included in a unit of employees covered by a negotiated collective bargaining agreement which does not provide for participation in the Plan. An independent contractor shall not be eligible to participate in the Plan.

1.21 **"Employer Contribution"** means a contribution made by the Employer to the Plan. The Employer shall contribute to the Plan for allocation to the Participant's Account in an amount and at specified time periods, in accordance with Table A.

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

1.23 **"Enrollment Date"** means, with respect to an Employee, the first day of any payroll period commencing after the Effective Date on which the Employee becomes a Participant in the Plan and is eligible to receive an Employer Contribution, or such other date or dates as the Board may establish either in lieu of, or in addition to, such dates.

1.24 **"Financial Organization"** means a person or entity selected by the Board to provide services in respect of the Plan, duly authorized to do business in the State of New York and who: (a) is registered as an investment adviser under the Investment Advisors Act of 1940, as such provisions may be amended from time to time; or (b) is a bank, as defined in such act; or (c) is an insurance company qualified under the laws of more than one state to manage, acquire or dispose of any assets of plans which meet the requirements for qualification under the Code.

1.25 **"Fund" or "Investment Fund"** means the separate fund(s) in which Employer Contributions to the Plan are invested as provided for in Section 6.

1.26 **"Life Expectancy"** means life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury Regulations.

1.27 **"Participant"** means any Employee or former Employee who is, or may become, eligible to receive a benefit of any type from this Plan, and who has commenced participation in the Plan under Section 2.

1.28 "**Participating Employer**" means any Public Employer (other than the City of New York) as defined in Appendix A.

1.29 "**Plan**" means the plan created and embodied herein, as amended from time to time, known as the 401(a) Savings Incentive Plan for the Employees of the City of New York and Related Agencies and Instrumentalities.

1.30 "**Plan Administrator**" means the New York City Deferred Compensation Plan, a division of the Mayor's Office of Labor Relations of the City of New York and acting under the delegated authority of the Board.

1.31 "**Plan Document**" means this instrument, including all appendices, tables and amendments thereto.

1.32 "**Plan Year**" means the Plan's accounting year, which is January 1 to December 31.

1.33 "**Public Employer**" means (1) the City of New York; or (2) any public corporation or public authority operating in whole within the City of New York.

1.34 "**Qualified Domestic Relations Order (QDRO)**" means a domestic relations order which creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant under the Plan (as defined in Code Section 414(p)(8)). The order must clearly specify the name and last known mailing address of the Participant and Alternate Payee covered by the order, the amount or percentage of the Participant's benefits to be paid by the Plan to each such Alternate Payee, or the manner in which such amount or percentage is to be determined, the number of payments or period to which such order applies, and each plan to which the order applies. The order must not require the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan, must not require the Plan to provide increased

benefits, and must not require the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another order previously determined to be a QDRO.

1.35 *"Required Beginning Date"* means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches age seventy and one-half (70 ½), or (ii) the calendar year in which the Participant retires.

1.36 *"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 Treasury Regulations). Severance from Employment shall not include a change of employment in which the Employee's new employer maintains the Plan or accepts a transfer of assets and liabilities (within the meaning of Code Section 414(l)) with respect to such Employee.

1.37 *"State"* means the State of New York.

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

1.39 *"Treasury Regulations"* means the regulations promulgated by the Treasury Department of the federal government under the Code as now in effect or as hereafter amended. All citations to sections of the Treasury Regulations are to such sections as they may from time to time be amended or renumbered.

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

1.41 "**USERRA**" means the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 contained in chapter 43 of Title 38 of the United States Code.

1.42 "**Valuation Date**" means each Business Day. The Board may in a nondiscriminatory manner designate as Valuation Dates such other dates as it deems necessary.

1.43 "**457 Plan**" means the Deferred Compensation Plan for Employees of the City of New York and Related Agencies and Instrumentalities Plan; which permits the Employee to make pretax contributions from the Employee's Compensation, and under which those contributions and the earnings thereon grow tax deferred until distributed.

## **SECTION 2: ELIGIBILITY AND PARTICIPATION**

2.1 Except as noted in this Section 2, an Employee, who is participating in the 457 Plan in accordance with Table B, is eligible to participate in the Plan.

2.2 The Plan Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer.

2.3 Each Employee shall become a Participant in the Plan as of his Enrollment Date, or such other date as the Board may determine, following the date the Plan Administrator determines him to be an eligible Employee.

2.4 A Participant who remains in the employ of the Employer but who is no longer an Employee shall continue to be a Participant of the Plan but shall not be eligible to receive Employer Contributions.

2.5 A Participant who remains an Employee in the employ of the Employer but who no longer participates in the 457 Plan, in accordance with Table B, shall continue to be a Participant of the Plan but shall not be eligible to receive Employer Contributions.

2.6 The participation of a Participant shall cease upon payment to the Participant of the entire value of his or her Plan Account or upon the Participant's death prior to such payment.

### **SECTION 3: EMPLOYER CONTRIBUTIONS AND LIMITATIONS ON CONTRIBUTIONS**

3.1 All Employer Contributions made to the Plan or on a Participant's behalf, in accordance with this Section 3 shall be paid by the Employer as promptly as possible, but in no event later than the date established under Table A, to the Custodian and shall be invested promptly. In no event later than two (2) Business Days following receipt thereof by the Custodian, and in accordance with the investment directions of the Participant, the Custodian shall invest the Employer Contributions in the Investment Funds provided by one or more Financial Organizations appointed by the Board, to be managed, invested and reinvested in accordance with the applicable agreement entered into by the Board with each such Financial Organization. The Board shall have the right in its sole discretion to replace any Financial Organization or Investment Fund with a successor or to select any additional Financial Organization or Investment Fund and to incur any and all reasonable fees and expenses on behalf of the Plan and to allocate such fees and expenses among Participant Accounts in connection with such replacement or addition. Each Participant's Account shall share in the earnings and losses of the Investment Fund(s) selected by the Participant. All Employer Contributions shall be made in cash.

3.2 Notwithstanding any other provision of the Plan, in no event shall the funds contributed under the Plan exceed the Annual Additions limit of Code Section 415. The following limitations shall apply:

(a) To the extent required under Code Section 415(c), in no event shall the "Annual Addition," as defined in this Section for a Participant for any Plan Year, exceed the lesser of:

(1) Forty Thousand Dollars (\$40,000), as adjusted under Code Section 415(d); or

(2) One-hundred percent (100%) of the Compensation (as defined in Code Section 415(c)(3) and the Treasury Regulations issued thereunder) of such Participant received during the Plan Year.

For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2 1/2 months after a Participant's Severance from Employment or the end of the limitation year that includes the date of the Participant's Severance from Employment if:

(1) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a Severance from Employment, the payments would have been paid to the Participant while the Participant continued in employment with the Employer; or

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

(3) Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the

Participant at the same time if the Participant had continued employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

Any payments not described above are not considered compensation if paid after Severance from Employment, even if they are paid within 2 1/2 months following Severance from Employment, except for payments to the individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(b) The Plan shall be administered so as to comply with the limitations of Code Section 415.

(c) For purposes of this Section, all defined contribution plans of a Participating Employer qualified under 401(a) or 401(k) are to be treated as a single defined contribution plan. However, each Participating Employer is to be considered as a separate employer.

(d) If as of any Allocation Date, the Annual Additions allocated to any Participant's Account exceed the limitations of this Section 3.2, the excess Annual Additions will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

(e) For purposes of this Section, "Annual Addition" means the annual addition as defined in Code Section 415(c) and as modified in Code Sections 415(l)(1). In general,

Code Section 415(c) defines the annual addition as the sum of the following amounts credited to a Participant's accounts for the limitation year under this Plan and any other defined contribution plan maintained by a Participating Employer:

- (1) employer contributions;
- (2) employee contributions; and
- (3) forfeitures.

(f) The Participating Employer must monitor contributions to the Plan on behalf of a Participant to this Plan and any other 401(a) plan maintained by the Participating Employer to determine compliance with this Section. The Participating Employer must cease contributions to avoid exceeding the limits of this Section and must notify the Plan Administrator if excess Annual Additions are made.

3.3 The Plan will not accept a rollover or transfer of an Eligible Rollover Distribution from an Eligible Retirement Plan.

3.4 Employer Contributions are intended to be exempt from federal, state and local income taxes until such time as funds are distributed to the Participant.

3.5 (a) Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u). If a Participant makes additional contributions to the 457 Plan, in accordance with Table B, pursuant to Code Section 414(u), upon return to employment, the Employer shall make corresponding Employer Contributions.

(b) For purposes of this Section and Section 3.2, a Participant shall be treated as receiving Compensation from the Employer during such period of qualified military service equal to (i) the Compensation the Participant would have received during such

period if the Participant were not in qualified military service, determined based on the rate of pay the Participant would have received from the Employer but for the absence during the qualified military service, or (ii) if the Compensation the Participant would have received during such period is not reasonably certain, the Participant's average compensation from the Employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(c) Effective January 1, 2007, to the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

(d) Beginning January 1, 2009, to the extent required by Code Section 414(u)(12), an individual receiving differential wage payment (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.

#### **SECTION 4: MAINTENANCE OF ACCOUNTS**

4.1 The Administrative Service Agency shall establish and maintain all Participant Accounts for the exclusive benefit of the Participants and their Beneficiaries. The total aggregate value of all Participants' Accounts shall be determined as shown in the Participant

records held by the Administrative Service Agency. All assets of the Plan, as well as all income attributable to Employer Contributions, shall be held in trust by the Custodian in a Custodial Account in accordance with a Custodial Agreement.

4.2 As of each Valuation Date and before taking into account any Employer Contributions for the period since the last preceding Valuation Date, each Investment Fund and each Participant's Account shall be adjusted as follows:

(a) The Custodial Account shall consist of the Investment Funds. The aggregate value of the Accounts shall be equal to the value of the Custodial Account. Each Investment Fund shall be valued either in Units or in dollars. As of each Valuation Date, each Investment Fund shall be valued pursuant to the agreements between the Board or the Custodian and the Financial Organizations to reflect the effect of income received and accrued, realized and unrealized profits and losses, and all other transactions of the preceding Valuation Date.

(b) The value of a Participant's Account shall be equal to the value of his or her Plan benefit, which shall be determined by aggregating the value of his or her separate interests, if any, in each Investment Fund.

(c) The Account balance of a Participant, former Participant, Beneficiary or Alternate Payee shall be reduced by any amounts paid to him from such Investment Fund since the last Valuation Date.

(d) On each Valuation Date, the expenses of administering the Plan, including (i) the fees and expenses of the Financial Organization, the Administrative Service Agency, the Custodian for their performance of services under the Plan, (ii) the expenses incurred by the Board in the performance of its duties under the Plan (including

reasonable compensation for any legal counsel, certified public accountants, consultants, and agents and cost of services rendered in respect of the Plan), and (iii) all other proper charges and disbursements of the Financial Organizations, Custodian, the Board or its members (including settlements of claims of legal actions approved by counsel to the Plan) shall be paid out and deducted from the Accounts as of each Valuation Date, unless the Employer elects to pay such expenses directly.

(e) 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 shall be deducted in computing the proceeds therefrom, as the case may be. Taxes, if any, of any and all kinds, which are levied or assessed on any assets held or income received by the Participant's Account shall be deducted therefrom in accordance with this Section.

4.3 Each Account of a Participant in each Investment Fund shall be credited on each Valuation Date with the value of the Employer Contributions allocable to that Fund made on behalf of the Participant by the Employer since the previous Valuation Date, if applicable.

4.4 Dividends, interest, and other distributions received on the assets held by the Custodian in respect to each of the Funds shall be reinvested in the respective Fund.

4.5 Each Participant, and, for any period following the death of the Participant and prior to distribution of the entire Plan benefit of such Participant, each Beneficiary, shall be furnished at least quarterly with a written statement of his or her Account(s) (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 Account(s) since the last statement provided). During the period prior to distribution of his or her interest under the Plan, each Alternate Payee

shall be furnished at least quarterly with a written statement of his or her Account (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 Account since the last statement provided).

## **SECTION 5: INVESTMENTS**

5.1 Any investment direction given by a Participant for execution in the 457 Plan shall be deemed to be a controlling investment direction for the Plan. A participant in the 457 Plan may change his or her investment direction with respect to future contributions, as of any Enrollment Date or other such date as the Board may determine by giving notice in writing or in such other form as the Board may authorize to the Administrative Service Agency at least one Business Day prior to such Enrollment Date or such time period as the Board may determine. With respect to the Plan, all future Employer Contributions shall be invested by the Administrative Service Agency in the Investment Funds in accordance with such changed direction in the 457 Plan.

5.2 (a) Any transfer to one or more other Investment Funds given by a Participant for execution in the 457 Plan, shall be deemed to be a controlling investment transfer for the Plan. As of any Valuation Date during a Plan Year, a participant in the 457 Plan 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 (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. With respect to the Plan, all transfers of Employer Contributions

shall be made by the Administrative Service Agency in accordance with such Participant direction in the 457 Plan.

(b) 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, the amount to be transferred with respect to each Participant who duly requested such a transfer may be reduced in proportion to the ratio which the aggregate amount that the Custodian, the Administrative Service Agency or Financial Organization has advised the Board may not prudently be so transferred bears to the aggregate amount that all Participants have duly requested be so transferred. 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 this Section 5.2(b) to the contrary, upon written notice to the Plan Administrator, the Custodian, the Administrative Service Agency or the Financial Organization may have the right, without prior notice to any Participant, to 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 (i) in light of unusual market conditions, (ii) in response to technical or mechanical problems with the Plan's automated system, if any, or the Plan's third-party record keeper and (iii) in connection with any suspension of normal trading activity on the New York Stock Exchange. Notwithstanding anything in this Section 5.2(b) to the contrary, the Board

may have the right, with prior written notice to Participants, to 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.

5.3 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, Treasury Regulations; or (iii) implementation of the investment direction would be contrary to a court order including, but not limited to, a Qualified Domestic Relations Order.

5.4 Notwithstanding any other provision of the Plan, during any period when an Account is created and the interest therein is segregated on behalf of an Alternate Payee pursuant to a QDRO, the Alternate Payee may be entitled to direct the investment of such amounts in accordance with this Section as if he or she were the Participant to the extent provided in such order. In the event that the Alternate Payee fails to specify an investment direction, the Alternate Payee's interest in their 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's Account.

5.5 Notwithstanding any other provision of the Plan, during any period following the death of a Participant and prior to distribution of the entire Plan Account of such Participant, such Participant's Beneficiary shall be entitled to direct the investment of such Plan Account, or, as applicable, his or her proportional interest in such Plan Account, in accordance with this Section as if he or she were the Participant.

5.6 No power of attorney, other than one properly executed in accordance with the General Obligations Law of New York, 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 investment direction under the Plan.

5.7 Each Participant, Beneficiary and Alternate Payee is solely responsible for the investment and allocation of his Plan Account in and among the Investment Funds and shall assume all risk in connection with any decrease in the value of any or all of the Investment Funds. Neither the Board, Employer, Plan Administrator, Financial Organization, Administrative Service Agency nor the Custodian is empowered to advise a Participant as to the manner in which such Plan benefit shall be allocated among the Investment Funds. The fact that a particular Investment Fund is available to Participants for investment under the Plan shall not be construed as a recommendation for investment in such Investment Fund.

Notwithstanding this Section, the Board may choose to offer investment advice as described by Section 601 of the Pension Protection Act of 2006.

## **SECTION 6: VESTING**

6.1 All Participant Accounts shall be 100% vested and nonforfeitable at all times.

## **SECTION 7: IN-SERVICE WITHDRAWALS**

7.1 No in-service withdrawals may be made from a Participant's Account except as otherwise provided in this Section 7.

7.2 Hardship distributions are prohibited under the Plan.

7.3 Loans are prohibited under the Plan.

7.4 A Participant who has attained age sixty-two (62) as of the effective date of any withdrawal pursuant to the Section may, without penalty, withdraw all or a portion of his Account. The minimum withdrawal shall be \$1000 or such other amount as the Board may determine.

7.5 To make an in-service withdrawal in accordance with Section 7.4, a Participant shall give at least thirty (30) days prior notice in a manner satisfactory to the Board. A withdrawal shall be made as of the first Valuation Date following the expiration of the thirty (30) day notice period. The amount of the withdrawal shall be allocated among the Investment Funds in proportion to the value of the Participant's Account(s) from which the withdrawal is made in each Investment Fund as of the date of the withdrawal. All payments to Participants under this Section shall be made as a lump sum payment in cash as soon as practicable following the first Valuation Date after expiration of the thirty (30) day notice period.

## **SECTION 8: DISTRIBUTIONS**

8.1 Except as otherwise provided in Section 7 or this Section 8, a Participant may not receive distribution of his or her Plan Account at any time prior to such Participant's Severance from Employment. Upon a Participant's Severance from Employment for any reason other than death, the Participant shall be entitled to receive an amount equal to the value of his or her Account(s), which shall be paid in accordance with the methods described in this Section 8 as of the commencement date elected by the Participant in accordance with the procedures prescribed by this Section 8.

8.2 If a Participant dies before receiving a distribution of the entire interest in his or her Plan Account, an amount equal to the value of the unpaid portion thereof as of the date of death

shall be paid in cash from the Participant's Account to the Participant's Beneficiary. Subject to the required minimum distribution provisions of Section 401(a)(9) of the Code described in Section 10, a Beneficiary shall be permitted to select his or her commencement date and one of the methods of distribution described in this Section 8.

8.3 (a) Notwithstanding anything in this Section 8 to the contrary, and in accordance with the requirements of Section 401(a)(9) of the Code, 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 the Participant, his or her Beneficiary) may elect:

- (1) One lump sum full withdrawal of the Participant's Account.
- (2) An amount certain – a specific portion of the Participant's Account in a lump sum withdrawal.
- (3) With respect to such Participant's Account, substantially equivalent monthly, quarterly, semi-annual or annual installment payments; provided, however, that a Participant (or, in the case of the death of a Participant, his or her Beneficiary) may also elect to receive (A) an amount certain and (B) the balance of his or her Account in substantially equivalent monthly, quarterly, semi-annual or annual installment payments, as long as the amount certain is in an amount greater than the amount of the subsequent installment payments and the installment payments commence within two years of such amount certain payment.
- (4) A Participant who elects to receive installment payments or who is currently receiving installment payments pursuant to Section 8.3(a)(3), may elect, in accordance with procedures established by the Plan Administrator, to receive a

portion of his or her Account distributed in an amount certain; provided, however, that no amount certain payment shall be less than \$500.00, or such other amount as the Board shall determine, and provided further, that such elections shall not be made more than twelve (12) times per Plan Year, or such other number as the Board shall determine. Such amount certain payment shall not result in a discontinuation of subsequent installment payments; provided, however, that such subsequent payments may be redetermined in accordance with methods and procedures established by the Plan Administrator.

(b) If a Participant (or, in the case of death of a Participant, his or her Beneficiary) elects a lump sum full withdrawal payment pursuant to Section 8.3(a)(1), the value of the Participant's Plan Account shall be determined as of the Valuation Date coincident with or last preceding the date on which the Plan Account is withdrawn from the Investment Funds and liquidated for distribution.

(c) If a Participant (or, in the case of death of a Participant, his or her Beneficiary) elects to receive installment payments, pursuant to Section 8.3(a)(3) or elects an amount certain pursuant to Section 8.3(a)(2), his or her Account shall continue to participate in the investment performance of the Investment Fund or Funds in which such amounts are invested and to bear its allocable share of administrative and investment expenses until the Valuation Date coincident with or last preceding the date on which such Plan Account amounts are withdrawn from the Investment Funds and liquidated for distribution; provided, however, that the amount of the installments need not be redetermined to reflect changes in the value of the Account more frequently than

annually. All such redeterminations shall be made by the Administrative Service Agency in accordance with procedures of uniform application.

(d) Any lump sum, final amount certain or final installment payment to a Participant or his Beneficiary(ies) shall not necessarily constitute final settlement of that Participant's Account. If, prior to the Participant's or his Beneficiaries' receipt of such payment, the Employer erroneously credited monies to the Participant's Account which are adjusted after the receipt of such payment, the Participant is liable for and will be required to remit any such monies. The Plan reserves the right to recover any monies erroneously credited to the Participant's Account.

8.4 In the case of the Participant's Severance from Employment, a distribution election may be made by the Participant or his or her Beneficiary prior to or after the Severance from Employment, to request that payments commence pursuant to the provisions of this Section 8. Such election shall specify the method of payment described in Section 8.3 elected and the date on which payments shall commence; provided, however, that payments may not commence earlier than 60 days, or such other number the Board shall determine, following the Participant's Severance from Employment. A Participant or his or her Beneficiary, including a Participant or his or her Beneficiary who is currently receiving distributions under the Plan, irrespective of the date on which such distributions commenced, may change both the timing and the method of payment elected in accordance with procedures established by the Plan Administrator, subject to Section 8.2.

8.5 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 Treasury Regulations, the Distributee 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 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 Plan shall provide written information to the Distributee regarding Eligible Rollover Distributions to the extent required by Section 402(f) of the Code.

8.6 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 Treasury Regulations, 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.

## **SECTION 9: MINIMUM DISTRIBUTION RULES**

9.1 The requirements of this Section 9 will take precedence over any inconsistent provisions of the Plan.

9.2 All distributions required under this Section 9 will be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9).

9.3 (a) The Participant's entire interest will be distributed, or begin to be distributed, to the Participant not later than the Participant's Required Beginning Date.

(b) If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, then distributions to the Surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70  $\frac{1}{2}$ , if later.

(2) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary may be made by lump sum or installment payments commencing no later than the close of the Plan Year following the Plan Year in which the Participant died, and all distributions must be made no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary and the Surviving Spouse dies after the Participant but before distributions to the Surviving Spouse begin, this paragraph (b), other than paragraph (b)(1), will apply as if the Surviving Spouse were the Participant.

For purposes of this paragraph (b) and Section 9.5, unless paragraph (b)(4) of this Section applies, distributions are considered to begin on the Participant's Required Beginning Date. If paragraph (b)(4) of this Section applies, distributions are considered to begin on the date the distributions are required to begin to the Surviving Spouse under paragraph (b)(1) of this Section. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's Surviving Spouse before the date distributions are required to begin to the Surviving Spouse under paragraph (b)(1) of this Section), the date distributions are considered to begin is the date distributions actually commence.

(c) Unless the Participant's interest is distributed in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 9.4 or 9.5.

9.4 (a) During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(1) The quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(2) If the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's

attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(b) Required minimum distributions will be determined under this Section beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

9.5 (a) Death on or After Date Distributions Begin.

(1) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

(i) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the Surviving Spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the Surviving Spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the Surviving Spouse's death, the remaining Life Expectancy of the Surviving Spouse is calculated using the age of the Surviving Spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of

the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Distributions Begin.

(1) If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in paragraph (a) of this Section.

(2) If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) If the Participant dies before the date distributions begin, the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, and the Surviving Spouse dies before distributions are required to begin to the Surviving Spouse under Section 9.3(b)(1), this paragraph (b) will apply as if the Surviving Spouse were the Participant.

9.6 Nothing in this Section 9 shall provide any individual entitled to a benefit under this Plan a benefit or payment option to which such individual would not otherwise be entitled pursuant to the provisions of the Plan.

9.7 Effective January 1, 2009, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs") , and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions (Participants and Beneficiaries will be given the opportunity to elect to stop receiving such distribution).

## **SECTION 10: DESIGNATED BENEFICIARY**

10.1 Any Beneficiary designation filed by a Participant and received for the 457 Plan, shall be deemed to be a controlling Beneficiary designation for the Plan. Each 457 Plan participant shall file with the Plan Administrator a written designation, or in such other form as the Board may determine, of one or more persons as the Designated Beneficiary who shall be entitled to receive the plan benefit, if any, payable under the 457 Plan upon his or her death. A Participant may from time to time revoke or change his or her Designated Beneficiary without the consent of any prior Designated Beneficiary by filing a new designation with the Plan Administrator for the 457 Plan. The last such designation received by the 457 Plan Administrator shall be controlling; provided, however, that no designation or change or

revocation thereof, shall be effective unless received by the 457 Plan Administrator prior to the Participant's death, and in no event shall it be effective as of a date prior to such receipt. With respect to the Plan, the Designated Beneficiary for the 457 Plan shall be the Designated Beneficiary for the Plan.

10.2 If no such Beneficiary designation is in effect at the time of a Participant's death, or if no Designated Beneficiary survives the Participant, or if no Designated Beneficiary can be located with reasonable diligence by the Plan Administrator, the payment of the Participant's Plan benefit, if any, payable under the Plan upon his or her death shall be made by the Custodian upon the Plan Administrator's direction from the Participant's Account to the Participant's Surviving Spouse, if any, or if the Participant has no Surviving Spouse or the Surviving Spouse cannot be located with reasonable diligence by the Employer or the Plan Administrator, then to his or her 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 direct the Custodian to retain such amount in the Custodial Account, without liability for any interest thereon, until the rights thereto are determined, or the Plan Administrator may 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. 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.

10.3 No power of attorney, other than one properly executed in accordance with 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 or change a Beneficiary designation 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 Beneficiary designation under this Plan.

## **SECTION 11: ADMINISTRATION**

11.1 In accordance with Section 11.6(a), the Board hereby delegates its general authority to operate and administer the Plan, in accordance with the terms of the Plan and all applicable Code sections and Treasury Regulations, to the Plan Administrator.

11.2 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.

11.3 Without limiting the generality of the foregoing, the Board shall have the following powers and duties:

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

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

(c) To interpret the Plan and to resolve ambiguities, inconsistencies and omissions;

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

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

(f) To 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; and

(g) The Board may, upon the recommendation of the Plan Administrator, enlarge or diminish the time periods set forth in the Plan; provided such action is not contrary to the Code or Treasury Regulations and the Board determines that such action is necessary or desirable to facilitate the proper administration of the Plan.

11.4 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 or wrongdoing 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.

11.5 Except as otherwise provided in the Plan and the Custodial Agreement, the Board shall have responsibility with respect to the control or management of the assets of the Plan and the Custodial Account. The Board shall periodically review the performance and methods of the Custodian and the Board may appoint and remove or change the Custodian. The Board shall have the power to appoint or remove one or more Financial Organizations and to delegate to such Financial Organization(s) authority and discretion to manage (including the power to acquire and dispose of) the assets of the Plan and Custodial Account in accordance with the Treasury Regulations and shall periodically review the performance and methods of such Financial Organization(s) and may direct the acquisition or disposition of the assets in any Investment Fund.

11.6 (a) The Board shall have general authority under the Plan. 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 sections and Treasury Regulations; provided, however, that such delegation shall be subject to revocation at any time at the discretion of the Board. Notwithstanding any other provision of the Plan, the Board's general authority shall include the right to review, revise, modify, revoke, or vacate any decision made or action taken by any party under the Plan.

(b) Any claim to rights or benefits under the Plan, including, without limitation, any purported Qualified Domestic Relations Order, 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, 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 benefit the claim is made, that the claim has been granted or denied, in whole or in part.

(c) Subject to the discretion of the Board or such other entity as the Board may designate to determine otherwise, no distribution of any Plan benefit shall be permitted during any period during which a claim, including without limitation, a purported QDRO, against all or part of such Plan benefit is being reviewed in accordance with the provisions of this Section 11.6. If the Plan Administrator or the Administrative Service Agency reasonably believes that a claim, including, without limitation, a purported QDRO, against all or part of any Plan benefit is likely to be asserted, the Plan Administrator or Administrative Service Agency shall notify the Board and it shall be within the discretion of the Board to refuse to permit any distribution of all or part of such Plan benefit pending determination of such claim.

(d) 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.

(e) A decision by the Board shall be made promptly and shall be final.

11.7 The Board shall arrange for the engagement of legal counsel and certified public accountants, who may be counsel or accountants for the Employer, and other consultants, 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 Treasury 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, including without limitation those matters involving the exercise of discretion; provided, however, that such delegation shall be subject to revocation at any time at the discretion of the Board.

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

11.9 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.

11.10 Notwithstanding any other provision hereof, the Plan shall at all times be operated in accordance with the requirements of applicable law, including, without limitation, the Code and Treasury Regulations applicable to a money purchase pension plan.

## **SECTION 12: AMENDMENT OR TERMINATION**

12.1 (a) Subject to Section 12.1(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, Employer Contributions, the Custodial Agreement and any Investment Fund, in whole or in part and for any reason and without the consent of any Employee, Participant, Beneficiary or other person.

(b) No amendment or modification shall be made which would retroactively impair any individual's rights to any benefits under the Plan, except as provided in Section 12.1(c).

(c) Any amendment, suspension or termination of any provisions of the Plan, any Employer Contributions, 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.

12.2 The Board shall give notice of any amendment, suspension or termination pursuant to Section 12.1 to all Participating Employers.

12.3 Upon termination of the Plan, all Plan Accounts 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 Accounts 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, transfers or other disposition of interests in the Custodial Account shall remain in force until all assets of the Custodial Account and the Plan have been transferred, distributed or disposed.

12.4 Notwithstanding anything contained herein to the contrary, subject to Section 12.1(b) and any requirements of State or federal law, the Plan Administrator shall have the right

to amend an appendix or a table at any time and with or without prior notice. The Plan Administrator shall give notice of any such amendment to all affected Participating Employers.

### **SECTION 13: ANTIASSIGNMENT PROVISIONS AND QDROs**

13.1 Except insofar as may otherwise be required by law or in accordance with this Section 13, 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. If any person shall attempt to, or shall, so alienate any amount payable under the Plan, or any part thereof, or if by reason of bankruptcy or other event happening at any time such amount would not be enjoyed by the person to whom it is payable under the Plan, then the Plan Administrator shall notify the Board and, if it so elects, may direct that such amount be withheld and that the same or any part thereof be paid to or for the benefit of such person, his or her spouse, children or other dependents, or any of them, in such manner and proportion as the Plan Administrator may deem proper.

13.2 Notwithstanding anything contained herein 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 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.

13.3 (a) Payments with respect to a Participant's Plan Account may be made by the Custodian from the Custodial Account to one or more Alternate Payees pursuant to the terms of a QDRO; provided however, that such QDRO shall not create any rights greater

than the Participant's rights under the Plan. Upon receipt of a QDRO by the Plan, a portion of the Participant's Account, which portion shall be determined in accordance with the QDRO, shall be segregated and maintained on behalf of each Alternate Payee designated under such QDRO until payment is made to the Alternate Payee in accordance with this Section 13.3 and the terms of the Plan. No liability whatsoever shall be incurred by the Board, Custodian, Employer, Plan Administrator, Administrative Service Agency or any Financial Organization solely by reason of any action taken in accordance with this Section 13.3 pursuant to the terms of a QDRO.

(b) The Plan specifically permits distribution at any time to an Alternate Payee under a QDRO irrespective of whether the Participant has met the Plan requirements to receive a distribution. A distribution to an Alternate Payee prior to the Participant's Severance From Employment is available only if: (a) the order specifies distribution at that time; and (b) 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.

#### **SECTION 14: GENERAL LIMITATIONS AND PROVISIONS**

14.1 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 and all other interested persons.

14.2 Nothing contained herein shall give any individual the right to be retained in the employment of the Employer or affect the right of the Employer to terminate any individual's employment. The adoption and maintenance of the Plan shall not constitute a contract between the Employer and any individual or consideration for, or an inducement to or condition of, the employment of any individual.

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

14.4 Each Participant shall file with the Plan Administrator such pertinent information concerning himself or herself and his or her Beneficiary as the Board may specify, and no Participant, Beneficiary or other person shall have any rights or be entitled to any benefits under the Plan unless such information is filed by or with respect to him.

14.5 All elections, designations, requests, notices, instructions, and other communications from a Public Employer, the Employee, Participant, Beneficiary, Surviving Spouse or other person to the Board, Administrative Service Agency or the Employer required or permitted under the Plan shall be in such form as is prescribed from time to time by the Board, shall be mailed by first class mail or delivered to such location as shall be specified by the Board,

and shall be deemed to have been given and delivered only upon actual receipt thereof at such location. Copies of all elections, designations, requests, notices, instructions and other communications from an Employee, Participant, Beneficiary, Surviving Spouse or other person to the Employer shall be promptly filed with the Plan Administrator.

14.6 All notices, statements, reports and other communications from the Plan Administrator, Administrative Service Agency or the Board to any Employee, 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 Employee, Participant, Beneficiary, Surviving Spouse or other person at his or her address last appearing on the records of the Plan Administrator.

14.7 If any Employer Contribution (or any portion of an Employer Contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the Employer Contribution, and upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken Employer Contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Employer.

14.8 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.

14.9 The Employer shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or Board's records, (b) notification sent to the Social Security Administration, the Internal Revenue Service, or the Pension Benefit Guaranty

Corporation (under their respective program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. 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.

14.10 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 employee or director thereof.

14.11 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.

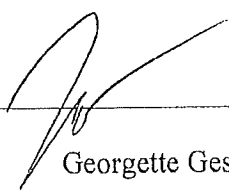
14.12 The duties and responsibilities allocated to each person under the Plan and the Custodial Agreement shall be the several and not joint responsibility of each, and no such person shall be liable for the act or omission of any other person.

14.13 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.

14.14 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.

DEFERRED COMPENSATION BOARD  
OF THE CITY OF NEW YORK

BY: \_\_\_\_\_

NAME:  Georgette Gestely

TITLE: Director, Deferred Compensation

DATE: October 8, 2013

## APPENDIX A

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