

NEW YORK STATE
DEFERRED COMPENSATION PLAN
LOCAL EMPLOYER
ADOPTION KIT

**NEW YORK STATE DEFERRED COMPENSATION PLAN
EMPLOYER ADOPTION KIT**

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Please return to:
New York State Deferred Compensation Plan
Administrative Services Agency
385 Jordan Road
Troy, NY 12180
Fax: (518) 286-9014

**New York State Deferred Compensation Plan
Administrative Checklist**
(Please complete a separate form for each payroll frequency)

Employer Name:			
Address:			
Telephone:		Fax:	
EMPLOYER CONTACTS			
Primary Contact:	Name:		
	Title:		
	Address:		
	Telephone:	Fax:	Email:
Payroll Contact: (Payroll Change Report)	Name:		
	Title:		
	Address:		
	Telephone:	Fax:	Email:
Additional Contact (Payroll Billing If different than above)	Name:		
	Title:		
	Address:		
	Telephone:	Fax:	Email:
PAYROLL INFORMATION			
1. Number of eligible employees			
2. Will payroll remittances be a standard percentage of salary, flat dollar basis or both?		<input type="checkbox"/> % of Salary <input type="checkbox"/> Flat Dollar <input type="checkbox"/> Both	
3. Payroll Frequency (weekly, Bi-weekly, monthly) <i>Note: Payroll frequency determines Remittance Frequency – Plan Guidelines require that payroll must be submitted within two days of pay date.</i>		<input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other (please list dates):	
4. Remittance Frequency (Must be same as above) <i>Note: For multiple payroll frequency please submit separate checklist</i>		<input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other (please list dates):	
5. Last Three Pay Dates		____/____/____	
6. How will remittances be sent to the Trustee/Custodian?		<input type="checkbox"/> Wire Transfer <input type="checkbox"/> Check	
7. How will payroll detail be submitted? <i>(electronic or diskette preferred)</i>		<input type="checkbox"/> Diskette <input type="checkbox"/> Electronic <input type="checkbox"/> Hard copy (mail/fax)	
8. How will termination dates be submitted?		<input type="checkbox"/> Electronic <input type="checkbox"/> Hard copy	
OFFICE USE ONLY			
Plan Number:			
Account Executive:			
Date Received:			

NEW YORK STATE DEFERRED COMPENSATION PLAN

ADOPTION CHECKLIST

A local public employer desiring to adopt the New York State Deferred Compensation Plan for the voluntary participation of its employees must:

Adopt a resolution of its governing body formally adopting the Plan, complete the related certification, and remit two copies to the Plan's Administrative Service Agency in the stamped self-addressed envelope enclosed for that purpose. A sample draft resolution has been enclosed for your convenience. Please submit Resolution on letterhead and have a raised seal for certification purposes.

The Plan's Administrative Service Agency will then file all required information with the President of the New York State Civil Service Commission and will contact the local public employer and arrange to commence the enrollment process and begin planning for payroll deductions.

To insure prompt commencement of participation, local employers should submit the aforementioned resolutions and certifications as soon as possible.

**NEW YORK STATE DEFERRED COMPENSATION PLAN
EMPLOYER ADOPTION KIT**

SECTION 2

SAMPLE RESOLUTION

This sample resolution is enclosed for your convenience. Before adopting the Plan, a local public employer should consult with local counsel regarding any special requirements for adopting the Plan under local law.

SAMPLE RESOLUTION

(Name of Local Public Employer) Adoption Of
The State of New York Deferred Compensation Plan

WHEREAS, the _____ (Employer) wishes to adopt the Deferred Compensation Plan for Employees of the State of New York and Other Participating Public Jurisdictions (the “Plan”) for the voluntary participation of all eligible employees; and

WHEREAS, the _____ (Employer) is a local public employer eligible to adopt the Plan pursuant to Section 5 of the State Finance Law;* and

WHEREAS, the _____ (Employer) has reviewed the Plan established in accordance with Section 457 of the Internal Revenue Code and Section 5 of the State Finance Law of the State of New York; and

WHEREAS, the purpose of the Plan is to encourage employees to make and continue careers with the _____ (Employer) by providing eligible employees with a convenient and tax-favored method of saving on a regular and long-term basis and thereby provide for their retirement;

*A local public employer eligible to adopt the Plan pursuant to Section 5 of the State Finance Law includes: a county, city, town, village or other political subdivision as defined in Section 131 of the retirement and Social Security law or civil division of the State; a school district or other governmental entity operating a public school, college, or university; a public improvement or special district, a public authority, commission, or public benefit corporation; or any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the State.

NOW, THEREFORE, it is hereby:

RESOLVED, that the _____ (Employer) hereby adopts the Plan for the voluntary participation of all eligible employees; and it is further

RESOLVED, that the appropriate officials of the _____ (Employer) are hereby authorized to take such actions and enter such agreements as are required or necessary for the adoption, implementation, and maintenance of the Plan; and it is further

RESOLVED, that the Administrative Services Agency is hereby authorized to file copies of these resolutions and other required documents with the President of the State of New York Civil Service Commission.

Adopted the _____ day of _____, 20 __, at a meeting of the _____.

I hereby certify that the _____ (Employer) is a local public employer within the meaning of Section 5 of the State Finance Law and that the adoption of the Plan has received all required approvals of any local governing body or officer and otherwise complies with local law.

Witnesseth by:

(Name of Local Public Employer)

By:

Consent of the Deferred
Compensation Board of the
State of New York to
Local Public Employer's
Participation

By: _____

**NEW YORK STATE DEFERRED COMPENSATION PLAN
EMPLOYER ADOPTION KIT**

SECTION 3

NEW YORK STATE PLAN DOCUMENT

Plan Document

for the

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

Amended and Restated as of

February 15, 2013

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PURPOSE

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

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

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

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

SECTION 1 DEFINITIONS

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

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

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

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

1.14 “Compensation” means:

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

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

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

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

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

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

1.18 “Effective Date” means January 1, 2011.

1.19 “Eligible Retirement Plan” means:

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

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

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

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

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

(f) a Roth IRA.

1.20 “Eligible Rollover Distribution” means all or any portion of the balance of the Plan to the credit of a Distributee or a Beneficiary of a Participant, except that an Eligible Rollover Distribution shall not include (a) any distribution that is (i) one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s Beneficiary or (ii) for a specified period of ten years or more, (b) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code, or (c) any distribution due to an Unforeseeable Emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.35 "Plan Year" means the calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.51 “State” means the State of New York.

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

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

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

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

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

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

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

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

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

SECTION 2 PARTICIPATION

2.1 Enrollment.

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

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

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

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

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

SECTION 3
AMOUNTS DEFERRED OR CONTRIBUTED

3.1 Participant Deferral and Contribution Authorization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4
INVESTMENT OF AMOUNTS DEFERRED OR CONTRIBUTED AND ROLLOVER CONTRIBUTIONS

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

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

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

4.4 Transfer of Assets Among Investment Options.

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

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

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

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

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

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

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

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

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

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

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

SECTION 5 ROLLOVERS

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

5.2 Acceptance of Assets from an Eligible Retirement Plan.

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

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

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

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

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

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

SECTION 6
ACCOUNTS AND RECORDS OF THE PLAN

6.1 Participant Accounts.

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

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

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

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

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

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

6.5 Plan Benefit and Trust Fund.

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

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

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

7.1 Distribution for an Unforeseeable Emergency.

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

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

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

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

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

7.3 Loans.

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

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

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

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

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

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

(e) Source of Loans; Security. A Plan loan shall be made only from the Before-Tax Deferral Account or, if applicable, Rollover Accounts relating to Rollover Contributions of before-tax deferrals. All Plan loans shall be made from the Trust Fund and notes evidencing such obligations shall be considered assets of the Trust Fund and shall be treated as a separate loan investment fund for purposes of determining the value as of any Valuation Date of a Participant's Accounts. All Plan loans shall be secured, as of the date of the Plan loan, by the sum of (i) the Participant's Before-Tax Deferral Account and Roth Account and (ii) the Participant's Rollover Accounts, if applicable, *provided, however*, that no more than 50% of the aggregate value of such Participant's Accounts shall be used as security for the Plan loan.

(f) Default. If a Participant fails to make any scheduled repayment of his or her Plan loan within 90 days of its due date, or such other period as the Administrative Service Agency shall determine, such Participant shall be considered in default and the Administrative Service Agency shall declare a deemed distribution to have occurred with respect to such Plan loan,

effective as of the date of the default and shall reduce the value of the Participant's Plan Benefit by the amount of the deemed distribution. Notwithstanding anything in Section 7.3 to the contrary, a Participant who has defaulted on a loan made under the Plan shall not be eligible to obtain another loan hereunder until the defaulted loan and accrued interest has been repaid, and the new loan shall be subject to any other limitations required under Section 1.72(p) of the Treasury Regulations.

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

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

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

SECTION 8
DISTRIBUTIONS FROM THE PLAN AND OTHER ELIGIBLE
RETIREMENT PLANS

8.1 Distributions to Participants.

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

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

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

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

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

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

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

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

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

(d) Calculation of Payments.

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

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

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

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

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

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

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

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

8.4 Eligible Rollover Distributions.

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

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

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

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

8.6 Required Minimum Distributions.

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

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

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

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

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

(a) The Beneficiary may elect to receive a distribution of the Plan Benefit over a period not exceeding the life expectancy of the Beneficiary;

provided that the distribution commences no later than December 31 of the calendar year immediately following the calendar year in which the Participant dies; or

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

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

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

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

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

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

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

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

8.7 Special Proceeds. If the Plan receives Special Proceeds (as defined below) that are allocable to an Account Participant who has received a final distribution of his or her entire Plan Benefit, then the Plan shall distribute such Special Proceeds to the former Participant, Beneficiary, or Alternate Payee (or in accordance with Section 9.2, if the Participant is deceased and no Beneficiary designation was in effect at the time of the Participant's death, or to the estate of Beneficiary or Alternate Payee, as applicable, if such person is deceased) in a lump sum as

soon as practicable after the Plan receives such Special Proceeds unless, at the time of such mandatory distribution, the value of such distribution would exceed \$1,000. For purposes of Section 8.7, “Special Proceeds” means amounts attributable to a settlement of any dispute or controversy related to any of the assets previously attributable to any Account of the former Participant, Beneficiary, or Alternate Payee or any other amounts allocable under the Plan to a former Participant, Beneficiary, or Alternate Payee relating to an adjustment to the amount or value of any such Account.

8.8 In-Plan Rollover to Roth Account.

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

SECTION 9 DESIGNATION OF BENEFICIARIES

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

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

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

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

SECTION 10
QUALIFIED DOMESTIC RELATIONS ORDERS

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

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

SECTION 11 ADMINISTRATION

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

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

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

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

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

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

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

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

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

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

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

11.4 Trustee. The Trustee shall have responsibility for the custody and safekeeping of the assets of the Plan and the Trust Fund and the valuation of such assets in accordance with the terms of the Trust Agreement and, in conjunction with the Administrative Service Agency, shall be responsible for implementing the aggregated investment decisions of Participants and beneficiaries by allocating the Plan assets to the various Investment Options. The Board shall periodically review the performance and methods of the Trustee and the Board may, subject to the terms of the Trust Agreement, appoint and remove or change the Trustee at any time for any reason or for no stated reason. If the Trust Agreement so provides, the Trustee may also serve as the Administrative Service Agency and perform the record keeping services normally performed by a third party Administrative Service Agency or may provide the services normally provided by a Financial Organization, provided that the Trustee otherwise qualifies as an Administrative Service Agency or a Financial Organization, as the case may be.

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

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

11.7 Plan Expenses.

(a) Assessment Against the Trust Fund. Subject to 11.7(b), the expenses of administering the Plan, including (i) the fees and expenses of the Financial Organizations and Administrative Service Agency for the performance of their duties under the Plan, including any fees and expenses associated with a change, termination or addition of an Investment Option, (ii) the fees, if any, of any member of the Board and any Trustee and the expenses incurred by the Board or any of its members or Staff or any Trustee in the performance of their duties under the Plan (including reasonable compensation for any legal counsel, certified public accountants, consultants, and agents, employees of the Board and cost of services rendered in respect of the Plan and the Trust Agreement (as provided therein)), and (iii) all other proper charges and

disbursements of the Financial Organizations, Administrative Service Agency, the Board or its members (including settlements of claims or legal actions approved by counsel to the Plan) or any Trustee shall be allocated to and paid out of the assets of the Trust Fund in accordance with such allocation and payment procedures as the Board shall establish from time to time. The Board is authorized to levy a fee against the Accounts of Account Participants for the purpose of paying some or all of such expenses, except where such expenses are paid from State funds allocated for such expenses or the Employer elects to pay such expenses directly; *provided, however,* that any such fees shall be levied on a pro-rata basis from the Account Participant's various Accounts at any given time, including Before-Tax Deferral Accounts, Roth Accounts, Rollover Accounts not relating to Rollover Contributions of amounts from a Qualified Roth Contribution Program, and Rollover Accounts relating to Rollover Contributions of amounts from a Qualified Roth Contribution Program.

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

11.8 Review of Claims.

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

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

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

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

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

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

SECTION 12
ADOPTIONS BY AND WITHDRAWALS OF PARTICIPATING EMPLOYERS

12.1 Adoption by a Participating Employer.

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

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

12.2 Withdrawal of Participating Employer.

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

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

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

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

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

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

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

SECTION 13
AMENDMENT OR TERMINATION

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

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

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

SECTION 14
GENERAL LIMITATIONS AND PROVISIONS

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

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

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

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

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

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

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

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

14.8 Account Assets and Account Vesting

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

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

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

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

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

**NEW YORK STATE DEFERRED COMPENSATION PLAN
EMPLOYER ADOPTION KIT**

SECTION 4

INTERNAL REVENUE SERVICE

DETERMINATION LETTERS

The New York State Deferred Compensation Plan amended its plan document to be effective January 1, 2002. The following letter is a determination letter from the Internal Revenue Service stating that the Plan was an eligible deferred compensation plan under section 457 of the Internal Revenue Code of 1986 prior to the adoption of those amendments. The Plan is seeking a determination from the Internal Revenue Service that the amendments to the Plan, as amended, continues to be an eligible deferred compensation plan under section 457 of the Internal Revenue Code of 1986.

Internal Revenue Service

Department of the Treasury

Index No.: 457.01-00 457.05-00

Washington, DC 20224

Kenneth J. Laverriere
Shearman & Sterling
599 Lexington Avenue
New York, NY 10022-6069

Contact Person:
Suzanne K. Tank (ID# 50-07152)
Telephone Number:
(202) 622-6030
In Reference to:

CC:EBEO:Br1 - PLR104684-99
Date: **SEP 30 1999**

**Board = State of New York Deferred Compensation Board
EIN = 13-3702288**

**State X = State of New York and Other Participating Public
Jurisdictions**

**State Plan = Deferred Compensation Plan for Employees of the State of
New York and Other Participating Public Jurisdictions**

Dear Mr. Laverriere:

This is in response to your letter dated February 25, 1999, on behalf of the Board requesting a ruling on the federal tax consequences of the State Plan. State X intends the State Plan to be an eligible deferred compensation plan under section 457 of the Internal Revenue Code of 1986 (the "Code"). The State Plan has been or will be adopted only by employers that are state or local governmental entities described in section 457(e)(1)(A). Pursuant to the laws of State X, the Board established the State Plan for the benefit of eligible employees of State X and of other public jurisdictions in State X that adopt the State Plan.

In 1996 the Internal Revenue Service (the "IRS") ruled that the State Plan as amended and restated at that time was an eligible state deferred compensation plan as defined in section 457. The State Plan has been amended and restated again to include several amendments effective in 1997 and 1998.

Under the State Plan an employee may elect to defer compensation he or she would have received for services rendered to an employer in any taxable year. The deferral extends until the participant reaches age 70 1/2, separates from service, or has an unforeseeable emergency. The election to defer compensation must be made by the 10th of the calendar month before any payroll date. The State Plan provides for a maximum amount that may be deferred by a participant in any taxable year and for a catch-up computation for amounts deferred for one or more of the participant's last

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catch-up computation for amounts deferred for one or more of the participant's last three taxable years ending before normal retirement age under the State Plan. The amounts that may be deferred under the annual maximum limitation and the catch-up provision are within the limitations set out in section 457 of the Code.

With certain limitations, a participant or beneficiary (or an alternate payee as described below) may elect the manner in which his or her deferred amounts will be distributed. The election must be made prior to the date any amounts become payable to the participant or beneficiary under the State Plan. If the participant or beneficiary fails to make a timely election concerning distribution of the deferred amounts, distributions are made at the time and in the manner prescribed by the State Plan. Regardless of who makes the election, the manner and time of benefits must meet the distribution requirements of section 401(a)(9) and 457(d)(2) of the Code.

The State Plan allows segregation of accounts on behalf of and payments to an alternate payee pursuant to a Plan Certified Domestic Relations Order (a "PCDRO"). A PCDRO is defined in the State Plan as a domestic relations order determined by a specified agency to meet the requirements of a qualified domestic relations order within the meaning of Code section 414(p). The State Plan provides that no distribution may be made to an alternate payee before the amount distributed would otherwise be available to the participant, that the rights of an alternate payee may never be greater than those of the participant, and that an alternate payee may not receive a distribution for an unforeseeable emergency. An alternate payee may direct the investment of amounts segregated on his or her behalf.

However, the State Plan does permit one exception to the above distribution requirements. The State Plan, in accordance with section 457(e)(9)(A) of the Code, includes a provision permitting an in-service distribution of \$5,000.00 or less from a participant's account provided that 1) the total amount payable to the participant under the State Plan does not exceed the dollar limit under section 411(a)(11) (currently \$5,000), 2) the participant had not previously received an in-service distribution of the total payable to him or her under the State Plan, 3) no amount had been deferred under the State Plan for the participant during the two-year period ending on the date of such in-service distribution and 4) the participant has elected to receive the distribution.

The State Plan further provides that all amounts of compensation deferred pursuant to the State Plan, all property and rights purchased with such amounts and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the State Plan. The trust under the State Plan was established pursuant to a written agreement that is represented to be a valid trust under the laws of State X.

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The rights of any participant or beneficiary to payments pursuant to the State Plan are not subject in any manner to alienation by anticipation, sale, transfer, assignment, bankruptcy, pledge, attachment, charge, or encumbrance of any kind.

The terms of the trust make it impossible prior to the satisfaction of all liabilities with respect to participants and their beneficiaries for any part of the assets and income of the trust to be used for, or diverted to, purposes other than the exclusive benefit of participants and their beneficiaries.

Section 457 of the Code provides rules for the deferral of compensation by an individual participant in an eligible deferred compensation plan (as defined in section 457(b)).

Section 457(a) provides that in the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan and any income attributable to the amounts so deferred shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or beneficiary.

Section 457(d)(1)(A) provides that for a section 457 plan to be an eligible plan, the plan must have distribution requirements providing that under the plan amounts will not be made available to participants or beneficiaries earlier than i) the calendar year in which the participant attains age 70 ½, ii) when the participant is separated from service with the employer, or iii) when the participant is faced with an unforeseeable emergency as determined under Treasury regulations. However, section 401(a)(9)(C)(i) generally allows plans to postpone the required beginning date until April 1 of the calendar year following the later of the calendar year in which the employee retires or in which he attains age 70 ½.

A basic requirement prescribed by section 457(b)(5) is that an eligible section 457 plan must meet the section 457(d) distribution requirements described above in order to retain its tax-deferred eligible status. A section 457 plan would violate these provisions of section 457(b)(5) and the regulations thereunder if the participant or anyone else received a distribution earlier than the earliest date established in section 457(d)(1)(A).

Section 457(e)(9)(A) provides that the total amount payable to a participant under the plan will not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if (i) such amount does not exceed \$5,000, and (ii) such amount

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may be distributed only if--(I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and (II) there has been no prior distribution under the plan to such participant under this option.

Section 1.457-2(h)(4) of the Income Tax Regulations defines an unforeseeable emergency as severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

Section 457(g)(1) provides that a plan maintained by an eligible governmental employer shall not be treated as an eligible deferred compensation plan unless all assets and rights purchased with such deferred compensation amounts and all income attributable to such amounts, property, or rights of the plan are held in trust for the exclusive benefit of participants and their beneficiaries.

Section 457(g)(2) provides that a trust described in section 457(g)(1) shall be treated as an organization exempt from tax under section 501(a). Section 457(g)(2)(B) provides that the amounts in the trust are treated as includible in the gross income of participants and beneficiaries only to the extent, and at the time, provided in section 457.

Under the terms of the State Plan and trust, the trustee must hold all of the section 457(b) plan assets for the exclusive benefit of the participants and their *beneficiaries*, and *all amounts deferred under the State Plan must be transferred to a trust meeting the requirements of section 457(g) of the Code within an administratively reasonable time period.*

Based upon the provisions of the revised State Plan summarized above, we conclude as follows:

1. The State Plan established by State X is an eligible deferred compensation plan as defined in section 457(b) of the Internal Revenue Code of 1986. All assets and income of the State Plan described in section 457(b)(6) will be held in trust for the exclusive benefit of participants and their beneficiaries.

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2. Amounts of compensation deferred in accordance with the State Plan, including any income attributable to the deferred compensation, will be includible in the recipient's gross income for the taxable year or years in which amounts are paid or otherwise made available to a participant or beneficiary in accordance with the terms of the State Plan.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the State Plan described above. In addition, no opinion is expressed concerning the effect the adoption of the trust has on the rights of employers under the State Plan. This ruling applies only to deferrals made after the date this ruling is issued. If the State Plan is significantly modified, this ruling will not necessarily remain applicable. This ruling is directed only to State X and the participants of the State Plan and applies only to the State Plan submitted on February 25, 1999. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in the ruling. See section 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 47. However, when the criteria in section 12.05 of Rev. Proc. 99-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Sincerely yours,



ROBERT D. PATCHELL
Assistant Chief, Branch 1
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosure:

Copy for section 6110 purposes

**NEW YORK STATE DEFERRED COMPENSATION PLAN
EMPLOYER ADOPTION KIT**

SECTION 5

**SECTION 5 OF THE NEW YORK
STATE FINANCE LAW**

New York State Finance Law

§ 5. Deferred compensation. 1. The deferred compensation board is hereby established, to consist of one member appointed by the governor, one member appointed by the temporary president of the senate and one member appointed by the speaker of the assembly. The board shall adopt rules and regulations regarding the standards and requirements of all deferred compensation plans established pursuant to this section, including selection of financial organizations for investment purposes.

2. a. Notwithstanding any other provision of law, the deferred compensation board shall establish a deferred compensation plan, under the provisions of section four hundred fifty-seven of the internal revenue code and regulations adopted pursuant thereto, for all state employees and shall promulgate rules and regulations as soon as is reasonably practicable following the appointment of all members of the board for the appropriate administration of such a plan.

b. The board shall enter into written agreements with one or more financial organizations to administer the deferred compensation plan for state employees and to invest funds held pursuant to such plan. Any such written agreement and deferred compensation plan shall conform with the provisions of section four hundred fifty-seven of the internal revenue code and regulations adopted pursuant thereto.

c. Within the discretion of the deferred compensation board and in accordance with and subject to its fiduciary duty and obligations to the deferred compensation plan for state employees and to the members and beneficiaries of such plan and such other investment limitations as may be prescribed by this chapter, the deferred compensation board is authorized to establish an MWBE asset management and financial institution strategy including reasonable goals for utilization of MWBE asset managers, MWBE financial institutions and MWBE professional service firms, which shall include, but shall not be limited to, the following objectives:

(i) conducting procurement procedures in a manner that will assure the inclusion of MWBE asset managers in any request for proposal or search process for asset management services undertaken in accordance with the rules and regulations and of the board;

(ii) subject to best execution policies, developing a strategy to (1) conduct trades of public equity securities with MWBE financial institutions and (2) conduct trades of fixed-income securities through MWBE financial institutions;

(iii) conducting procurement procedures in a manner that will assure the inclusion of MWBE financial institutions and other MWBE professional service firms in procurements for services that include accounting, banking, financial advisory, insurance, legal, research, valuation and other financial and professional services that are undertaken in accordance with the rules and regulations of the board;

(iv) cooperating with other fiduciary controlled entities and state agencies and offices to identify MWBE asset managers, MWBE financial institutions and MWBE professional service firms.

As used in this section, the terms "MWBE asset manager", "MWBE financial institutions", "MWBE fiduciary-controlled entities" and "best execution" shall have the meanings specified in section one hundred seventy-six of the retirement and social security law.

d. The board is also authorized to:

(i) periodically provide notice of the existence of such strategy so that MWBE asset managers, MWBE financial institutions and other MWBE professional service firms are made aware of the opportunities made available pursuant to this strategy;

(ii) within sixty days of the end of each fiscal year following the effective date of this paragraph, the board shall report to the governor, legislature and the chief diversity officer of the state of New York on the participation of MWBE asset managers, MWBE financial institutions and MWBE professional service providers in investment and brokerage transactions with or as providers of services for the deferred compensation plans, including a comparative analysis of such activity relative to such activity with all asset managers, financial institutions and professional service providers for the relevant period and on the progress and the success of the efforts undertaken during such period to achieve the goals of such strategy. Each report shall be simultaneously published on the website of the deferred compensation plans for not less than sixty days following its release to the governor and the other recipients named above;

(iii) work with the other fiduciary-controlled entities to create a database of such MWBE entities; and

(iv) periodically, but not less than annually, hold a conference to promote such strategy in conjunction with the other fiduciary-controlled entities.

e. The rules and regulations promulgated by the board shall establish standards for the selection of financial organizations, authorized to do business in this state, to participate in such plans, including, but not limited to, the following criteria:

(i) rates of commission, brokerage and other fees, administrative expenses and related service charges imposed by the financial organization,

(ii) variety of types of investment opportunities offered by the financial organization and/or among the financial organizations selected and the ability to transfer among such opportunities,

(iii) the stability of the financial organization as evidenced by experience, reputation, assets and holdings, ability to guarantee specific rates of return,

(iv) ability to comply with reporting requirements to the board and to participants in such a plan, and

(v) such other factors which would be considered by a prudent investor in such a plan.

f. The president of the state civil service commission, subject to the rules and regulations of the board, shall provide assistance to any public employer as is appropriate to the provisions of this section.

g. At the request of a state employee the comptroller shall, by payroll deduction, defer the payment of part of the compensation of such employee as provided in a written statement by the employee and transfer the amount so deferred to the authorized financial organization.

h. The board may hire such employees as it deems necessary and prudent to assist in its administration. Such employees may be either: (i) in the unclassified service of the state and, notwithstanding any other provision of law to the contrary, shall be designated managerial and, as such, eligible for benefits provided by subdivision two of section eleven and subdivision (a) of section twelve of chapter four hundred sixty of the laws of nineteen hundred eighty-two, as amended; section one hundred fifty-eight of the civil service law; eligible to participate in the state deferred compensation plan, the New York state and local employees' retirement system; the

health insurance plan for state employees; and subject to coverage under sections seventeen and eighteen of the public officers law, or (ii) hired not as state employees but hired on a contractual basis.

3. a. Notwithstanding any other provision of law, every public employer in the state may provide a deferred compensation plan for its employees in accordance with standards, rules and regulations of the deferred compensation board and the provisions of section four hundred fifty-seven of the internal revenue code and regulations adopted pursuant thereto.

b. For the purposes of this section, the term "public employer" shall mean: a county, city, town, village or any other political subdivision as defined in section one hundred thirty-one of the retirement and social security law or civil division of the state; a school district or any governmental entity operating a public school, college or university; a public improvement or special district; a public authority, commission or public benefit corporation; any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state or any instrumentality jointly created by this state and any other state or states.

c. Subject to the rules and regulations promulgated by the board, a public employer may establish a deferred compensation plan and enter into written agreements with one or more financial organizations to administer such deferred compensation plan for its employees and to invest the funds held pursuant to such plan or such employer may elect participation in the deferred compensation plan provided for state employees. At the request of an employee of any such public employer, the chief fiscal officer or other appropriate officer of the public employer shall, by payroll deduction, defer the payment of part of the compensation of such employee, as provided in a written statement by the employee, and transfer the amount so deferred to the authorized financial organization.

4. Notwithstanding the other provisions of this section, state employees, otherwise eligible to participate in the deferred compensation plan, who are in a negotiating unit represented by an employee organization which negotiates pursuant to article fourteen of the civil service law shall not be permitted to participate under the provisions of this section until such time as such participation is authorized pursuant to a collectively negotiated agreement between the state and the employee organization; provided, however, that the state need only negotiate whether or not such employees shall be included in such plan.

5. Should a public employer elect to provide or elect to participate in a deferred compensation plan for employees otherwise eligible to participate in the plan, employees in a negotiating unit represented by an employee organization which negotiates pursuant to article fourteen of the civil service law shall not be permitted to participate under the provisions of this section until such time as such participation is authorized pursuant to a collectively negotiated agreement between the public employer and the employee organization; provided, however, that the public employer need only negotiate whether or not such employees shall be included in such plan.

6. To the extent permitted by section four hundred fifty-seven of the internal revenue code and regulations adopted pursuant thereto, any compensation deferred by a state employee or an employee of a public employer under an eligible deferred compensation plan established pursuant to this section shall be considered part of annual compensation by any retirement system or plan to which the state or public employer contributes on behalf of said employee. However, this in no way shall be construed to supersede the provision of section four hundred thirty-one of the retirement and social security law or any other similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.

7. Any benefit from a deferred compensation plan established pursuant to this section shall be in addition to any retirement benefits provided a state or public employee under any other provision of law.

8. a. The term "financial organization" shall mean an organization authorized to do business in the state of New York and (A) which is an authorized fiduciary to act as a trustee pursuant to the provisions of an act of congress entitled "Employee Retirement Income Security Act of 1974" as such provisions may be amended from time to time, or an insurance company; and (B) (i) is licensed or chartered by the state insurance department, (ii) is licensed or chartered by the state banking department, (iii) is chartered by an agency of the federal government, (iv) is subject to the jurisdiction and regulation of the securities and exchange commission of the federal government, or (v) is any other entity otherwise authorized to act in this state as a trustee pursuant to the provisions of an act of congress entitled "Employee Retirement Income Security Act of 1974" as such provisions may be amended from time to time.

b. The term "state employee" as used in this section shall mean an employee or officer of the state, whose salary is paid directly by the state and, for the limited purposes of this section shall be deemed to include officers or employees in positions in the institutions under the management and control of Cornell and Alfred universities, as representatives of the board of trustees of the state university.

**NEW YORK STATE DEFERRED COMPENSATION PLAN
EMPLOYER ADOPTION KIT**

SECTION 6

**RULES AND REGULATIONS OF THE
DEFERRED COMPENSATION BOARD
OF THE STATE OF NEW YORK**

June 15, 2011

**Rules and Regulations
of the
New York State Deferred Compensation Board**

Effective Date: June 15, 2011

Following are the rules and regulations of the Deferred Compensation Board of the State of New York (the “Regulations”) as amended and restated consistent with the amendments adopted by the Board by resolution at a public meeting on May 20, 2011 and published in the State Register on June 15, 2011 at which time the amendments to the Regulations became effective and enforceable.

SUBTITLE II

Deferred Compensation Board

- 9000 Scope and Definitions**
- 9001 General Provisions**
- 9002 Establishment of Plan**
- 9003 Selection of and Agreements with Trustees, Independent Consultants, Administrative Service Agencies, Financial Organizations and Certified Public Accountants**
- 9004 Solicitation and Education**
- 9005 Auditing, Bonding and Insurance**
- 9006 Compliance**

PART 9000

SCOPE AND DEFINITIONS

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.
9000.1 Scope

Sec.
9000.2 Definitions

Section 9000.1 Scope. This Subtitle applies to every deferred compensation plan established by the board or any local employer pursuant to section 5 of the State Finance Law.

9000.2 Definitions. (a) Unless otherwise defined, the terms used herein shall have the same meaning as that used in the Internal Revenue Code of 1986 (the “Internal Revenue Code”), as now in effect or hereinafter amended, the State Finance Law and the State plan or the model plan.

(b) Wherever used herein, the following terms shall be construed as follows:

(1) *Administrative service agency* means a person 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 Internal Revenue Code, governmental plans and eligible deferred compensation plans. The functions of an administrative service agency under this Subtitle may be carried out by a trustee, provided that the person serving as a trustee otherwise satisfies all of the requirements under this Subtitle applicable to an administrative service agency.

(2) *Board* means the deferred compensation board of the State of New York established by section 5 of the State Finance Law.

(3) *Deferred compensation committee* means the committee or board, or other entity, office or officer, appointed in accordance with applicable law by a local employer to act in respect of a plan in accordance with section 9001.2(b) of this Subtitle.

(4) *Financial organization* means a person duly authorized to do business in the State of New York and who:

- (i) is registered as an investment adviser under the Investment Advisors Act of 1940, as such provisions may be amended from time to time;
- (ii) is a bank, as defined in such act; or
- (iii) 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 Internal Revenue Code, governmental plans and eligible deferred compensation plans.

The functions of a financial organization under this Subtitle may be carried out by a trustee, provided that the person serving as a trustee otherwise satisfies all of the requirements under this Subtitle applicable to a financial organization.

For the purposes of this Subtitle, a financial organization that provides self-directed investment services to a plan through a mutual fund or brokerage “window” arrangement sponsored by such financial organization shall be recognized as the sole financial organization in relation to such self-directed investment services and the term “financial organization” shall not be deemed to include any entity sponsoring mutual funds provided through such “window.”

(5) *Guaranteed investment contract* means a contract with an insurance company or a bank that guarantees a specific rate of return on the invested capital over the life of the contract and for the return of such invested capital and interest to the plan on one or more dates specified in the contract.

(6) *Independent Consultant* means a person duly authorized to do business in the State of New York and who may be or is retained by the board or a deferred compensation committee in accordance with the provisions of this Subtitle to provide advice to the board or deferred compensation committee on investment matters and who is registered as an investment adviser under the Investment Advisors Act of 1940, as such provisions may be amended from time to time.

(7) *Local employer* means a public employer as defined in section 5 of the State Finance Law but excluding the State of New York.

(8) *Model plan* means the form of plan authorized by the board for adoption in accordance with the provisions of this Subtitle by any local employer not participating in the State plan and not sponsoring a plan described in section 9001.2(a)(3) of this Subtitle, as such may be amended by the board from time to time. A copy of the model plan may be obtained from the board.

(9) *Participation agreement* means an agreement executed by an employee and the employer as described in the State plan and the model plan or such other similar agreement executed in connection with another plan.

(10) *Person* means any individual, corporation, partnership, association, trust, joint stock company, unincorporated organization or other similar entity.

(11) *President* means the president of the New York State Civil Service Commission.

(12) *Plan* means any of the State plan, the model plan and any other deferred compensation plan described in section 9001.2(a)(3) of this Subtitle.

(13) *Stable income fund* means, with respect to a plan, an investment option available to participants in the plan that seeks to provide book-value accounting, stability of principal and a low volatility total return.

(14) *State plan* means the Deferred Compensation Plan for Employees of the State of New York and Other Participating Public Jurisdictions established by the board, as such may be amended by the board from time to time. A copy of the State plan may be obtained from the board.

(15) *Trust* means a trust to hold the assets of a plan for the exclusive benefit of participants and their beneficiaries that meets the requirements of this Subtitle, including without limitation the requirements of section 9002.1(b), and section 457(g) of the Internal Revenue Code.

(16) *Trust Agreement* means an agreement evidencing a trust meeting the requirements of this Subtitle.

(17) *Trustee* means each person designated by the board or deferred compensation committee, as applicable, in accordance with the provisions of this Subtitle to hold in a trust any amounts under a plan.

(18) *Wrap contract* means a contract with a financial organization that provides for book-value accounting with respect to a designated portion of the assets of a stable income fund but that does not give the financial organization issuing the contract day-to-day investment authority with respect to such assets. Such term includes participating, non-participating and hybrid wrap contracts.

PART 9001

GENERAL PROVISIONS

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.	Sec.
9001.1 Application; Incorporation by Reference	9001.3 Ineligibility
9001.2 Establishment of plan by local employer	9001.4 Special provisions

Section 9001.1 Application; Incorporation by Reference. (a) This Subtitle shall be interpreted and applied so that any plan established hereunder shall be an eligible deferred compensation plan under section 457 of the Internal Revenue Code.

(b) The Board hereby adopts and incorporates by reference the provisions of Sections 457, 401(a)(9) and 72(p) of the Internal Revenue Code and the corresponding sections of title 26 of the Code of Federal Regulations and Section 203 of the Investment Advisers Act of 1940, effective as of the date of the adoption of these Regulations. Copies of said material may be obtained from the U.S. Government Printing Office, Washington D.C. 20402 and such material is available for public inspection and copying at the Offices of the New York State Deferred Compensation Board, Empire State Plaza Concourse – North, Room 124, Albany, NY 12223.

9001.2 Establishment of plan by local employer. (a) Except as specifically provided in this section 9001.2(a), a local employer may not establish or maintain more than one plan for its employees. A local employer may establish a plan for its employees:

- (1) by becoming a participating employer in the State plan as provided therein;
- (2) by adopting the model plan in accordance with the procedures prescribed in Part 9002 of this Subtitle; or
- (3) by adopting another plan which complies with all requirements of this Subtitle and section 457 of the Internal Revenue Code in accordance with the procedures prescribed in Part 9002 of this Subtitle.

A local employer which has previously established a plan may establish a plan in accordance with the requirements of this Subtitle so long as (i) all amounts held under the previously established plan have been distributed or otherwise paid out in accordance with the terms of such previously established plan and all other obligations of the previously established plan have been satisfied, or (ii) another local employer has been substituted as sponsor of the previously established plan.

(b) A deferred compensation committee shall be appointed by a local employer to act on behalf of the local employer under the model plan or a plan described in section 9001.2(a)(3) of this Subtitle to the extent permitted or required by this Subtitle and by such plan whenever such employer adopts such plan and shall continue in existence, as it may be reconstituted from time to time by the local employer in accordance with applicable law, for so long as such plan remains in existence.

9001.3 Ineligibility. Independent contractors shall not be eligible to participate in any plan.

9001.4 Special provisions. (a) Actuarial tables which distinguish on the basis of sex shall not be utilized for any purpose under any plan.

(b) Any installment distribution option permitted by any plan shall comply with all requirements of sections 457 and 401(a)(9) of the Internal Revenue Code and any treasury regulations promulgated thereunder.

(c) Any plan shall provide clear procedures for the review of domestic relations orders and shall require compliance with all domestic relations orders properly issued in accordance with such procedures and the requirements of applicable law in respect of amounts under the plan.

(d) Any plan established under this Subtitle may permit the loan of any amounts under such plan solely to a participant or beneficiary; *provided* that such plan establishes clear procedures for the administration of such loans and shall require compliance with sections 457 and 72(p) of the Internal Revenue Code and any treasury regulations promulgated thereunder and any other applicable laws.

PART 9002

ESTABLISHMENT OF PLAN

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.
9002.1 Assets held in trust

Sec.
9002.2 Documents to be filed

Section 9002.1 Assets held in trust. (a) A plan established by the board or a local employer shall require (i) that its assets be invested by one or more financial organizations selected by the board or deferred compensation committee, as applicable, and (ii) that, by January 1, 1999 or such other later date as may be permitted under section 457 of the Internal Revenue Code with respect to a plan in existence as of August 20, 1996 and immediately with respect to all other plans, all such assets shall be held in one or more trusts pursuant to one or more trust agreements.

(b) Each trustee designated by the board or deferred compensation committee must be authorized to act as a trustee under applicable law and shall be either a member of the board with respect to the State plan or a member of the relevant deferred compensation committee with respect to a model plan or other plan or a financial organization selected in accordance with the requirements of this Subtitle. A trust agreement between the board or deferred compensation committee and a trustee shall not meet the requirements of this section 9002.1(b) unless it satisfies each of the following requirements:

(1) the trust established by such agreement meets all of the requirements applicable to trusts described in section 457(g) of the Internal Revenue Code;

(2) such agreement provides that the assets of the plan to which such trust relates (i) are held in trust for the exclusive benefit of plan participants and their beneficiaries, (ii) may be used only to pay plan benefits and defray reasonable expenses of administering the plan and (iii) cannot revert to the State or local employer until all plan benefits have been paid to plan participants and beneficiaries in accordance with the terms of the plan;

(3) such agreement names the trustee and provides that, upon the trustee's appointment as such, the trustee shall have exclusive authority and direction to manage and control the assets of the plan, except to the extent that (i) such management and control has been delegated in accordance with the terms of the trust agreement to one or more financial organizations appointed in accordance with this Subtitle, (ii) the trust agreement provides that such trustee shall manage and control the assets of the plan at the direction of the board or deferred compensation committee or at the direction of one or more financial organizations appointed by the board or deferred compensation committee for this purpose, or (iii) the assets of the plan are to be allocated among the investment options available under the plan in accordance with the investment directions of plan participants, which investment directions may be communicated to the trustee by an administrative service agency appointed by the board or deferred compensation committee for this purpose;

(4) to the extent that the trustee performs the duties under this Subtitle of an administrative service agency, such agreement meets all of the requirements under this Subtitle applicable to contracts with administrative service agencies;

(5) to the extent that the trustee performs the duties under this Subtitle of a financial organization, such agreement meets all of the requirements under this Subtitle applicable to contracts with financial organizations; and

(6) such agreement satisfies the other applicable requirements of this Subtitle and any other applicable law.

9002.2 Documents to be filed. (a) Each local employer adopting the model plan or another plan shall file, prior to the acceptance of any deferrals under such plan, with the president for acknowledgment:

(1) a completed copy of the plan supplying all relevant information, including without limitation the information which is bracketed in the model plan;

(2) an executed copy of the trust agreement entered into with each trustee;

(3) a certification signed by its chief executive officer and chief legal officer stating (i) that the local employer is aware that there are three options for adopting a plan as described in section 9001.2(a) of this Subtitle, that the local employer has made an informed choice in determining to adopt the plan and that the local employer understands the ongoing responsibilities it is undertaking, including without limitation pursuant to this Subtitle, section 457 of the Internal Revenue Code and the plan, by adopting the plan; (ii) that the local employer's plan and trust agreement meet the requirements of section 457 of the Internal Revenue Code and of all other applicable State and local laws including this Subtitle; and (iii) that all required approvals of any local governing body or officer have been issued; provided, however, that in executing any such certification with respect to the adoption or amendment of the model plan, the chief executive officer and chief legal officer may rely on any ruling or determination issued by the Internal Revenue Service in respect of the model plan or any amendment to the model plan promulgated by the board;

(4) the name of each trustee, independent consultant, financial organization, firm of certified public accountants and administrative service agency which has been selected to provide services in respect of the plan and a certification signed by its chief executive officer and chief legal officer stating that each such trustee, independent consultant, financial organization, firm of certified public accountants and administrative service agency has been duly selected to provide services in accordance with the provisions of this Subtitle;

(5) evidence that bonds and insurance have been secured pursuant to the provisions of this Subtitle; and

(6) except to the extent that fiduciary acknowledgment is not required under section 9003.6 of this Subtitle, evidence that each trustee, independent consultant,

administrative service agency and financial organization selected by the deferred compensation committee will act as a fiduciary under section 457(g) of the Internal Revenue Code and under State and common trust law principles with respect to all trusteeship, administrative or investment matters for which it has assumed responsibility and the plan will be indemnified as a result of any cause of action brought against it as a result of acts or omissions of the trustee, independent consultant, administrative service agency or financial organization together with the reasonable costs of litigation arising therefrom.

(b) No deferral may be accepted under any plan until the board has been furnished with a written acknowledgment by the president that all of the documents and materials required by subdivision (a) and, to the extent applicable, subdivision (d) of this section 9002.2 have been received.

(c) No amendment may be made to a model plan other than an authorized amendment promulgated by the Board; provided, however, that notwithstanding any other provision hereof, the requirements of the preceding sentence shall be effective as of January 1, 1997 and shall not affect the validity of any amendment to a model plan which was duly adopted in accordance with the then-effective requirements of this section 9002.2 prior to January 1, 1997. Any amendment to a model plan made by the local employer which maintains such model plan shall require the same proof and procedures contained in subdivisions (a) and (b) of this section. Where one or more of the documents and materials required by subdivision (a) of this section contains identical information as submitted on the most recent filing of such documents and materials, a local employer that has adopted an amendment authorized by the Board may submit an affidavit, on a form provided by the Board, attesting that the documents and materials required by subdivision (a) of this section have not changed since the local government last submitted such documents and materials. In the event that one or more of the documents or materials required by subdivision (a) of this section has changed, such documents and materials are required to be submitted at the same time the affidavit is submitted to the president.

(d) Each local employer adopting or amending a plan other than the model plan or amending the model plan in a manner other than authorized by the board shall file, prior to the acceptance of any deferrals under such plan, with the president for acknowledgment (i) a ruling or determination issued by the Internal Revenue Service stating that such plan or form of plan meets the requirements of section 457 of the Internal Revenue Code applicable to eligible deferred compensation plans or (ii) an opinion of legal counsel that such plan meets the requirements of section 457 of the Internal Revenue Code applicable to eligible deferred compensation plans.

PART 9003

SELECTION OF AND AGREEMENTS WITH TRUSTEES, INDEPENDENT CONSULTANTS, ADMINISTRATIVE SERVICE AGENCIES, FINANCIAL ORGANIZATIONS AND CERTIFIED PUBLIC ACCOUNTANTS

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.	Sec.
9003.1 Contracts or agreements	9003.5 Miscellaneous requirements
9003.2 Competitive proposals	9003.6 Acknowledgment
9003.3 Criteria for selection	9003.7 Precluded investments
9003.4 Provision of diverse investments	9003.8 Transfer of assets

Section 9003.1 Contracts or agreements. (a) The contracts or agreements effecting the appointment of any trustee, independent consultant, administrative service agency, financial organization or firm of certified public accountants to provide services in respect of a plan shall be awarded pursuant to the procedures set forth in this Part 9003 and shall comply with the requirements of this Subtitle. Contracts or agreements with administrative service agencies shall not be required in whole or in part if an appointed trustee or financial organization, in the opinion of the board or of the deferred compensation committee, as applicable, is able to perform all or a portion of the required services as effectively. Contracts or agreements with independent consultants shall not be required in whole or in part if, in the opinion of the board or of the deferred compensation committee, as applicable, such board or deferred compensation committee is able to effectively make decisions with respect to the investment of plan assets, the allocation of plan assets among financial organizations and the selection of financial organizations to invest the assets of a plan without the advice of a consultant. Upon the expiration or termination of any contract or agreement entered into in accordance with this Subtitle, the board or deferred compensation committee, as applicable, shall follow the procedures set forth in this Part 9003 in awarding new contracts and entering into new agreements. Unless they are entered into in accordance with the procedures set forth in this Part 9003 and are in all other respects in substantial compliance with the requirements of this Subtitle, all contracts or agreements entered into in respect of a plan shall be null and void and new competitive proposals shall be submitted pursuant to the procedures set forth in this Part 9003. Notwithstanding the previous sentence, no trustee who is the only trustee of a plan shall be forced to resign the position of trustee solely by operation of this section 9003.1 prior to the time such person's successor as trustee has been duly qualified and appointed.

(b) Notwithstanding section 9003.1(a) of this Subtitle, a deferred compensation committee may contract with a firm of certified public accountants selected as a result of a competitive proposal undertaken by the local employer that expressly included in the scope of services an audit of the deferred compensation plan sponsored by the local government to be conducted in compliance with section 9005.1 of this Subtitle. The competitive request for proposals must be in general compliance with section 9003.2 of this Subtitle, except for the requirement of notice in the *State Register*. The deferred compensation committee must adhere to the criteria contained in section 9003.3 of this Subtitle in the selection of such auditor made pursuant to this paragraph (b). A firm of certified public accountants selected by a deferred

compensation committee pursuant to this paragraph (b) shall be subject to the provisions of section 9003.5 of this Subtitle. The firm of certified public accountants may be the same firm that is under contract with the local employer for other auditing services of the local employer.

(c) Notwithstanding section 9003.1(a) of this Subtitle, the board or a deferred compensation committee may contract with a financial organization for the purposes of investing a portion of the assets of a plan selected as a result a search conducted by the independent consultant to the board or deferred compensation committee of financial organizations that provide such services. The board or deferred compensation committee shall provide direction to the independent consultant, in writing, designating the generally recognized investment classification and sub-classification that the independent consultant is to make a recommendation to the board or deferred compensation committee after the conduct of a search of qualified financial organizations and the number of financial organizations that is to be recommended, which number shall not be less than three. The independent consultant must adhere to the criteria contained in section 9003.3 of this Subtitle prior to recommending any financial organization to the Board or deferred compensation committee. The independent consultant must recommend at least the number of financial organizations requested by the board or deferred compensation committee in each generally accepted investment classification and sub-classification and a detailed analysis of each financial organization being recommended, including a comparison of such recommended financial organization to the appropriate and generally recognized benchmarks for such investment classification and sub-classification. The board or deferred compensation committee may select one or more financial organizations for the purposes of investing a portion of the assets of a plan from the recommendation of the independent consultant. The provisions of this Section 9003.1(c) apply to the board and any deferred compensation committee that enters into contracts with financial organizations separately from any other contracts or agreements effecting the appointment of any trustee, independent consultant, administrative service agency, or firm of certified public accountants to provide services in respect of a plan. (added June 18, 2008)

9003.2 Competitive proposals. All contracts and agreements in respect of a plan shall be awarded only after receiving competitive proposals; provided, however, that no competitive proposal or bidding shall be necessary for the board or a deferred compensation committee to serve as the trustee of a plan under its authority or with respect to financial organizations selected pursuant to Section 9003.1(c). The board or deferred compensation committee, as applicable, shall cause to be published an announcement requesting competitive proposals. Such announcement shall be published in the *State Register* and in the official newspaper or newspapers, if any, or otherwise in an appropriate newspaper designated for such purposes, at least 90 days prior to the date on which the contract or agreement will be awarded, and shall request proposals within a specified time period from the date of publication. (amended June 18, 2008)

9003.3 Criteria for selection. (a) In reviewing competitive proposals and selecting a trustee, independent consultant, financial organization, administrative service agency or a firm of certified public accountants, the board or deferred compensation committee, as applicable, shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man or woman acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; provided, however, that the board

or deferred compensation committee, as applicable, may reasonably rely on the evaluation of such competitive proposals made by its properly selected independent consultants in any case other than their own selection. The board or deferred compensation committee, as applicable, shall consider, as applicable, in selecting a trustee, independent consultant, financial organization, administrative service agency or firm of certified public accountants among other items, the following:

(1) the stability of the independent consultant, administrative service agency, firm of certified public accountants or financial organization as evidenced by its experience or investment record over a substantial period of time;

(2) the ability of the trustee, independent consultant, administrative service agency, firm of certified public accountants or financial organization to meet its contractual obligations, provide the services set forth in the proposals, and to comply with the reporting requirements to the board or deferred compensation committee, as applicable, and participants, and with all requirements of the plan, section 457 of the Internal Revenue Code and this Subtitle;

(3) the variety and types of investment products offered by the financial organization, and the ability to transfer among such products offered by a different financial organization with which the board or deferred compensation committee may have a contract;

(4) the trustee's, independent consultant's, administrative service agency's, firm of certified public accountants' or financial organization's experience with plans that meet the requirements for qualification under the Internal Revenue Code, eligible deferred compensation plans under section 457 of the Internal Revenue Code, individual retirement accounts, tax-sheltered annuities under section 403(b) of the Internal Revenue Code, and the trustee's, independent consultant's, administrative service agency's, firm of certified public accountants' or financial organization's familiarity with public pension systems and the fiduciary obligations of administrators, investment managers and trustees under the Employee Retirement Income Security Act of 1974 and similar federal or State statutes;

(5) whether the trustee, investment, consulting, auditing or administrative products and services described in the proposal are of the highest quality and soundness in all respects;

(6) the overall cost efficiency of the proposal; and

(7) the overall quality and scope of the services to be provided to plan participants under the trustee's, independent consultant's, administrative service agency's, firm of certified public accountants' or financial organization's proposal.

All proposals shall be in writing, contain a representation that the proposal complies with all requirements of this Subtitle and clearly indicate all direct fees, indirect fees and charges. All brokerage fees and related charges shall be negotiated so that the best competitive rate under the circumstances is obtained.

(b) Each proposal submitted under this Part 9003 shall fully disclose any sponsorship or similar arrangement. Such arrangements shall be precluded unless it can be demonstrated by clear and convincing evidence that the arrangement is cost effective.

(c) Before a contract or agreement between a deferred compensation committee and a trustee, independent consultant, administrative service agency, firm of certified public accountants or financial organization may become effective, the deferred compensation committee must submit in writing to the president the name of such selected trustee, independent consultant, administrative service agency, firm of certified public accountants or financial organization and a certification signed by its chief executive officer and chief legal officer stating that each such trustee, independent consultant, administrative service agency, firm of certified public accountants or financial organization has been duly selected to provide services in accordance with the provisions of this Subtitle.

9003.4 Provision of diverse investments. The board and each deferred compensation committee shall appoint, with respect to the plan under their control, in accordance with the requirements of this Subtitle, one or more financial organizations such that amounts held under the plan may be at all times invested in one or more of a broad range of investment alternatives, including without limitation a diverse selection of fixed income and equity investments.

9003.5 Miscellaneous requirements. (a) All contracts and agreements entered into with a trustee, an independent consultant, a financial organization, a firm of certified public accountants or an administrative service agency shall be in writing, shall be awarded on the basis of a competitive bid conducted or a search conducted in accordance with Section 9003.1(c) in respect of the specific contract or agreement in accordance with this Part 9003, shall not exceed five years in duration, and shall impose no penalties or surrender charges for the transfer of assets or responsibilities on expiration of the contract or agreement. Where the board or a deferred compensation committee enters into a contract or agreement with a trustee, a financial organization or organizations, and an administrative service agency and such trustee, financial organization or organizations and administrative service agency is selected by the board or deferred compensation committee independently from each other service, such contracts or agreements shall not exceed ten years in duration. Notwithstanding the previous sentence, no trustee who is the only trustee of a plan shall be forced to resign the position of trustee solely by operation of this section 9003.5(a) prior to the time such person's successor as trustee has been duly qualified and appointed. (amended June 18, 2008)

(b) Notwithstanding Section 9003.5(a), when the board or a deferred compensation committee deems it to be in the best interest of the plan, the board or any deferred compensation committee may extend, in writing, by vote duly taken, any contract or agreement entered into with a trustee, an independent consultant, a financial organization, a firm of certified public accountants or an administrative service agency for a duration not to exceed two consecutive one-year periods and with the consent of such party; *provided, however*, that any such one-year extension shall be implemented only upon (1) the expiration of the initial term of such contract or agreement in the case of the first one-year extension, or (2) the expiration of the first one-year extension in the case of the second one-year extension. In the event that the board or a deferred compensation committee implements such an extension, the board or the deferred compensation

committee shall describe in writing the reasons for its determination that the extension is in the best interest of the plan.

(c) Neither the Board nor any deferred compensation committee may permit, nor enter into an agreement that permits, a trustee, financial organization, independent consultant, administrative service agency or any other person to select one or more other trustees, administrative service agencies, firms of certified public accountants, independent consultants, or financial organizations to provide services in respect of a plan. Notwithstanding the previous sentence, this section 9003.5(c) shall not prohibit the Board or any deferred compensation committee from entering into an agreement with

(1) a financial organization selected and retained by the Board or a deferred compensation committee, as applicable, in accordance with this Subtitle, that provides for self-directed investment services through a mutual fund or brokerage “window” arrangement sponsored by such financial organization with respect to a plan, *provided* that such self-directed investment services shall not be the sole investment alternative provided under a plan and that the Board and the deferred compensation committee shall establish clear guidelines regarding participants' access to, and level of participation in, such self-directed investment services

(2) a financial organization selected and retained by the Board or a deferred compensation committee, as applicable, in accordance with this Subtitle, to manage the stable income fund of such plan which authorizes such financial organization to engage in one or more of the following fund management activities with respect to the assets of a stable income fund:

(i) the investment of the assets of the stable income fund in one or more guaranteed investment contracts, provided, however, that such guaranteed investment contract shall not exceed five years in duration;

(ii) the purchase of one or more wrap contracts with respect to the assets of the stable income fund; or,

(iii) the periodic allocation of the assets of the stable income fund between or among two or more other financial organizations selected and retained by the Board or deferred compensation committee, as applicable, in accordance with this Subtitle,

provided that, in each case,

(i) the written agreement between the Board or deferred compensation committee, as applicable, and the financial organization, expressly authorizes the applicable fund management activities and states that the financial organization is a fiduciary to the plan with respect to the fund management activities so authorized;

(ii) any such fund management activity is undertaken by the financial organization in accordance with reasonable practices of the financial organization

applicable to its clients generally, and the financial organization receives no fee or other consideration from any person (other than the plan) related to such fund management activity;

(iii) the guaranteed investment contract or wrap contract, as applicable, imposes no penalties or surrender charges for the transfer of assets or responsibilities on expiration of the contract or agreement;

(iv) the trustee of the plan continues to be the owner on behalf of the plan of all of the assets of the stable income fund; and,

(v) any such fund management activity complies with the criteria for selection and reporting of section 9003.3 of this Subtitle and the then effective investment policies and guidelines of the Board or deferred compensation committee, as applicable, related to the stable income fund.

A financial organization engaged in the management activities described in paragraph (2) of this section 9003.5(c) shall do so in accordance with the procedures of this paragraph (2) and with other provisions of this Subtitle to the extent such other provisions are incorporated into this paragraph (2).

9003.6 Acknowledgment. Except as otherwise provided in this section 9003.6, each trustee, independent consultant, administrative service agency and financial organization so appointed shall acknowledge in writing that it is a fiduciary with respect to all administrative or investment matters for which it has assumed responsibility with respect to a plan. Notwithstanding the foregoing, no such fiduciary acknowledgment shall be required pursuant to this section 9003.6 from a financial organization (i) which issues a guaranteed investment contract, or (ii) which is the manager of an open-ended investment company registered under the Investment Company Act of 1940, as now in effect or as hereinafter amended, solely by reason of the investment, upon the specific direction of a trustee, another financial organization, the Board, a deferred compensation committee or an administrative service agency acting in accordance with the terms of the plan to implement the investment directions of one or more participants, of amounts held under the plan in shares of such open-ended investment company.

9003.7 Precluded investments. No contract or agreement entered into with a financial organization may provide for the investment of any amounts under a plan in any annuity contract providing for a term which could exceed five years or which is measured by one or more natural lives or any life insurance or other contract providing traditional death benefits.

9003.8 Transfer of assets. All amounts deferred under a plan, together with all necessary investment instructions, shall be paid by the State or local employer as promptly as possible, but in no event later than two business days from the applicable payroll date, to an appointed trustee which shall then pay such amounts as promptly as possible, but in no event later than one business day following receipt thereof by such trustee, to one or more appointed financial organizations for investment, and upon receipt thereof by each such financial organization shall, if not otherwise invested, be transferred to an interest-bearing account to hold such amounts in cash or cash equivalent investments within one business day, where such

amounts may remain until the financial organization receives all necessary investment instructions or otherwise determines it prudent to transfer such amounts to another investment fund.

PART 9004

SOLICITATION AND EDUCATION

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.

9004.1 Provisions

Section 9004.1 Provisions. No trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency nor any of their agents shall use information obtained by reason of its appointment in respect of a plan as a trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency to solicit or otherwise induce any person to invest in, purchase, utilize or act in any other manner regarding any products or services made available by such trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency. Educational materials designed to acquaint employees with the benefits of such plan may be provided by a financial organization or administrative service agency upon prior approval by the Board or deferred compensation committee, as applicable. All information obtained in connection with any services performed or proposed to be performed in respect of a plan shall be confidential and used exclusively for purposes relating to such plan and expressly contemplated by an agreement entered into with the Board or deferred compensation committee, as applicable, in accordance with the requirements of this Subtitle. Neither the Board nor any deferred compensation committee shall enter into any agreement in respect of a plan with a trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency which permits the use of any information obtained by reason of appointment as a trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency to solicit or otherwise induce any person to invest in, purchase, utilize or act in any other manner regarding any products or services made available by such trustee, independent consultant, financial organization, firm of certified public accountants or administrative service agency for any purpose not directly related to the administration of the plan and the investment of plan assets in accordance with the requirements of this Subtitle.

PART 9005

AUDITING, BONDING AND INSURANCE

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.	Sec.
9005.1 Financial Statements, Auditing and Agreed Upon Procedures	9005.3 Statements
9005.2 Authority of board and committee	9005.4 Bonding and insurance

Section 9005.1 Financial Statements, Auditing and Agreed-Upon Procedures

Reports. The board, with respect to the State plan, and the deferred compensation committee, with respect to any other plan, shall be responsible for causing such plan to be in compliance with this Section 9005 for each plan year.

(a) Subject to paragraph (c) of this Section 9005.1, a plan shall be subject to this paragraph (a) for a plan year if the plan has fewer than 100 participants as of the last day of the plan year. If a plan is subject to this paragraph (a) for a plan year, the deferred compensation committee shall:

(1) prepare, or cause to be prepared, for the plan year an unaudited financial statement of the net assets available for benefits and the related statements of changes in net assets available for benefits for the plan year-end; and

(2) engage, or cause to be engaged, in accordance with the requirements of Part 9003 of this Subtitle, a certified public accountant to conduct a review of the plan's activities during the plan year and to produce an agreed-upon procedures report for the plan year, which report shall specify the procedures and the results of the procedures by such firm of certified public accountants in the review of each of the following items (and any other additional items as may be required by the deferred compensation committee for the plan):

(i) whether participant account balances, by investment option and in the aggregate as of the plan-year end, as reported by the administrative service agency for the plan, agree to the value of the assets held by the trustee of the plan by investment option and in the aggregate as of plan-year end;

(ii) whether participant deferrals reported by the plan sponsor, by individual participant and in the aggregate, for the plan year agree with the deferrals received by the trustee of the plan for the plan year;

(iii) whether participant deferrals for the plan year were properly authorized and accurately remitted to the trustee of the plan in accordance with the timing and other requirements of the plan document (or industry practice if no direction is provided in the plan document);

(iv) whether the plan properly and separately accounted for pre-tax and, if applicable, designated Roth contributions deferred or contributed for the plan year;

(v) whether maximum contribution limitations and minimum required distribution requirements were properly implemented for the plan year;

(vi) whether participant requests for lump sum and installment benefit distributions for the plan year were properly authorized and processed in accordance with the plan document and contractual provisions (or industry practice, if no direction is provided in the plan document or applicable contracts);

(vii) whether participant requests for unforeseeable emergency withdrawals during the plan year were processed according to written procedures, properly authorized and properly documented;

(viii) whether participant requests for plan loans during the plan year were processed according to written procedures and were properly authorized and documented;

(ix) whether participant requests for deferral amount changes and asset allocation changes for the plan year were processed accurately and in a timely manner in accordance with the plan document and applicable contract provisions (or industry practice, if no direction is provided in the plan document or applicable contracts);

(x) whether all plan-level and participant-level fees for the plan year were disclosed to participants, were allocated in accordance with written procedures and on a uniform basis and were assessed solely to support operations of the plan; and

(xi) whether, for the plan year, employees who were eligible during that plan year to elect to participate in the plan were provided with written notification of the plan and enrollment opportunities.

(3) The specific procedures and methods applied to each item covered by paragraph (a)(2) of this Section 9005.1 shall be determined in the professional judgment of the certified public accountant in accordance with generally accepted industry standards in conjunction with the deferred compensation committee for the plan prior to the firm's performance of the agreed-upon procedures on the plan.

(b) A plan shall be subject to this paragraph (b) for a plan year if it is the State plan or, subject to paragraph (c) of this Section 9005.1, if the plan has 100 or more participants as of the last day of the plan year. If a plan is subject to this paragraph (b) for a plan year, the board or deferred compensation committee, as applicable, shall:

(1) prepare, or cause to be prepared, a financial statement of the net assets available for benefits and the related statements of changes in net assets available for benefits for the plan year-end, which statements shall be prepared in accordance with Governmental Accounting Standards Board Statement 32, "Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans", or any successor statement thereto; and

(2) engage, or cause to be engaged, in accordance with the requirements of Part 9003 of this Subtitle, a certified public accountant to conduct an audit of the financial statements described in paragraph (b)(1) of this Section 9005.1 in accordance with auditing standards generally accepted in the United States of America.

(c) The following rules shall apply to plans that would otherwise become subject to paragraph (a) or (b) of this Section 9005.1 (or cease to be subject to paragraph (a) or (b) of this Section 9005.1) from one plan year to the next succeeding plan year as a result of an increase or decrease in the number of participants in the plan.

(1) A plan that (i) was subject to paragraph (a) of this Section 9005.1 for a prior plan year and that has complied with the requirements set forth in paragraph (a) above for that plan year and (ii) becomes subject to paragraph (b) of this Section 9005.1 for the current plan year by virtue of having 100 or more participants as of the last day of the current year, may elect to comply with the provisions of paragraph (a) of this Section 9005.1 for such current plan year, and, if such election is made, shall not be subject to the requirements of paragraph (b) of this Section 9005.1 for the current year.

(2) A plan that (i) was subject to paragraph (b) of this Section 9005.1 for a prior plan year and (ii) would be subject, but for the operation of this paragraph (c)(2), to paragraph (a) of this Section 9005.1 for the current plan year by virtue of having fewer than 100 participants as of the last day of the current plan year, shall be required to continue to comply with the provisions of paragraph (b) of this Section 9005.1 for such current plan year and shall not become eligible to utilize the procedures in paragraph (a) of this Section 9005.1.

(3) Example: Plan X has 90 participants as of the last day of Plan Year 1, and accordingly, the deferred compensation committee of Plan X causes the plan to comply with the financial statement and agreed-upon procedures requirements described in paragraph (a) of this Section 9005.1 with respect to Plan Year 1. On the last day of Plan Year 2, Plan X has 110 participants. Plan X may elect to continue to comply with the provisions of paragraph (a) of this Section 9005.1 and will not be subject to the audit requirements of paragraph (b) for Plan Year 2.

(4) Example. Plan Y has 110 participants as of the last day of Plan Year 1, and accordingly, the deferred compensation committee of Plan Y causes the plan to comply with the financial statement and audit requirements described in paragraph (b) of this Section 9005.1 with respect to Plan Year 1. On the last day of Plan Year 2, Plan Y has 90 participants. Plan Y must continue to comply with the provisions of paragraph (b)

of this Section 9005.1 and will not be permitted to rely on the agreed-upon procedures provisions of paragraph (a) of this Section 9005.1 for Plan Year 2.

(d) The deferred compensation committee for a plan subject to paragraph (a) of this Section 9005.1 for a given plan year may elect to comply with the requirements of paragraph (b) of this Section 9005.1 for such plan year.

(e) For purposes of this Section 9005.1, “participant” means any person who, as of the last day of a plan year, has an account balance under the plan that is greater than zero.

(f) The agreed-upon procedures requirement described in paragraph (a)(2) of this Section 9005.1 and the audit requirement described in paragraph (b)(2) of this Section 9005.1 shall be completed by no later than 6 months following the end of the plan year to which such agreed-upon procedures or audit relates. Provided, however, for a plan year that ended on or after December 31, 2010 and before December 31, 2011, the agreed-upon procedures or audit relating to such plan year shall be completed by no later than 12 months following the end of such plan year.

(g) The board or deferred compensation committee, as applicable, for a plan shall adopt and communicate to plan participants written procedures whereby a plan participant may request in writing or electronically to receive the financial statements and agreed-upon procedures report described in paragraph (a)(2) of this Section 9005.1 and the audited financial statements and accompanying auditors report described in paragraph (b)(2) of this Section 9005.1 at no cost to the participant other than a reasonable charge for copying and postage. The board or deferred compensation committee, as applicable, will be deemed to have satisfied the requirements of this paragraph (g) if participants (i) are able to obtain the applicable reports and financial statements for the plan or (ii) are directed to a web site associated with the plan or the State or local employer sponsor of the plan that contains such information in a readily readable and downloadable format.

(h) The board or deferred compensation committee, as applicable, shall file with the president a complete and accurate copy of the financial statements and agreed-upon procedures report described in paragraph (a)(2) of this Section 9005.1 or the audited financial statements and accompanying auditors report described in paragraph (b)(2) of this Section 9005.1 promptly following delivery of such statements and reports to the board or deferred compensation committee, as applicable.

(i) The provisions of this Section 9005.1 shall be in effect for each plan year of a plan ending on or after December 31, 2010. (added June 15, 2011)

9005.2 Authority of board and committee. The board and each deferred compensation committee shall receive reports from its agents and appointed trustees, independent consultants, administrative service agencies and financial organizations, and shall promptly terminate or amend such agency, arrangement, agreement or contract with such trustee, independent consultant, administrative service agency or financial organization if its obligations under this Subtitle or otherwise so require. To the extent necessary to comply with this section 9005.2 or

section 9006.1, the board or deferred compensation committee, as applicable, shall have the authority to serve as a temporary or interim trustee until a successor trustee is appointed in accordance with this Subtitle.

9005.3 Statements. Each participant in a plan shall be furnished with a statement at least quarterly from the trustee or administrative service agency. Such statement shall indicate the balance of his or her account under the plan, the participant's interest in each investment option under the plan and any other data which the board or deferred compensation committee, as applicable, shall determine to be relevant. Each participant in a plan shall be furnished with clear and complete written disclosure no less frequently than annually (i) of all fees and expenses paid out of or charged against any assets of the plan, including all fees and expenses netted against any investment return on amounts held under the plan and (ii) of the allocation of all such fees and expenses to and among participants' accounts under the plan.

9005.4 Bonding and insurance. (a) Each person appointed in accordance with this Subtitle or outside agent which handles, holds, invests, maintains custody of or directs disbursement of funds or serves as a trustee shall be bonded with a customary or usual bond, obtained from an organization duly authorized and licensed to provide such bond in the State of New York, to protect against any loss resulting from fraud or dishonesty by such person or the employees, officers and agents thereof.

(b) The amount of the bond shall not be less than the lesser of:

(1) 100 percent of the amount under the plan managed or administered or held by such person; or

(2) \$25 million; provided, however, that the board or deferred compensation committee, as applicable, may, in its discretion, require a bond in a greater amount if the board or deferred compensation committee determines that such greater amount is necessary or advisable to adequately protect the plan from any loss resulting from fraud or dishonesty by such person.

The cost of any such bond for a trustee who is a member of the board or deferred compensation committee shall be treated as a reasonable and necessary expense of administering the plan and may be paid from the assets of the plan.

(c) Each trustee, independent consultant, administrative service agency and financial organization appointed in accordance with this Subtitle shall provide appropriate evidence of adequate insurance, and the cost of any such insurance for a trustee who is a member of the board or deferred compensation committee, as applicable, shall be treated as a reasonable and necessary expense of administering the plan and may be paid from the assets of the plan.

PART 9006

COMPLIANCE

(Statutory authority: State Finance Law, § 5; L. 1982, ch. 547)

Sec.

9006.1 Authority of board

9006.2 Documentary provisions

Sec.

9006.3 Exemptions

Section 9006.1 Authority of board. Upon notice that any plan or any contract or agreement or other arrangement entered into in respect of a plan does not substantially comply with this Subtitle or any other applicable federal, State or local law, or that a local employer is not ensuring substantial compliance with its plan, the board may investigate, hold hearings and take such action as it deems warranted or appropriate, including but not limited to termination of the plan, contract, agreement or other arrangement.

9006.2 Documentary provisions. Every contract or agreement entered into by the board or a deferred compensation committee in respect of a plan shall contain a provision that the agreement or contract is subject to the plan and to this Subtitle, and that such plan and this Subtitle are made a part thereof.

9006.3 Exemptions. In exceptional circumstances, and where the board deems it to be in the best interest of the plan, the board in its sole discretion may grant an exemption from the applicability of any of the rules and regulations set forth under this Subtitle; *provided, however,* that, any exemption granted hereunder must be in accordance with the requirements of the Internal Revenue Code, the plan and the board's fiduciary obligations. In the event that the board grants such an exemption, the board shall describe in writing the exceptional circumstances and explain the reasons for its determination that the exemption is in the best interests of the plan. All requests for such exemption must be submitted to the board in writing and contain a detailed explanation of the reasons why an exemption has been requested.