



TOMPKINS COUNTY

REQUEST FOR PROPOSALS

SECTION 457 DEFERRED COMPENSATION PLAN

**ADMINISTRATIVE SERVICE AGENCIES, FINANCIAL
ORGANIZATIONS, and/or TRUSTEES**

DUE DATE: AUGUST 29, 2014, 11:30 a.m.

RFP Released	August 8, 2014
Last Day for Questions	August 20, 2014, 4:00 p.m.
Proposals Due	August 29, 2014
Award	September 2014

Procedures Governing Submission of Proposals

The purpose of the proposed deferred compensation plan will be to provide eligible employees with a convenient way to provide for a long-term retirement program and to encourage broad-based participation of employees in the plan.

We do not want to imply that any specified amount of contributions will be made, but we do want to assure that this additional benefit is recognized by all employees, that they have the opportunity to receive one-on-one counseling and voluntarily participate.

The plan is intended to qualify as an "eligible deferred compensation plan" under Section 457 ("Section 457") of the Internal Revenue Code of 1986 ("Code"), as now in effect or hereinafter amended. To become an "eligible deferred compensation plan" in the State of New York, you must meet the requirements of the "Rules and Regulations" [Parts 9000 to 9006 of Subtitle II of Title 9 NYCRR ("Subtitle II")] (the "Regulations") promulgated by the New York State Deferred Compensation Board (the "Board") pursuant to the authority granted by the State Finance Law, § 5; L. 1982, ch. 547.

This document constitutes a Request for Proposals from qualified Administrative Service Agencies and/or Financial Organizations relating to (1) trust service, (2) administration and/or (3) funding of an "eligible deferred compensation plan". If you are "qualified" according to the Regulations to administer, maintain records and accounts of plans and/or if you have appropriate trust services and/or products available for use as funding media and are interested in making those services and/or products available, you are requested to complete this invitation for Proposals.

Due Date

To receive consideration, all proposals:

- Must submit ONE (1) original copy and ONE (1) copy on either a CD or Flash Drive of the proposal no later than 11:30 a.m., on August 26, 2014.

Send to: Lisa M. Hall, Buyer
Tompkins County Purchasing
125 East Court Street
Old Jail Building, 2nd Floor
Ithaca, NY 14850

- Must display the following identification on the outside lower left-hand corner:

**“RESPONSE TO REQUEST FOR PROPOSALS
DEFERRED COMPENSATION ENCLOSED”**

Form and Substance

Attached you will find: the "Rules and Regulations" (effective June 15, 2011), hereafter referred to as the "Regulations", and the Model Plan promulgated by the Legislature for which you are to rely on for responding to this invitation for Proposals. Failure to conform to or satisfy any requirement of these documents will result in the immediate rejection of the proposal.

- Must include a fully completed questionnaire, restating each statement or question in Section I through Section VI inclusive, and by recording your response directly below each statement or question.
- Must respond to all questions in the "Contractual Requirements" section (Section I) and must conform to the specifications set forth in this Request for Proposals ("RFP"). If recordkeeping services are provided by a "person" (defined by Regulations) that is neither the parent nor subsidiary company of the Financial Organization, then separate and complete responses must be received by each company.
- Must include a transmittal letter on the Company's official letterhead signed by an official of the Company who is authorized to commit the organization to perform the services outlined in the submitted proposal: you must indicate such commitment. The transmittal letter must contain a representation that the proposal complies with all requirements of the Regulations and the Model Plan.

It is each bidder's responsibility to assure that proposals are shipped in a timely fashion so as to be received by the designated party on or before the due date. Proposals received after the specified date will not be considered. We accept no responsibility for lost and/or late delivery of proposals.

By submitting a proposal, each bidder agrees not to make any claims for or have any right to damages because of any misunderstanding or misrepresentation of specifications, because of any misinformation or lack of information or because such bidder is not selected to provide the services proposed. Submission also indicates acceptance of the conditions contained in the Request for Proposals, unless clearly and specifically noted otherwise in the response. All costs for developing proposals are entirely the responsibility of the bidder.

Questions regarding these specifications may be directed to Lisa Hall, lhall@tompkins-co.org. Questions **must** be received no later than **4:00 p.m. on August 20, 2014**.

Evaluation Criteria

In selecting, we will use criteria which comply with the requirements of the Regulations, including Section 9003.3(a-c)(1 through 7) of the Regulations.

All qualified proposals, sought in conjunction with the requirements of Section 9003.2 of the Regulations, will be evaluated and awards made to the bidder or bidders whose bid is determined to be in the best interest of the plan participants.

Selection Process

Section 9001.2(b) of the Regulations, recognizes that we have appointed a committee to act on our behalf, to the extent permitted or required by the Regulations and by the Model Plan.

Section 9003.3(c): Before any contract or agreement entered into by the committee may become effective, the committee must submit in writing, to the President of the New York State Civil Service Commission (“the President”), the name of such selected bidder(s) and a certification signed by the chief executive officer and chief legal officer stating that such bidder(s) has been duly selected to provide services in accordance with provisions of the Regulations.

Contracts or agreements cannot be awarded before the expiration of ninety (90) days from date of our announcement publication in the State Register and local paper.

Invitations may be made for oral presentations.

Any award of a contract or agreement as a result of this invitation will be made by written notification.

We reserve the right to reject any or all proposals or parts thereof. We reserve the right to establish a deferred compensation plan by any of the methods prescribed by Section 9001.2(a) of the Regulations.

Term of Contract

Pursuant to Section 9003.5(a) of the Regulations, we expect to enter into a written contractual arrangement(s) of up to five (5) years in duration with an option to extend for an additional two (2) years upon mutual agreement. All contracts and agreements entered into shall impose no penalties or surrender charges for the transfer of assets or responsibilities on expiration of the contract or agreement. Upon the expiration or termination of any contract(s) or agreement(s), the committee shall follow procedures set forth in the Regulations in Part 9003 for awarding new contracts and entering into new agreements.

<p>SECTION I. CONTRACTUAL REQUIREMENTS</p>
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"Agree" or "Disagree" must be indicated for each of the following specifications. The following specifications can be found in either the Regulations or the Model Plan, all of which should have been enclosed as attachments. Please include reasons for any rejection or disagreement of any specification and alternative options, if applicable. There should be neither elaboration nor qualification for "agree" unless otherwise requested.

Specifications of the Regulations

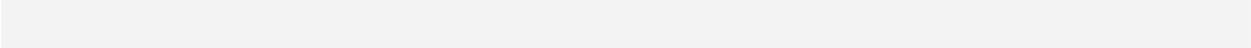
1. Section 9000.2(b)(4)- As a Financial Organization authorized to do business (provide investment products) in New York State, you agree that your firm is one of the following: (a) a Registered Investment Advisor, (b) a Bank or (c) an Insurance Company qualified under the laws of more than one state.

If you are an Insurance Company acting through a subsidiary in New York State, then the Subsidiary Insurance Company must certify that it (the Subsidiary Insurance Company) is qualified to do business under the laws of more than one state.

2. Section 9001.2(b) - We have appointed a deferred compensation committee to act on our behalf and you agree to interface with this committee. Additionally, we may decide to be the grantor of our own trust, then you also agree to interface with the trust and trustee: all funding contracts, of whatever nature, will be "issued to, owned and retained by the trustee".
3. Section 9001.4(a) through (d) - You agree to abide by all four (4) provisions, especially not allowing annuity type payouts.
4. Section 9002.2(a)(5) - You will provide evidence that bonds and insurance have been secured by you pursuant to the Regulations.
5. Section 9002.2(a)(6) - You will acknowledge in writing that you will act as a fiduciary under Section 457(g) of the Code and under State and common trust law principles with respect to all trusteeship, administrative, or investment matters for which you assume responsibility. Additionally, you agree to indemnify our Plan as a result of any cause of action brought against it as a result of acts or omissions together with the reasonable costs of litigation arising therefrom.

6. Section 9003.3(a) - Your proposal shall be in writing and contain a representation that the proposal complies with all requirements of the Regulations and clearly indicate all direct fees, indirect fees and charges.
7. Section 9003.5(a) - All contracts and/or agreements shall be in writing, shall be awarded on the basis of a competitive bid, and shall not exceed five (5) years in duration, and shall impose no penalties or surrender charges for the transfer of any asset(s) or responsibilities on expiration of the contract or agreement.
8. Section 9003.5(c) - You will not permit any other Trustee, Administrative Service Agency, Financial Organization, independent consultant or person to provide services in respect to the Model Plan we have adopted.
9. Section 9003.7 - You will not permit an investment of any amount, in any annuity contract providing for a term which could exceed five (5) years or which is measured by one or more natural lives or any life insurance or other contract providing traditional death benefits.
10. Section 9004.1 - All information obtained by your position will remain confidential and you will neither solicit nor provide products other than deferred compensation.
11. Section 9005.3 - Statements to participants will be provided at least quarterly, even in situations where no contributions are being made but funds are on deposit. You also agree to provide, at least annually, an additional statement to participants disclosing all fees and expenses paid out of or charged against plan assets.
12. Section 9005.4 - Agree to satisfy the bonding and insurance requirements of this Section and provide evidence of such.
13. Section 9006.2 - You agree to include in your contracts and agreements a provision that the contracts and agreements are subject to the Regulations and the Model Plan and that such Regulations and the Model Plan are made part thereof.

Specifications of the Model Plan

1. Section 3.2(a) - The Model Plan requires a minimum deferral amount to be \$260 for any plan year. Your proposal will state this minimum requirement wherever requested.
 2. Section 4.1 - You acknowledge that the amounts of compensation deferred by the participants will be invested, according to the participant's investment directions, no later than two (2) business days following receipt thereof, in the appropriate investment funds.
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SECTION II. TRUSTEE SERVICES

NOTE: You may skip this section entirely if you are not a Financial Organization bidding to become Trustee. You do not need to copy any of the questions. Move to next applicable Section.

Section 9002.1(a) of the Regulations states that assets must be held by one or more trustees pursuant to one or more trust agreements. Such agreements must satisfy all the requirements of Section 9002.1(b). Section 9002.1(b) also indicates who may be trustee. We reserve the right to create our own trust as provided by this Section 9002.1(b) but desire to explore the alternative of a Financial Organization acting as trustee.

Please respond to each of the following statements if you desire to be considered as trustee. If any statement does not apply, please indicate so by responding: "Not Applicable".

Requested Information

- A. The name of your firm, address, name of primary contact person and telephone number.
- B. Whether your firm has provided trust services to any New York State municipality for their Code Section 457(b) deferred compensation plan. List names of all such municipalities.
- C. Description of trust services you would provide acting as a Financial Organization rendering only trust services. Please specify all fees, expenses, charges and costs for the trustee services. Please provide disclosure of any compensation structure.
- D. If you are selected as the Financial Organization acting as our trustee and desire to additionally respond to performing the duties of an Administrative Service Agency, as described in Sections 9000.2(b)(1) and 9002.1(b)(4) of the Regulations, please indicate your intention here.

If you respond affirmatively, then it will be necessary for you to complete the questions in Sections III and IV addressed to the Administrative Service Agency bidder. However, in addition to stating your intention to bid, it is requested that you indicate here the effect this will have on any fees, expenses, charges and costs as distinguished from those previously stated in this Section.

- E. The trustee will also be requested to acknowledge in writing that it is a fiduciary with respect to all administrative or investment matters for which it has assumed responsibility as outlined in Section 9002.2(a)(6) and 9003.6 of the Regulations.

- F. Referring to Section 9005.4 of the Regulations, describe the type of bond and its limits that you will be furnishing. Include “cost disclosure” if it is your intention for us to satisfy any part of this obligation.
- G. Do you intend to supply us with a sample trust agreement for our consideration? If so, do you attest that this agreement meets all of the requirements applicable to trusts as stated in Section 9002.1(b) of the Regulations and Section 457(g) of the Code?

SECTION III.
**ADMINISTRATIVE SERVICE AGENCY/
FINANCIAL ORGANIZATION**

(Excluding Trustee)

Please respond to each of the following statements if you desire to be considered as either the Administrative Service Agency and/or the Financial Organization. If you feel any statement does not apply, please indicate so by responding: "Not Applicable" and provide your reasoning.

Company Background

- A. The name of your firm, home office address, New York State address (if any), and the name (including title), address and phone number of your primary contact person whom we may contact about your proposal.
- B. Give a very brief description of your company and its history of participation in similar public employee Code Section 457(b) deferred compensation plans for state and local government employers. In New York State, such plans first materialized in 1985. Include your specific experience in similar plans in New York since that time.
- C. How many public employee elective deferral retirement plans and deferred compensation plans do you currently provide administrative services and/or investment products for? How many of these plans are New York plans?
- D. In the past three (3) years, has any public employee Code Section 457(b) deferred compensation plan/program, regardless of geographic location, terminated your (parent, subsidiary or affiliate) services either through the competitive bid process or for cause? If so, by whom and under what circumstances?
- E. List ten (10) client Code Section 457(b) deferred compensation plan references for which your organization provides services and/or investment products similar to those requested in this proposal. It would be preferable if five (5) of the references could represent different size clients (based on assets) from New York State, if possible. Please include contact person name, title, address and telephone number, number of participants and approximate size of plan assets and the number of years you have been providing services. Spreadsheet format preferred.

- F. What professional liability coverage is maintained by your company for errors and omissions or any other act?
- G. Financial Organization's should provide appropriate "ratings" from the following: A.M. Best, Standard & Poor's, Moody's, and Fitch (formerly Duff & Phelps). Has your rating in any of these agencies fallen below "A" in the last three (3) years? If yes, give complete details. If, as a Financial Organization, you have no ratings by any of these agencies, please explain.
- H. Provide any additional information that would distinguish your firm.

SECTION IV. SERVICES

Please respond to each of the following statements if you desire to be considered as the Administrative Service Agency. If you feel any statement does not apply, please indicate so by responding: "Not Applicable" and provide your reasoning.

Marketing and Enrollment Services

1. Briefly describe the marketing and employee communication strategy which will be used with our plan. Indicate the use and capabilities of laptop computers, if utilized.
2. Briefly describe the types of marketing/promotional materials to be utilized. How will you work to develop a marketing program unique to our needs?
3. Do you provide communications to participants on a regular basis, if so, please describe?
4. Will these services and materials be prepared and distributed at your cost?
5. What educational materials will be provided to the Plan to maintain compliance?
6. Briefly describe how you propose to conduct group enrollment meetings and ongoing educational sessions so that all interested employees have an opportunity to attend at a convenient time and location. How often are these type sessions proposed? Indicate the use and capabilities of laptop computers, if used.
7. Please describe, in detail, your one-on-one counseling sessions. Your response should emphasize how you plan to satisfy "the individual one-on-one on demand availability" of your enrollment specialist, especially at times and locations convenient to our employees.
8. What educational services are provided for retirees?
9. Describe your approach to asset allocation and diversification.
10. How do you follow-up with or contact employees that did not have an opportunity to attend a group session or with an employee subsequently hired after that meeting date? Your comments on the one-on-one availability of your enrollment specialists for this function are important.
11. Briefly describe your continuing education program, if any.
12. Do you attest that these Enrollment Services are provided only by a properly licensed representative: licensed to meet both Federal and New York State requirements?

Administrative Services

A. Services offered to the Plan Sponsor

1. Do you offer a dedicated toll-free Plan Sponsor line?
2. How does your organization provide assistance with revisions to the New York State Model Plan Document?
3. Does your company provide loans to participants?
4. Do you offer a loan feature? If yes, please describe.
5. Will your company withhold, remit and report income taxes deducted from distributions? Does this service include the production and distribution all income tax reports to all the necessary parties as required by federal and state laws?
6. Specify all reports which will be issued to us, our participants and governmental agencies.
7. The Committee anticipates plan expenses related to the administration of the Plan. Would you be willing to reimburse the Committee for these expenses and if so, to what level?

B. Services offered to Participants

1. Describe your voice response telephone system. Identify all available services including customer service options as well as “Voice Response Systems” or automated options. Include security features and voice options, if applicable.
2. Can your customer service representatives assist non-English speaking participants?
3. Describe your internet strategy. What features are currently available on your website? What services are you developing for the near future? What security safeguards are used?
4. Please describe the settlement options available to each participant at retirement, voluntary termination and death. Please state your compliance to reflect the Board’s continued prohibition on annuity distribution options (Section 9001.4 of the Regulations).
5. In the event you are asked to administer our plan along side another provider(s), please describe your required process for assisting with participant requests to transfer plan assets from your program to one of the other carriers. Describe in detail the forms, signatures and overall process that you require.

Recordkeeping System

1. Specify the basic recordkeeping system to be provided for our plan, with particular reference to the ability to receive, disburse, control and audit deductions, and to ensure timeliness, accuracy and confidentiality of records and describe the software used.
2. Briefly describe data processing operations, including the media by which your company can receive payroll deduction information, and its security provisions. Include a statement about your disaster recovery plan and its site location. Identify any subcontracting requirements for your primary administration responsibilities and comment on how this is possible in light of Section 9003.5(b) of the Regulations.
3. Indicate all interfacing: payroll deduction inputs, required certifications and any other transactions, specifying all direct and indirect costs. Specify how payroll deduction information is to be supplied. Indicate ability to interface with internal data processing systems.

SECTION V. INVESTMENTS

Please respond to each of the following statements if you desire to be considered as the Financial Organization. If you feel any statement does not apply, please indicate so by responding: "Not Applicable" and provide your reasoning.

Fund Offerings

Information should be for the most recent calendar quarter completed.

1. Describe fully the various attributes of each investment option your company has to offer. For each option include an Investment Options Summary sheet which includes the funds objective, portfolio statistics, asset allocation, top 10 holdings, and industry diversification.
2. Describe fully your "fixed" investment option. Include a one-page summary including applicable rates for the current calendar year, asset composition, and rating methodology.
3. Does your company offer a self-directed brokerage window as a potential option? Please fully describe the services and fees associated with the administration of the brokerage accounts.
4. Illustrate in spreadsheet format provided, (see Exhibit A) the 'variable values' for each equity type investment. Please give annualized returns for year-to-date, one-year, three-year, five-year, ten-year, and 'since inception' values.
5. Illustrate in spreadsheet format provided, (see Exhibit B) all charges including loading costs, policy fees, surrender charges, actuarial margins, asset fees, transfer charges, distribution charges, withdrawal fees, redemption fees, commission, termination/withdrawal of contract fees, etc., etc.

Investment Flexibility

1. Describe fully all matters related to the exchange/transfer limitations or conditions, termination/withdrawal of contract provisions, any other restrictions or penalties, etc., etc. Include any information on "unrestricted" and/or "free" transfers or plan transfer limitations.
2. Identify any other charges or limitations not described in the previous responses.

SECTION VI. CONVERSION SERVICES

NOTE: The Committee may consider appointing a sole Administrative Service Agency/Financial Organization, in which case there may be a need for conversion services.

Experience

1. Provide a detailed description and complete history of Code Section 457(b) plans that you have been successful in taking over completely. Include entity name and date of takeover, the name of the former provider, the asset size of the plan, the number of participants, transition time, staffing requirement and other detail you believe is significant.

Process

1. Fully describe transition activities stating the time frame for a complete transition. Identify any cost to us or to our participants for each step or phase: for the complete conversion.
2. What on-site support will be provided during the transition? Who will provide this service? Would the key individuals be willing to meet with the Plan?
3. What impact, if any, would there be on our plan if you were to be appointed the sole administrator? For example, would fees be reduced, would we qualify for additional services, etc.
4. Please provide references for three plans you recently transitioned. If possible, please provide those located within New York.

**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.

Plan Document

for the

**DEFERRED COMPENSATION PLAN
FOR EMPLOYEES OF
TOMPKINS COUNTY¹**

**Deferred Compensation Plan
for Employees of
Tompkins County
Plan Document**

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**Deferred Compensation Plan
for Employees of
Tompkins County
Plan Document**

PURPOSE

The purpose of the Plan is to encourage Employees to make and continue careers with the Employer 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. The Employer adopted this Plan by complying with the procedures set forth in the Regulations.

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 (if applicable), 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 Committee 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 (if applicable).
- 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 “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.

1.12 “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.

1.13 “Committee” means the Deferred Compensation Committee appointed by the Employer in accordance with the Regulations to act on behalf of Employer to administer the Plan.

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 “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.

1.16 “Distribution Waiting Period” means 45 days following a Participant’s Severance from Employment, or, to the extent that the Committee has designated a different Distribution Waiting Period under Section 8.1(e) of Schedule A, the Distribution Waiting Period as set forth in Section 8.1(e) of Schedule A.

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 _____.²

1.19 “Eligible Retirement Plan” means:

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

² Insert the date upon which the Employer adopted this amended and restated Plan. The Employer should delete this footnote from the adopted Plan document.

- (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 any elected or appointed officer or employee of the Employer, and 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 _____.³

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 Committee 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.

³ Insert the name of the Public Employer adopting this amended and restated Plan. The Employer should delete this footnote from the adopted Plan document.

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

1.29 “Loan Grace Period” means 90 days following the due date of a Participant’s scheduled repayment of his or her Plan loan, or, to the extent that the Committee has designated a shorter Loan Grace Period under Section 7.3(f) of Schedule A, the Loan Grace Period as set forth in Section 7.3(f) of Schedule A.

1.30 “Maximum Annual Number of Partial Distributions” means twelve partial lump sum payments per Plan Year, or, to the extent that the Committee has designated a different Maximum Annual Number of Partial Distributions under Section 8.1(c)(i) and (iii) of Schedule A, the Maximum Annual Number of Partial Distributions as set forth in Section 8.1(c)(i) and (iii) of Schedule A.

1.31 “Minimum Installment Amount” means \$100, or, to the extent that the Committee has designated a different Minimum Installment Amount under Section 8.1(c) of Schedule A, the Minimum Installment Amount as set forth in Section 8.1(c) of Schedule A.

1.32 “Minimum Lump Sum Amount” means \$100, or, to the extent that the Committee has designated a different Minimum Lump Sum Amount under Section 8.1(c)(i) and (iii) of Schedule A, the Minimum Lump Sum Amount as set forth in Section 8.1(c)(i) and (iii) of Schedule A.

1.33 “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.

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

1.35 “Participation Agreement” means an agreement in writing or in such other form approved by the Committee, 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.

- 1.36 “Plan” means the Deferred Compensation Plan for Employees of the Employer, as the same may be amended from time to time.
- 1.37 “Plan Benefit” has the meaning set forth in Section 6.5.
- 1.38 “Plan Year” means the calendar year.
- 1.39 “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.
- 1.40 “Qualified Roth Contribution Program” means a qualified Roth contribution program as defined in Section 402A of the Code.
- 1.41 “Regulations” means the rules and regulations promulgated by the Deferred Compensation Board of the State of New York pursuant to Section 5 of the State Finance Law, as the same may be amended from time to time.
- 1.42 “Required Beginning Date” means April 1 of the calendar year following the later of the calendar year in which the Participant: (a) attains age 70½, or (b) Severs from Employment.
- 1.43 “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.
- 1.44 “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).
- 1.45 “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.
- 1.46 “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.
- 1.47 “Roth Contributions” means amounts contributed pursuant to Section 3.1 by a Participant to the extent that the Committee has resolved to implement a Roth Program to Section 3.1(c) of Schedule A, 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 Employer as includible in the Participant's income at the time the Participant would have received that amount in Compensation.

1.48 "Roth IRA" has the meaning set forth in Section 408A of the Code.

1.49 "Roth Program" means a Qualified Roth Contribution Program within the Plan.

1.50 "Section 457 Transfer" means a transfer made into an Account pursuant to Section 5.1.

1.51 "Severance from Employment" or "Severs from Employment" means a severance from employment with the Employer within the meaning of Section 457 of the Code.

1.52 "State" means the State of New York.

1.53 "Surviving Spouse" means the survivor of a deceased Participant to whom such Participant was legally married on the date of the Participant's death.

1.54 "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.

1.55 "Trust Agreement" means an agreement entered into in respect of the Plan between the Committee 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.

1.56 "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.

1.57 "Trustee" means the trustee or trustees acting as such under the Trust Agreement, and any successors thereto.

1.58 "Unforeseeable Emergency" means a (i) 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) 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.

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

1.60 “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.

1.61 “Valuation Date” means each Business Day unless otherwise provided in the Plan or in an agreement between the Committee 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 Committee. 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 (to the extent applicable), 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 Committee, 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. To the extent that the Committee has resolved on or after January 1, 2011 to implement a Roth Program pursuant to Section 3.1(c) of Schedule A, a Participant 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). For the avoidance of doubt, to the extent that the Committee has *not* resolved to implement a Roth Program pursuant to Section 3.1(c) of Schedule A, Participants shall not be permitted to make Roth Contributions and any provisions of the Plan as they relate to Roth Contributions, Roth Accounts, Rollover Contributions from Qualified Roth Contribution Programs and in-Plan rollovers into Roth Accounts shall not apply.

(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 (to the extent applicable), 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 or Unforeseeable Emergency Withdrawal. A participant's deferrals and contributions will be suspended for a period of six months following a distribution pursuant to the Section 414(u)(12)(B)(i) of the Code and, to the extent that the Committee has resolved to implement a suspension of deferrals after an Unforeseeable Emergency withdrawal pursuant to Section 3.1(e) of Schedule A, after a distribution due to an Unforeseeable Emergency withdrawal.

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

(a) In General. The aggregate amount of Before-Tax Deferrals and Roth Contributions (to the extent applicable) that may be deferred or contributed by a Participant for any pay period shall be a minimum of \$10 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 (to the extent applicable) 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 (to the extent applicable), 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 Committee in accordance with the Regulations, and shall be held, managed, invested and reinvested in accordance with the applicable agreement entered into by the Committee 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 Committee 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 Committee. A Participant's investment allocation elections shall be applied in the same manner to both Before-Tax Deferrals and Roth Contributions (to the extent applicable).

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 Committee 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 (to the extent applicable). 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 Committee 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 (to the extent applicable). Such direction must be made in accordance with the requirements and procedures established by the Committee 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) Committee's Right to Reduce or Deny Transfer Request. If the Trustee or any Financial Organization appointed by the Committee advises the Committee, or the Committee 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 Committee 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 Committee 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 Committee, 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 Committee, 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 Committee, 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 Committee 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 (to the extent applicable) 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 (to the extent applicable) 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 Committee eliminates one or more of the Investment Funds or Investment Options or undertakes similar activity on behalf of the Plan, the Committee 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 Committee 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 Committee. All such Section 457 Transfers shall be credited to the applicable Account Participant's corresponding Before-Tax Deferral Account or Roth Account (to the extent applicable), 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 may be contributed only to the extent that the Committee has resolved to implement a Roth Program pursuant to Section 3.1(c) of Schedule A and any such contributions 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 Committee, 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) to the extent that the Employer has resolved to adopt a loan program pursuant to Section 7.3 of Schedule A, 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 or the Deferred Compensation Plan for Employees of the State of New York and Other Participating Jurisdictions, 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 Committee, 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, to the extent applicable) 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 Committee.

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 (to the extent applicable), 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 (to the extent applicable), 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 Committee 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 Committee. 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 Committee 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 Committee 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 Committee 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.

(a) Elective Distribution. 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:

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

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

(b) Automatic Distribution. With respect to a Participant or an Alternate Payee whose Plan Benefit, including any amounts attributable to an in-Plan Rollover Contribution to a Roth Account pursuant to Section **Error! Reference source not found.**, but not including any amounts in the Participant or Alternate Payee's Rollover Accounts, does not exceed the amount set forth in Section 7.2(a), if and to the extent that the Committee has resolved to provide for

automatic distributions pursuant to Section 7.2(b) of Schedule A, the Committee shall direct the automatic distribution of the Participant's Account and Rollover Account or the Alternate Payee's Alternate Payee Account as soon as practicable, to the extent provided in Section 7.2(b) of Schedule A: (i) following the Participant's Severance from Employment and (ii) upon an Account Participant's Plan Benefit falling below the value set forth in Section 7.2(b) of Schedule A, to the extent that the requirements of Section 7.2(a) are met; *provided, however*, that in the event any such distribution is greater than \$1,000, if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly in accordance with Section 8.1(b), then the Committee will pay the distribution in a direct rollover to an individual retirement plan designated by the Committee; and *provided further*, that such distribution shall be made in accordance with the requirements of Section 401(a)(31) of the Code.

7.3 Loans. To the extent the Committee has resolved to adopt a loan program pursuant to Section 7.3 of Schedule A, this Section 7.3 shall apply.

(a) Eligibility. Participants who are active Employees, and, if the Committee 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 Committee 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 (to the extent applicable)); 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 Committee shall determine. Any Plan loan shall be repaid in substantially equal installments of principal and accrued interest that shall be paid at least monthly or quarterly, as specified by the Committee, 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 Committee 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 (to the extent applicable) 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 the Loan Grace Period, 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 Committee 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; (ii) the Participant's attainment of age 70½; provided, however, that for purposes of this 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 the Minimum Lump Sum Amount, and the number of partial lump sum payments in any Plan Year may not exceed the Maximum Annual Number of Partial Distributions.

(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 the Minimum Installment Amount. 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 Committee 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 the Minimum Lump Sum Amount; and *provided further*, that the number of such elections in any Plan Year may not exceed the Maximum Annual Number of Partial Distributions, as set forth in Section 8.1(c) of Schedule A. 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 (to the extent applicable). 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 (to the extent applicable).

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 at the end of the Distribution Waiting Period; *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 Committee 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 8.1(c), by filing a distribution election specifying the form of payment as provided in Section 8.6 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 (to the extent applicable), 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 Committee 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, Committee, 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 Committee, 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 Committee, 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 Committee 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 Committee and the Committee shall have all of the broad, general authority necessary or advisable to operate and administer the Plan. The Committee 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 Committee 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 Committee's discretion and shall be final, conclusive and binding on all parties.

11.2 Committee Powers and Duties. Without limiting the generality of the foregoing, the Committee 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 Committee 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 Committee nor any member thereof 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 Committee. No member of the Committee 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 Committee shall periodically review the performance and methods of the Trustee and the Committee 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 Committee 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 Committee shall periodically review the performance and methods of such Financial Organization(s). The Committee 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 Committee 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 Committee. Notwithstanding any other provision of the Plan, the Committee'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 Committee 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 Committee or otherwise. The rights of the Committee under Section 11.6 include, the right to review, revise, modify, revoke, or vacate any decision of the Administrative Service Agency or the Review.

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 Committee and any Trustee and the expenses incurred by the Committee or any of its members 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 Committee 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 Committee 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 Committee shall establish from time to time. The Committee 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 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 (to the extent applicable), 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 Committee 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 Committee, or with such other entity as the Committee may designate. Within sixty days after receipt of such claim, the Committee, or such other entity designated by the Committee, 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 Committee, or by such other entity designated by the Committee, 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 Committee 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 Committee may rely upon the written opinions of 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 Committee Power. No member of the Committee 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 Committee Action. All actions of the Committee shall be taken at a public meeting in accordance with Article 7 of the Public Officers Law. The Committee 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 General Requirements. Notwithstanding any other provision hereof, the Plan shall at all times be operated in accordance with the requirements of applicable law, including, the Regulations.

SECTION 12
AMENDMENT OR TERMINATION

12.1 Power to Amend and Terminate. Subject to any requirements of State or federal law, the Employer 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 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.

12.2 Termination of Plan. Upon any action by the Employer to initiate a Plan termination, the Employer shall permit no 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 Employer may distribute all Plan Benefits to Account Participants or the Employer 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 Committee and the Trustee(s) shall remain in existence and the Trust Agreement and all of the provisions of the Plan that the Employer determines are necessary or advisable for the administration and distribution, transfer or other disposition of interests in the Trust Fund shall remain in force.

SECTION 13
GENERAL LIMITATIONS AND PROVISIONS

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 Notices to the Committee. All elections, designations, requests, notices, instructions, and other communications from the Employer, an Employee, an Account Participant, or any other person to the Committee, Administrative Service Agency or the Employer required or permitted under the Plan shall be in such form as is prescribed by the Committee, shall be mailed by first class mail or delivered electronically in such a form and to such location as shall be prescribed by the Committee 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.

13.6 Notices to Participants. All notices, statements, reports and other communications from an Employer, the Trustee or the Committee 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 Committee 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 Trustee or the Employer.

13.7 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 Committee, 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 Committee or any member thereof, the Employer, or any officer or employee of an Employer. Nothing in Section 13.7 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.

13.8 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.

13.9 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.

13.10 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.

13.11 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.

SCHEDULE A

Effective date of last completion or amendment of this Schedule A: _____

Instructions

This Schedule A and all later amendments to this Schedule A are part of the Plan document and should remain attached to the Plan document.

Schedule A is used by the Committee (1) TO ACTIVATE or TERMINATE optional Plan provisions described below, (2) TO MODIFY the default provisions of the Plan described below or (3) TO INDICATE that the default provisions described below will continue to apply under the Plan.

Each section of this Schedule A must be completed by the Committee in connection with the adoption of this amendment and restatement of the Plan. All selections made shall remain effective until this Schedule A is later amended by the Committee.

All section references refer to the corresponding sections of the Plan and all defined terms have the meanings ascribed to them in the Plan.

Committee Elections – Optional Plan Provisions

3.1(c) ROTH PROGRAM

Section 3.1(c) of the Plan permits Roth Contributions only if the Committee checks YES below. The Committee must also indicate below the effective date of this election. The Committee should check NO below to indicate that Roth Contributions will not be permitted under the Plan or, at a later time, to change prospectively (as of a specified effective date) a prior election under this section.

The Plan shall maintain a Roth Program under which Participants may make Roth Contributions to the Plan, which Roth Contributions will be made and separately accounted for in compliance with the relevant provisions of the Plan and the Code.

YES

NO

Effective date: _____

8.8 IN-PLAN ROLLOVER TO A ROTH ACCOUNT

Section 8.8 of the Plan permits In-Plan Rollovers to a Roth Account only if the Committee has checked YES in Section 3.1(c) (permitting a Roth Program) and checked YES below allowing a Participant's Plan Benefit not attributable to Roth Contributions or outstanding loans to be directly contributed to a Roth Account under the Plan prior to, upon or after a distributable event. The Committee must also indicate below the effective date of this election. The Committee should check NO below to indicate that a Participant's Plan Benefit may not be directly rolled over to a Roth Account under the Plan or, at a later time, to change prospectively (as of a specified effective date) a prior election under this section.

To the extent the Committee has resolved to implement and maintain a Roth Program pursuant to Section 3.1(c) of Schedule A, a Participant may elect to have the portion of his or her Plan Benefit that is not attributable to Roth Contributions or outstanding loans directly rolled over into a Roth Account in the Plan.

- YES (do not check YES unless Roth Program is in effect)
- NO

Effective date: _____

3.1(e) SUSPENSION OF DEFERRALS AND CONTRIBUTIONS FOLLOWING AN UNFORESEEABLE EMERGENCY WITHDRAWAL

Section 3.1(e) of the Plan allows the Employer automatically to suspend deferrals and contributions for six months following the date a Participant receives an Unforeseeable Emergency withdrawal only if the Committee checks YES below. The Committee must also indicate below the effective date of this election. The Committee should check NO below to indicate that a suspension of deferrals and contributions will not be required or, at a later time, to change prospectively (as of a specified effective date) a prior election under this section.

A Participant's deferrals and contributions will be suspended for a period of six months following a distribution due to an Unforeseeable Emergency withdrawal.

- YES
- NO

Effective date: _____

7.2(b) AUTOMATIC DISTRIBUTION OF SMALL ACCOUNTS FOLLOWING A SEVERANCE FROM EMPLOYMENT

Section 7.2(b) of the Plan allows the Employer to automatically distribute certain small account balances following a Severance from Employment only if the Committee has checked YES below. The Committee must also indicate below the effective date of this election. The Committee should check NO to indicate that no automatic distribution will occur following a Severance from Employment or, at a later time, prospectively to change(as of a specified effective date) a prior election under this section.

With respect to a Participant or an Alternate Payee whose Account or Alternate Payee Account does not exceed the amount set forth in Section 7.2(a) of the Plan, the Committee shall direct the automatic distribution of the Participant's Account and Rollover Account or the Alternate Payee's Alternate Payee Account as soon as practicable following the Participant's Severance from Employment.

YES

NO

Effective date: _____

7.2(b) AUTOMATIC DISTRIBUTION OF INACTIVE SMALL ACCOUNTS

Section 7.2(b) of the Plan allows the Employer to automatically distribute certain small account balances in inactive accounts only if the Committee has checked YES below and indicated the small account amount below. The Committee must also indicate below the effective date of this election. The Committee should check NO to indicate that no automatic distribution of inactive small accounts will occur or, at a later time, prospectively to change (as of a specified effective date) a prior election under this section.

7.2(b) Automatic Distributions after a Severance from Employment.

With respect to a Participant or an Alternate Payee whose Account or Alternate Payee Account does not exceed the amount set forth in Section 7.2(a) of the Plan, upon an Account Participant's Plan Benefit falling below \$_____, ***[Insert any whole dollar amount up to the dollar limit under Section 411(a)(11)(A) of the Code]*** to the extent that the requirements of Section 7.2(a) of the Plan are met, the Committee shall direct the automatic distribution of the Participant's Account and Rollover Account or the Alternate Payee's Alternate Payee Account in accordance with 7.2(b) of the Plan.

YES (do not check YES unless a permissible amount is specified above)

NO

Effective date: _____

7.3 PLAN LOANS FOR ACTIVE EMPLOYEES

Section 7.3 of the Plan allows active Employees to request a Plan loan only if the Committee has checked YES below. The Committee must also indicate below the effective date of this election. The Committee should check NO to indicate that no Plan loans will be permitted or, at a later time, prospectively (as of a specified effective date) to change a prior election under this section.

Participants who are active Employees shall be eligible to request a Plan loan and may be granted a loan pursuant to the requirements of Section 7.3 of the Plan.

YES

NO

Effective date: _____

7.3(a) PLAN LOANS FOR PARTICIPANTS ON AN APPROVED LEAVE OF ABSENCE

Section 7.3(a) of the Plan allows Participants who are on an approved leave of absence to be eligible to request a Plan loan only if the Committee has checked YES above (permitting Plan loans for active Employees) and checked YES below extending the loan provisions to Participants on an approved leave of absence. The Committee must also indicate below the effective date of this election. The Committee should check NO to indicate that no Plan loans will be permitted for Participants on an approved leave of absence or, at a later time, prospectively to change (as of a specified effective date) a prior election under this section.

Participants who are on an approved leave of absence from their Employer shall be eligible to request a Plan loan and may be granted a loan pursuant to the requirements of Section 7.3 of the Plan.

YES (do not check YES unless Plan Loans are authorized for active Employees)

NO

Effective date: _____

Committee Elections – Modification of Default Plan Provisions

7.3(f) DURATION OF LOAN GRACE PERIOD

Section 7.3 of the Plan allows the Committee to permit Plan loans (see elections above). If the Committee permits Plan loans, the Plan document states that, unless the Committee makes an election below, any such loan will be in default if a Participant fails to make a required loan repayment within 90 days following the due date for such repayment. The Plan document refers to this period as the “Loan Grace Period.”

Section 7.3(f) of the Plan allows the Committee to specify a shorter Loan Grace Period by indicating a period of fewer than 90 days below and by indicating that such election will apply to Plan loans made after the effective date specified below. The Committee may, at a later time, indicate (as of a specified effective date) a different Loan Grace Period by making a new election under this section.

The Loan Grace Period for purposes of Section 7.3(f) shall be _____ days *[a number of days greater than 0 but less than 90]* following the due date of a Participant’s scheduled loan repayment.

Effective date: _____

8.1(c)(i) and (iii) MINIMUM LUMP SUM AMOUNT

Sections 8.1(c)(i) and (iii) of the Plan allow a Participant who is otherwise eligible for a distribution under the Plan to elect to receive that distribution in a total or partial lump sum. The Plan document states that, unless the Committee makes an election below, the amount of a partial lump sum distribution cannot be less than \$100. The Plan document refers to this amount as the “Minimum Lump Sum Amount.”

Sections 8.1(c)(i) and (iii) of the Plan allow the Committee to specify a different Minimum Lump Sum Amount by indicating a dollar amount below and by indicating that such Minimum Lump Sum Amount will apply to distributions made after the effective date specified below. The Committee may also indicate there is no Minimum Lump Sum Amount by inserting the “none” or “0” below. The Committee may, at a later time, indicate (as of a specified effective date) on a prospective basis a different Minimum Lump Sum Amount by making a new election under this section.

The Minimum Lump Sum Amount shall be \$_____.

Effective date: _____

8.1(c)(ii) MINIMUM INSTALLMENT AMOUNT

Section 8.1(c)(ii) of the Plan allows a Participant who is otherwise eligible for a distribution under the Plan to elect to receive that distribution in periodic monthly, quarterly, semi-annual or annual installments. The Plan document states that, unless the Committee makes an election below, the amount of an installment distribution cannot be less than \$100. The Plan document refers to this amount as the “Minimum Installment Amount.”

Section 8.1(c)(ii) of the Plan allows the Committee to specify a different Minimum Installment Amount by indicating a dollar amount below and by indicating that such Minimum Installment Amount will apply to distributions made after the effective date specified below. The Committee may also indicate there is no Minimum Installment Amount by inserting the “none” or “0” below. The Committee may, at a later time, indicate (as of a specified effective date) on a prospective basis a different Minimum Installment Amount by making a new election under this section.

The Minimum Installment Amount shall be \$_____.

Effective date: _____

8.1(c)(i) and (iii) MAXIMUM ANNUAL NUMBER OF PARTIAL DISTRIBUTIONS PER PLAN YEAR

Sections 8.1(c)(i) and (iii) of the Plan allow a Participant who is otherwise eligible for a distribution under the Plan to elect to receive that distribution in a total or partial lump sum. The Plan document states that, unless the Committee makes an election below, the maximum number of partial lump sum distributions in a Plan Year may not exceed 12. The Plan document refers to this amount as the “Maximum Annual Number of Partial Distributions.”

Sections 8.1(c)(i) and (iii) of the Plan allow the Committee to specify a different Maximum Number of Partial Distributions per Plan Year by indicating a different limit below and by indicating that such limit will apply to distributions made after the effective date specified below. The Committee may, at a later time, indicate (as of a specified effective date) on a prospective basis a different Maximum Number of Partial Distributions for a Plan Year by making a new election under this section.

The Maximum Annual Number of Partial Distributions for each Plan Year shall be _____.

Effective date: _____

8.1(e) DISTRIBUTION WAITING PERIOD

Section 8.1(c) of the Plan allows a Participant who is otherwise eligible for a distribution under the Plan to elect to receive that distribution in a total or partial lump sum or in installments. Section 8.1(e) of the Plan document also states that, unless the Committee makes an election below, a distribution will be delayed for 45 days if the distribution would result in the Participant having an account balance of less than \$500. The Plan document refers to this period as the “Distribution Waiting Period.”

Section 8.1(e) of the Plan allows the Committee to specify a different Distribution Waiting Period by indicating a different limit below and by indicating that such limit will apply to distributions made after the effective date specified below. The Committee may also indicate there is no Distribution Waiting Period by inserting the word “none” below. The Committee may, at a later time, indicate (as of a specified effective date) on a prospective basis a different Distribution Waiting Period for a Plan Year by making a new election under this Schedule A .

The Distribution Waiting Period shall be _____ days.

Effective date: _____

ANTI-DISCRIMINATION CLAUSE

During the performance of this contract, (the contractor) hereby agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, color, creed, ethnicity, Vietnam-era veteran status, disabled veteran, marital status, disability, national origin, or status as an ex-offender. Such action shall be taken with reference, but not be limited, to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) The contractor will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner for Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (f) hereinafter called "non-discrimination clauses". If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish him with as written statement that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Commission for Human Rights of such failure or refusal.
- (c) The contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's and local Tompkins County Laws against discrimination as the State Commission for Human Rights shall determine.
- (d) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color or national origin.
- (e) The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- (f) This contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commission for Human Rights that the Contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until he satisfies the State Commission for Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the Contractor and opportunity has been afforded him to be heard publicly before three members of the Commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law. The Contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

GENERAL CONDITIONS ACCEPTED BY:

Firm: _____

By: _____

Date: _____

Title: _____

**COUNTY OF TOMPKINS
GENERAL CONDITIONS**

AFFIDAVIT OF NON-COLLUSION

NAME OF RESPONDER: _____ PHONE NO.: _____ FAX NO.: _____

BUSINESS ADDRESS: _____ EMAIL: _____

I hereby attest that I am the person responsible within my firm for the final decision as to the price(s) and amount of the proposal, or If not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his/her behalf and on behalf of my company.

I further attest that:

1. The prices in this bid/proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition with any other contractor, responder or potential bidder; and
2. Neither the price(s), nor the amount of this bid/proposal, have been disclosed to any other firm or person who is a responder or potential responder on this project, and will not be so disclosed prior to bid/proposal opening; and
3. No attempt has been made or will be made to solicit, cause or induce any company or person to refrain from responding to this RFB/RFP, or to submit a bid/proposal higher than the proposal of this company, or any intentionally high or non-competitive bid/proposal or other complementary proposal; and
4. The bid/proposal of my company is made in good faith and not pursuant to any agreement or discussion with, or inducement from any firm or person to submit a complementary proposal; and
5. My company has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any other company or person, offerer, promised or paid cash of anything of any value to any company or person, whether in connection with this or any other project, in consideration for an agreement or promise by a company or person to refrain from responding to this RFB/RFP or to submit a complementary bid/proposal on this project; and
6. My company has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any company or person, and has not been promised or paid cash or anything of value by and company or person, whether in connection with this or any project, in consideration for my company's submitting a complementary bid/proposal or agreeing to do so on this project; and
7. I have made a diligent inquiry of all members, officers, employees, and agents of my company with responsibilities relating to the preparation, approval or submission of my company's proposal on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion act or other conduct inconsistent with any statements and representations made in this affidavit.
8. **By submission of this proposal I certify that I have read, am familiar with, and will comply with any and all segments of these specifications.**

The person signing this proposal, under the penalties of perjury, affirms the truth thereof.

Signature & Company Position: _____

Print Name & Company Position: _____

Company Name: _____

Date Signed _____ Federal I.D. Number _____

ATTACHMENT 1 Attach to Tompkins County contracts as of December 2013

Contractor’s Representation—Livable Wage Policy

Livable Wage Policy: By policy, Tompkins County must “consider the wage levels and benefits, particularly health care, provided by contractors when awarding bids or negotiating contracts, and to encourage the payment of livable wages whenever practical and reasonable.”

Paying the living wage rate to all employees directly involved in providing the contracted County service is not mandatory. However, the attainment of a broadly-applied living wage is a County goal and is therefore an important consideration applied by the County when reviewing contract proposals.

The Current Living Wage: The Living Wage in Tompkins County is computed by the Alternatives Federal Credit Union and is currently \$12.62 per hour if the employer contributes at least half the cost of an employee’s health insurance/benefit cost and \$13.94 per hour if the employer does not make such a contribution. The rate will be adjusted again in May 2015.

Requirement of All Contractors: As a part of its proposal or contract representations, a prospective service contractor must advise the County whether it will pay the AFCU livable wage rate to all Covered Employees directly involved in the provision of the contracted service, including employees of any subcontractor engaged to assist in providing the service.

Additionally, contractors are asked to estimate the number of employees who will be directly involved in the provision of the contracted service.

Covered Employees include all full- and part-time employees, other than those Excluded Employees described below, who are directly involved in the provision of the contracted service, including employees of sub-contractors engaged to assist in providing the service.

Excluded Employees are:

- Employees under the age of 18
- Seasonal or temporary employees (90 days or less)
- Employees in a probationary status (90 days or less)
- Those employed in a sheltered or supported work environment
- Employees participating in a limited-duration (90 day) job training program
- Employees participating in an academic work-study or academic internship program
- Volunteers
- Employees participating in mandated welfare-to-work programs
- Employees paid pursuant to a collective bargaining agreement

Contractor’s Living Wage Representation

Approximately how many Covered Employees, including employees of any subcontractor involved in providing the service, will be involved in the provision of the contracted service? _____

Will all Covered Employees, including employees of any subcontractors directly involved in the provision of County services, be paid at least the living wage?

Yes

No

Contractor Name: _____

If you answered “Yes” to the Living Wage Representation and are awarded the County contract, you will be expected to maintain all employees directly involved in the provision of services under this contract at or above the living wage as of the time of execution of the contract for the duration of the contract.

If you answered “No,” your response will be among the considerations applied by the County in making its contract award. As a part of contract negotiations, the County may request additional information from you regarding the basis of this response.

**Tompkins County
Vendor Responsibility Form**

The Office of the State Comptroller requires that governmental agencies award contracts only to vendors that have been certified as “responsible.” Vendor responsibility means that a vendor has the integrity to justify the award of public dollars and the capacity to fully perform the requirements of the contract. It is the contracting agency’s responsibility, under Section 163 (9) of the State Finance Law (SFL), to evaluate and make a determination of the responsibility of a prospective contractor. A responsibility determination, wherein the contracting agency determines that it has reasonable assurances that a vendor is responsible, is an important part of the procurement process, promoting fairness in contracting and protecting a contracting agency and the County against failed contracts.

The following factors are to be considered in making a responsibility determination:

1. Legal Authority to do business in New York State
2. Integrity
3. Capacity – both organizational and financial
4. Previous performance

Please complete the following questions. This form **must** be returned with your bid submission in order for your bid to be ruled responsive.

Within the past five (5) years has your firm, any affiliate, any predecessor or company or entity, owner, director, officer, partner or proprietor been the subject of:

ANSWER ALL QUESTIONS

- | | | |
|--|-----------|----------|
| A. An indictment, judgment, conviction, or a grant of immunity, including pending actions, for any business related conduct constituting a crime under governmental law? | YES _____ | NO _____ |
| B. A government suspension or debarment, rejection of any bid or disapproval of any proposed sub-contract, including pending actions, for lack of responsibility, denial or revocation of prequalification or a voluntary exclusion agreement? | YES _____ | NO _____ |
| C. Any governmental determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed “serious or willful?” | YES _____ | NO _____ |
| D. A consent order with NYS Department of Environmental Conservation, or a governmental enforcement determination involving a construction-related violation of federal, state, or local environmental laws? | YES _____ | NO _____ |

E. A finding of non-responsibility by a governmental agency or Authority for any reason.

YES _____

NO _____

If yes to any of the above, please provide details regarding the finding.

ENTITY MAKING FINDING: _____

YEAR OF FINDING: _____

BASIS OF FINDING: _____

(Attach additional sheets if necessary)

Offerer Certification:

I certify that all information provided to Tompkins County with respect to State Finance Law §139-k is complete, true and accurate.

Name: _____

Title: _____

Company Name: _____

Company Address: _____

Signature: _____

Request for Taxpayer Identification Number and Certification

**Give form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name” line.

Limited liability company (LLC). Check the “Limited liability company” box only and enter the appropriate code for the tax classification (“D” for disregarded entity, “C” for corporation, “P” for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner’s name on the “Name” line. Enter the LLC’s name on the “Business name” line.

For an LLC classified as a partnership or a corporation, enter the LLC’s name on the “Name” line and any business, trade, or DBA name on the “Business name” line.

Other entities. Enter your business name as shown on required federal tax documents on the “Name” line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the “Business name” line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the “Exempt payee” box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

BID/PROPOSAL SIGN-OFF SHEET

BID/PROPOSAL TITLE: Tompkins County Deferred Compensation Plan

Please check off and sign for items below and submit this required sheet with your bid/proposal response; the bid/proposal may be rejected if the required documents are not included with the response.

	DONE	INITIALS
1. Bid/Proposal enclosed		
2. Bid Bond enclosed	N/A	N/A
3. Non-Collusive Certificate enclosed		
4. Anti-Discrimination Clause enclosed		
5. Insurance Certificate completed by insurance agent enclosed	N/A	N/A
6. Insurance Binder enclosed	N/A	N/A
7. Wages, Awards, Bond Requirements – agree to conditions	N/A	N/A
8. Equal Opportunity Acknowledgement enclosed	N/A	N/A
9. Statement of Surety’s Intent enclosed	N/A	N/A
10. Site Visit Verification Form enclosed	N/A	N/A
11. Subcontractor and Supplier list(s) enclosed	N/A	N/A
12. Vendor Responsibility Form enclosed		
13. Prevailing Wage Receipt Form enclosed	N/A	N/A
14. Livable Wage Form enclosed		
15. W-9 Taxpayer Identification and Certification enclosed		
16. Addenda (if issued) received		
List Addendum # and dates		

By signing below the respondent is certifying that:

1. All information provided herein is true and correct to the best of their knowledge.
2. The respondent has read and understands the specifications in their entirety and that the response is made in accordance therewith, and;
3. The respondent possesses the capabilities, resources, and personnel necessary to provide efficient and successful service to the County, and;
4. The respondent will be held responsible for any and all discrepancies, errors, etc. in the discounts or rebates which are discovered during the contract term or up to and including three (3) fiscal years following the County’s annual audit.
5. The respondent agrees to all terms and conditions as provided within the specifications.

Name/Title of Authorized Person Submitting Bid

Firm or Corporation Making Bid

Address

Telephone

Fax

(Remit to address (if different than above))

Signature of Authorized Person Submitting Bid