

**MILWAUKEE PUBLIC SCHOOLS  
403(b) PLAN**

**Amended and Restated Effective January 1, 2010**

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**MILWAUKEE PUBLIC SCHOOLS**  
**403(b) PLAN**

**ARTICLE I.**

**PLAN ESTABLISHMENT AND RESTATEMENT**

**Section 1.01. Plan Establishment.**

(a) The Milwaukee Public Schools ("Employer") is a public school system established under Wisconsin law and an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended ("Code"). The Employer established the Milwaukee Public Schools 403(b) Plan ("Plan") to provide retirement benefits for eligible employees.

(b) The Plan is, and is intended to remain, a defined contribution plan under Code Section 403(b), and is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a governmental plan, ERISA does not apply.

(c) The Plan was most recently restated effective January 1, 2009, to comply with the final regulations under Code Section 403(b) and to make certain other desired changes, and has been amended from time to time thereafter.

**Section 1.02. Plan Restatement.**

(a) The Plan is now being amended and restated effective January 1, 2010, except as otherwise specifically provided herein, to incorporate the prior amendment to the Plan and to make certain discretionary changes.

(b) Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2010, and to transactions under the Plan on and after January 1, 2010. The rights and benefits, if any, of individuals who are not Employees on or after January 1, 2010, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

**Section 1.03. Plan Funding.** The Plan is funded exclusively through the purchase of Investment Arrangements from the Vendor(s) identified in Appendix A attached hereto, as that Appendix may be modified from time to time.

## ARTICLE II.

### CONSTRUCTION AND DEFINITIONS

#### Section 2.01. Construction and Governing Law.

(a) The Plan shall be interpreted, enforced and administered in accordance with the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Wisconsin without regard to conflict of law principles.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and *vice versa*, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate, and *vice versa*.

(c) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(d) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute a defined contribution plan under the provisions of Code Section 403(b), (ii) be a governmental plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) comply with all applicable requirements of the Code, shall prevail over any different interpretation.

**Section 2.02. Definitions.** When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:

(a) "Account" means the separate accounts maintained for any Participant or Beneficiary under an Investment Arrangement. The following Accounts shall be established for a Participant or Beneficiary, if applicable:

(1) A Pre-Tax Elective Deferral Account to reflect the Participant's interest in an Investment Arrangement attributable to his or her Pre-Tax Elective Deferrals pursuant to Section 4.01. Such Account may be further divided into a Pre-1987 Pre-Tax Elective Deferral Account reflecting Pre-Tax Elective Deferrals made to the Plan prior to 1987 and a Post-1987 Pre-Tax Elective Deferral Account reflecting Pre-Tax Elective Deferrals made to the Plan after 1986, including any earnings on the Pre-1987 Elective Deferrals.

(2) A Roth Elective Deferral Account to reflect the Participant's interest in an Investment Arrangement attributable to his or her Roth Elective Deferrals pursuant to Section 4.02.

(3) A Discretionary Nonelective Contribution Account to reflect the Participant's interest in an Investment Arrangement attributable to his or her

Discretionary Nonelective Contributions pursuant to Section 4.03.

(4) A Rollover Contribution Account to reflect the Participant's interest in an Investment Arrangement attributable to his or her Rollover Contributions pursuant to Section 4.04.

(b) "Account Balance" means the total benefit to which a Participant or the Participant's Beneficiary is entitled under an Investment Arrangement, taking into account all Contributions made to the Investment Arrangement and all earnings or losses (including expenses) that are allocable to the Participant's Accounts, and any distribution made to the Participant, the Participant's Beneficiary, or any Alternate Payee. The Account Balance includes any part of the Participant's Account that is treated under the Plan as a separate contract to which Code Section 403(c) (or another applicable provision of the Code) applies. A separate Account shall be established for an Alternate Payee.

(c) "Accumulated Benefit" means the sum of a Participant's or Beneficiary's Account Balances under all Investment Arrangements under the Plan.

(d) "Administrator" means the Employer; provided, however, that to the extent that the Employer has delegated any of its responsibilities as Administrator to any other person or persons, the term Administrator shall be deemed to refer to that person or persons. Functions of the Administrator, including those described in the Plan, may be performed by Vendors, designated agents of the Administrator, or others (including Employees a substantial portion of whose duties is administration of the Plan) pursuant to the terms of Investment Arrangements, written service agreements or other documents under the Plan. For this purpose, an Employee is treated as having a substantial portion of his or her duties devoted to administration of the Plan if the Employee's duties with respect to administration of the Plan are a regular part of the Employee's duties and the Employee's duties relate to Participants and Beneficiaries generally (and the Employee only performs those duties for himself or herself as a consequence of being a Participant or Beneficiary).

(e) "Alternate Payee" means a 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 benefits payable under the Plan with respect to such Participant, as defined in Code Section 414(p)(8).

(f) "Annuity Contract" means a nontransferable group or individual contract as defined in Code Sections 403(b)(1) and 401(g), established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity.

(g) "Applicable Form" means the appropriate form as designated and furnished by the Administrator or the Vendor to make any election or provide any notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Administrator and/or the Vendor may prescribe an electronic or telephonic form in lieu of or in addition to a written form.

(h) "Beneficiary" means the designated person(s) or entity(ies) entitled to receive

benefits under the Plan after the death of a Participant, as identified under the terms governing each Investment Arrangement or in other records maintained under the Plan. Effective June 1, 2020, unless otherwise provided under the terms governing the applicable Investment Arrangement, if the designated Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's Spouse shall be the Beneficiary or, if there is no surviving Spouse, the Participant's estate shall be the Beneficiary. Beneficiary also means an Alternate Payee.

(i) "Board" means the Milwaukee Board of School Directors.

(j) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(k) "Compensation" means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross W-2 income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross W-2 income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including a Compensation Reduction Election under the Plan). Compensation does not include amounts that are "picked up" by the Employer within the meaning of Code Section 414(h). For purposes of Discretionary Nonelective Contributions only, Compensation taken into account under the Plan for any year shall not exceed the limit set forth in Code Section 401(a)(17), adjusted for cost-of-living to the extent provided under Code Section 401(a)(17)(B).

(l) "Compensation Reduction Election" means an election by an Employee to reduce his or her Compensation and have that amount contributed as an Elective Deferral on his or her behalf to one or more Investment Arrangements pursuant to a Salary Reduction Agreement.

(m) "Contract" means a collective bargaining agreement, written employment agreement, employee handbook, Board resolution, or similar written document, as applicable to an Employee or to a specified classification of Employees, and as amended from time to time.

(n) "Contributions" mean Pre-Tax Elective Deferrals, Roth Elective Deferrals, Discretionary Nonelective Contributions, and Rollover Contributions.

(o) "Custodial Account" means the group or individual custodial account or accounts, as defined in Code Section 403(b)(7), established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

(p) "Disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long continued and indefinite duration, as defined under Code Section 72(m)(7). The permanence and degree of such impairment shall be supported by medical evidence. For purposes of Annuity Contracts distributing amounts not attributable to Elective Deferrals, Disabled shall have the meaning described in this paragraph (p) unless an alternative definition is provided in the Investment Arrangement.



(q) "Discretionary Nonelective Contribution" means a contribution made to the Plan by the Employer on behalf of a Participant in accordance with Section 4.03.

(r) "Effective Date" means January 1, 2010, with respect to this restatement of the Plan.

(s) "Elective Deferral" means the contributions made to the Plan by the Employer at the election of the Participant in lieu of receiving cash Compensation. Elective Deferrals include Pre-Tax Elective Deferrals and as of January 1, 2011, Roth Elective Deferrals, except where specifically stated otherwise.

(t) "Employee" means each individual who is a common law employee of the Employer performing services for a public school as an employee of the Employer, including an individual who is appointed or elected, and shall not include an individual who is designated in good faith as an independent contractor, as determined by the Employer in its sole discretion, regardless of whether such individual is later determined to be a common law employee for tax purposes. An individual is not an Employee unless his or her Compensation for performing services for a public school is paid by the Employer. Further, a person occupying an elective or appointive public office is not an employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local government.

(u) "Employer" means the Milwaukee Public Schools.

(v) "Former Vendor" means any provider that was approved by the Administrator to offer annuity contracts or custodial accounts under the Plan, but that ceases to be eligible to receive new contributions under the Plan on or after January 1, 2005, and that continues to hold Plan assets.

(w) "Includible Compensation" means an Employee's compensation received from the Employer that is includible in the Employee's gross income for Federal income tax purposes (computed without regard to Code Section 911) for the most recent period that is a Year of Service which precedes the taxable year by no more than five years within the meaning of Code Section 403(b)(3). Includible Compensation also includes any amounts excludable from taxable income because of an election under Code Sections 403(b), 457(b), 125, 401(k) or 132(f) (including a Compensation Reduction Election under this Plan). The amount of Includible Compensation is determined without regard to any community property laws. Includible Compensation does not include any amounts "picked-up" by the Employer within the meaning of Code Section 414(h). Includible Compensation includes any compensation described in subsection (1), (2), or (3), provided the compensation is paid by the later of 2½ months after the Employee's Severance from Employment or the end of the calendar year in which the Employee has a Severance from Employment:

(1) any payment that would have been paid to the Employee prior to a Severance from Employment if the Employee had continued in employment with the Employer and that is regular compensation for services during the Employee's regular

working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;

(2) a payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would have been included in the definition of Includible Compensation if paid prior to the Employee's Severance from Employment; and

(3) a payment received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the Employer and only to the extent that the payment is includible in the Employee's gross income.

Notwithstanding the above, Includible Compensation shall not exceed the limits under Code Section 401(a)(17), adjusted for cost-of-living to the extent provided under Code Section 401(a)(17)(B).

(x) "Investment Arrangement" means an Annuity Contract or Custodial Account that satisfies the requirements of Treasury Regulation Section 1.403(b)-3 and that is issued or established for funding amounts held under the Plan and specifically approved by the Employer for use under the Plan.

(y) "Investment Options" means the mutual funds and other investment options available for investing amounts held under an Investment Arrangement under the Plan and specifically approved by the Employer for use under the Plan.

(z) "Participant" means an individual for whom Contributions are currently being made or for whom Contributions have previously been made under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

(aa) "Plan" means the Milwaukee Public Schools 403(b) Plan, as amended from time to time.

(bb) "Plan Year" means the calendar year.

(cc) "Pre-Tax Elective Deferral" means an Elective Deferral made to the Plan by the Employer at the election of a Participant pursuant to a Salary Reduction Agreement in accordance with Section 4.01.

(dd) "Qualified Distribution" means a distribution from a Roth Elective Deferral Account after the Participant has satisfied a five year tax holding period and has attained age 59½, died, or become Disabled, in accordance with Code Section 402A(d). The five year tax holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Elective Deferral under the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five consecutive taxable years have been completed.

(ee) "Related Employer" means any entity which is under common control with the Employer under Code Section 414(b), (c), (m) or (o). The Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under IRS Notice 89-23, 1989-1 C.B. 654.

(ff) "Rollover Contribution" means an amount contributed to the Plan pursuant to Section 4.04.

(gg) "Roth Elective Deferral" means an Elective Deferral that is: (i) designated irrevocably by the Participant at the time of the Compensation Reduction Election as a Roth Elective Deferral that is being made in lieu of all or a portion of the Pre-Tax Elective Deferrals the Participant is otherwise eligible to make under the Plan; and (ii) treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a Compensation Reduction Election.

(hh) "Salary Reduction Agreement" means an agreement entered into between an Employee and the Employer pursuant to Section 4.01. Such agreement shall not be effective with respect to Compensation made available prior to the effective date of such agreement and shall be binding on the parties and irrevocable with respect to Compensation earned while it is in effect.

(ii) "Severance from Employment" means that the Employee ceases to be employed by the Employer and any Related Employer. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public school, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public school or in a capacity that is not employment with a public school (*e.g.*, ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer).

(jj) "Spouse" means the person to whom an Employee is legally married under the law of any State.

(kk) "State" means a State, a political subdivision of a State, or any agency or instrumentality of a State. "State" includes the District of Columbia pursuant to Code Section 7701(a)(10). An Indian tribal government is treated as a State pursuant to Code Section 7871(a)(6)(B) for purposes of Code Section 403(b)(1)(A)(ii).

(ll) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(mm) "Vendor" means the provider of an Annuity Contract or Custodial Account as selected by the Administrator and listed in Appendix A, as modified from time to time in the Administrator's sole discretion. A modification of Appendix A is not an amendment of the Plan.

(nn) "Vested" means the interest of the Participant in his or her Account that is unconditional, legally enforceable, and nonforfeitable.

(oo) "Year of Service" means each full year during which an individual is a full-time

Employee of the Employer, plus fractional credit for each part of a year during which the individual is either a full-time Employee of the Employer for a part of a year or a part-time Employee of the Employer. The Employee must be credited with a full Year of Service for each year during which the Employee is a full-time Employee and a fraction of a year for each part of a work period during which the Employee is a full-time or part-time Employee of the Employer. An Employee's number of Years of Service equals the aggregate of the annual work periods during which the Employee is employed by the Employer. The work period for an Employee who is a teacher is the academic year. For all other Employees, the work period is the Employer's fiscal year.

### **ARTICLE III.**

#### **ELIGIBILITY AND PARTICIPATION**

**Section 3.01. Elective Deferral Eligibility.** Each Employee is eligible to elect to have Elective Deferrals made on his or her behalf to the Plan immediately upon becoming employed by the Employer as provided under Sections 4.01 and 4.02.

**Section 3.02. Discretionary Nonelective Contribution Eligibility.** Each Employee is eligible to participate in the Plan for purposes of Discretionary Nonelective Contributions as provided under Section 4.03.

**Section 3.03. Rollover Contribution Eligibility.** Each Employee is eligible to make a Rollover Contribution to the Plan immediately upon becoming a Participant as provided under Section 4.04.

**Section 3.04. Participation.** The Employer shall notify an Employee when he or she is eligible to participate in the Plan. An Employee must complete the Applicable Forms to enroll in and become a Participant under the Plan. An Employee who has satisfied the participation requirements under the Plan and who fails to complete the enrollment process shall be deemed to have waived all of his or her rights under the Plan; provided that such Employee may become a Participant in the Plan at any time thereafter by completing the enrollment process.

### **ARTICLE IV.**

#### **CONTRIBUTIONS**

##### **Section 4.01. Elective Deferral Contributions.**

(a) **General Rule.** An Employee becomes a Participant by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral on his or her behalf to one or more Investment Arrangements) and filing it with the Administrator. The Compensation Reduction Election shall be made on the Salary Reduction Agreement provided by the Employer under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time. An Employee shall become a Participant as soon as administratively practicable following the date of the Employee's completion of the Applicable Forms, including the Salary Reduction Agreement. A

Pre-Tax Elective Deferral Account and/or Roth Elective Deferral Account shall be established for each Participant.

(b) Information Provided by the Employee. Each Participant shall provide at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the administration of the Plan, including any information required under the terms governing the Investment Arrangement.

(c) Change in Compensation Reduction Election. Subject to the terms governing the applicable Investment Arrangement, a Participant may change his or her Compensation Reduction Election, choice of Investment Arrangements, Investment Options, and designated Beneficiary. A change in the Compensation Reduction Election shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in Investment Arrangements, Investment Options, or Beneficiary designation shall take effect when the election is accepted by the Vendor.

(d) Contributions Made Promptly. Elective Deferrals to the Plan shall be transferred to the Vendor within 15 business days following the end of the month in which the amounts would have been paid to the Participant.

(e) Leave of Absence. If an Employee is absent from work due to a leave of absence, Elective Deferrals (unless a Compensation Reduction Election is otherwise revised) under the Plan shall continue to the extent that Compensation continues.

#### **Section 4.02. Roth Elective Deferrals.**

(a) General Application. Effective January 1, 2011, subject to the terms of the Investment Arrangements, a Participant may designate all or a portion of the Participant's Elective Deferrals as Roth Elective Deferrals. Any Roth Elective Deferrals under an Investment Arrangement shall be allocated to a separate Account maintained under the Investment Arrangement for a Participant's Roth Elective Deferrals. Unless specifically stated otherwise, Roth Elective Deferrals shall be treated as Elective Deferrals for all purposes under the Plan.

(b) Separate Accounting.

(1) Contributions and withdrawals of Roth Elective Deferrals shall be credited and debited to the Roth Elective Deferral Account maintained for the Participant under the Investment Arrangement.

(2) A record of the amount of the Roth Elective Deferrals in each Roth Elective Deferral Account shall be maintained.

(3) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Elective Deferral Account and the Participant's other Accounts.

(4) No contributions other than Roth Elective Deferrals and properly attributable earnings shall be credited to a Participant's Roth Elective Deferral Account.

**Section 4.03. Discretionary Nonelective Contributions.**

(a) Subject to Article V, the Employer may make Discretionary Nonelective Contributions to the Plan on behalf of an Employee or group of Employees as may be set forth in an appendix to the Plan or a Contract from time to time. Discretionary Nonelective Contributions shall be allocated to the Discretionary Nonelective Contribution Account of the Participant as of the date of the contribution, and shall be made in accordance with Code Section 403(b)(3) and Treasury Regulation Section 1.403(b)-4(d), as applicable.

(b) Appendix B sets forth the current Discretionary Nonelective Contributions under the Plan. Subject to any collective bargaining agreements and/or Board policies, the Employer may amend Appendix B. A modification of Appendix B is not an amendment of the Plan.

(c) Notwithstanding Section 3.04, if an Employee fails to complete the Applicable Form(s) at such time that the Employee is eligible for Discretionary Nonelective Contributions, Discretionary Nonelective Contributions shall be made by the Employer to a Discretionary Nonelective Contribution Account under the Plan on behalf of the Participant and invested in the default Investment Option described in Section 10.03(b) until such time that the Employee completes the Applicable Form(s).

**Section 4.04. Eligible Rollover Contributions to the Plan.**

(a) Eligible Rollover Contributions. To the extent provided under the terms governing the applicable Investment Arrangement, an Employee who is a Participant who is entitled to receive an Eligible Rollover Distribution from another Eligible Retirement Plan may request to have all or a portion of the Eligible Rollover Distribution paid to the Plan as a Rollover Contribution. Such Rollover Contributions shall be made in the form of cash only. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an Eligible Retirement Plan.

(b) Eligible Rollover Distribution. For purposes of paragraph (a), an Eligible Rollover Distribution means any distribution of all or any portion of a Participant's benefit under another Eligible Retirement Plan, except that an Eligible Rollover Distribution does not include (i) any installment payment for a period of ten years or more, (ii) any distribution made upon hardship, or (iii) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code Section 401(a)(9).

(c) Eligible Retirement Plan. For purposes of paragraph (a), an Eligible Retirement Plan means a qualified trust described in Code Section 401(a) (excluding after-tax contributions), an annuity plan described in Code Section 403(a) or 403(b) (excluding after-tax contributions), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or an eligible governmental plan described in Code Section 457(b).

(d) Roth Rollover Contributions. Effective January 1, 2011, the Plan shall accept a Rollover Contribution from a Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) only if it is a direct rollover and only to the extent the

rollover is permitted under the rules of Code Section 402(c). A separate Rollover Contribution Account shall be maintained to reflect any direct rollover to the Plan of an eligible Roth Rollover Contribution as herein provided.

(e) Information Regarding Participant Basis Required. A rollover of an Eligible Rollover Distribution that includes Roth Elective Deferrals shall only be accepted if the Vendor obtains information regarding the Participant's tax basis under Code Section 72 in the amount rolled over.

(f) Separate Accounts. The Vendor shall establish and maintain separate accounts for the Participant for any Eligible Rollover Distribution.

## ARTICLE V.

### LIMITATIONS ON CONTRIBUTIONS

**Section 5.01. Basic Annual Limitation for Elective Deferrals.** Except as provided in Sections 5.02 and 5.03, the maximum amount of the Elective Deferrals under the Plan for any calendar year shall not exceed \$19,500 for 2020 which is the applicable dollar amount established under Code Section 402(g)(1)(B), adjusted for cost-of-living to the extent provided under Code Section 402(g)(4) thereafter.

**Section 5.02. Special Section 403(b) Elective Deferral Catch-up Limitation for Employees With 15 Years of Service.** Because the Employer is a qualified organization within the meaning of Treasury Regulation Section 1.403(b)-4(c)(3)(ii), the applicable dollar amount under Section 5.01 for any qualified employee is increased by the least of:

- (a) \$3,000;
- (b) The excess of:
  - (1) \$15,000, over
  - (2) The total special 403(b) catch-up Elective Deferrals made for the qualified employee by the Employer for all prior years of employment with the Employer; or
- (c) The excess of:
  - (1) \$5,000 multiplied by the number of Years of Service of the qualified employee with the Employer, over
  - (2) the total Elective Deferrals made for the qualified employee by the Employer for all prior years of employment with the Employer.

For purposes of this Section 5.02, a "qualified employee" means an Employee who has completed at least 15 Years of Service taking into account only employment with the Employer. Effective June 1, 2020, an Employee may not make additional Elective Deferrals under this Section 5.02 unless the Employee was making such additional Elective Deferrals as of May 31,

2020.

**Section 5.03. Age 50 Catch-up Elective Deferrals.** An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$6,500 for 2020, adjusted for cost-of-living to the extent provided under Code Section 414(v) thereafter.

**Section 5.04. Elective Deferral Catch-up Provision Coordination.** Elective Deferrals in excess of the limitation set forth in Section 5.01 will be allocated first to the special 403(b) catch-up under Section 5.02 (if applicable) and next as an age 50 catch-up contribution under Section 5.03.

**Section 5.05. Special Rule for a Participant Covered by Another Defined Contribution Plan.** For purposes of this Article V, if the Participant is or has been a Participant in one or more other plans under Code Section 403(b) (and any other plan that permits elective deferrals under Code Section 402(g)), then this Plan and all such other plans shall be considered as one plan for purposes of applying the limitations in this Article V. For this purpose, the Administrator shall take into account any other such plan maintained by any Related Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan; provided, however, that another plan maintained by a Related Employer shall be taken into account for purposes of Section 5.02 only if the other plan is a 403(b) plan. Notwithstanding the preceding, it is the Participant's responsibility to ensure that his or her elective deferrals to a plan maintained by an employer that is not the Employer or a Related Employer, when added to his or her Elective Deferrals to this Plan, do not exceed the limits under Code Section 402(g).

**Section 5.06. Correction of Excess Elective Deferrals.**

(a) If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described in this Article V, or the Elective Deferral on behalf of a Participant for any calendar year exceeds these limitations when combined with other amounts deferred by the Participant under another plan of the Employer under Code Section 403(b) (and any other plan that permits elective deferrals under Code Section 402(g) for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, to the extent in excess of the applicable limitations (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant by no later than the April 15th following the calendar year in which the excess Elective Deferral was made, provided that the Participant notifies the Employer in writing of the excess amounts by no later than the preceding March 1st. A Participant shall be deemed to have notified the Employer of excess Elective Deferrals to the extent the Participant has excess Elective Deferrals for the calendar year calculated by taking into account only Elective Deferrals under this Plan and amounts deferred by the Participant to other plans of the Employer. Any tax consequences resulting from a Participant's failure to notify the Employer under this paragraph are the sole responsibility of the Participant. Subject to the terms of the Investment Arrangements, if a Participant who made both Pre-Tax Elective Deferrals and Roth Elective Deferrals for a calendar year has excess Elective Deferrals for that



year, the excess Elective Deferrals shall be distributed out of the Participant's Pre-Tax Elective Deferral Account unless the Participant elects to instead have the excess amounts distributed out of the Roth Elective Deferral Account.

(b) Notwithstanding paragraph (a), to the extent that the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above only when combined with other amounts deferred by the Participant under a plan of a Related Employer, then the plan of the Related Employer is responsible for distributing the excess amounts for the year.

**Section 5.07. Annual Additions Limitation.**

(a) Limitations on Aggregate Annual Additions.

(1) General Limitation on Annual Additions. A Participant's Annual Additions under the Plan for a Limitation Year may not exceed the Maximum Annual Addition as set forth in Section 5.07(b)(4).

(2) Aggregation of 403(b) Plans of the Employer. If Annual Additions are credited to a Participant under any 403(b) plans of the Employer in addition to this Plan for a Limitation Year, the sum of the Participant's Annual Additions for the Limitation Year under this Plan and such other 403(b) plans may not exceed the Maximum Annual Addition as set forth in Section 5.07(b)(4).

(3) Aggregation Where Participant is in Control of Any Employer. If a Participant is in control of any employer for a Limitation Year, the sum of the Participant's Annual Additions for the Limitation Year under this Plan, any other 403(b) plans of the Employer, any defined contribution plans maintained by controlled employers, and any 403(b) plans of any other employers may not exceed the Maximum Annual Addition as set forth in Section 5.07(b)(4) below. For purposes of this subsection, a Participant is in control of an employer based upon the rules of Code Sections 414(b), 414(c), and 415(h), and a defined contribution plan means a defined contribution plan that is qualified under Code Section 401(a) or 403(a), a Code Section 403(b) plan, or a simplified employee pension within the meaning of Code Section 408(k).

(4) Coordination of Limitation on Annual Additions Where Participant is in Control of Employer. If the Participant is in control of an employer, Annual Additions which may be credited to a Participant under this Plan for any Limitation Year shall not exceed the Maximum Annual Addition under Section 5.07(b)(4), reduced by the Annual Additions credited to the Participant under any defined contribution plans maintained by controlled employers and 403(b) plans of any other employers. Contributions to the Participant's Accounts under this Plan shall be reduced to the extent necessary to prevent this limitation from being exceeded.

(5) Coordination of Limitation on Annual Additions Where Employer Has Another 403(b) Plan. If Annual Additions are credited to the Participant for the Limitation Year under another 403(b) plan of the Employer, the Annual Additions which

may be credited to the Participant for the Limitation Year shall be limited to the extent necessary to prevent exceeding the Maximum Annual Addition under Section 5.07(b)(4) as follows: first, under the other 403(b) plan; and, second, this Plan.

(6) Excess Annual Additions.

(i) If, notwithstanding Sections 5.07(a)(1) through 5.07(a)(5), a Participant's Annual Additions under this Plan, or under this Plan and plans aggregated with this Plan under Sections 5.07(a)(2) and 5.07(a)(3), result in an Excess Annual Addition for a Limitation Year, the Excess Annual Addition will be deemed to consist of the Annual Additions last credited, except Annual Additions to a defined contribution plan qualified under Code Section 401(a) or a simplified employee pension maintained by an employer controlled by the Participant will be deemed to have been credited first.

(ii) Any Excess Annual Addition attributable to this Plan will be corrected in the manner described in Section 5.07(a)(7).

(7) Correction of Excess Annual Additions. A Participant's Excess Annual Additions for a taxable year are includible in the Participant's gross income for that taxable year. A Participant's Excess Annual Additions attributable to this Plan shall be credited in the year of the excess to a separate account under the Plan for such Excess Annual Additions which shall be maintained by the Vendor until the Excess Annual Additions are distributed. This separate account will be treated as a separate contract to which Code Section 403(c) (or another applicable provision of the Code) applies. Amounts in the separate account may be distributed at any time, notwithstanding any other provisions of the Plan. Excess Annual Additions shall be corrected as permitted under the Employee Plans Compliance Resolution System (or similar Internal Revenue Service correction program).

(b) Definitions.

(1) "Annual Additions" means the following amounts credited to a Participant under the Plan or any other plan aggregated with the Plan under Sections 5.07(a)(2) and 5.07(a)(3):

(i) Discretionary Nonelective Contributions, including elective deferrals (other than age 50 catch-up elective deferrals described in Code Section 414(v) and contributions that have been distributed to the Participant as excess elective deferrals);

(ii) after-tax employee contributions;

(iii) forfeitures;

(iv) amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan, and amounts derived from contributions paid or accrued which are attributable to post-

retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e); and

- (v) allocations under a simplified employee pension.

Amounts described in (i), (ii), (iii), and (v) are Annual Additions for purposes of both the dollar limitation under Section 5.07(b)(4)(i) and the percentage of compensation limitation under Section 5.07(b)(4)(ii). Amounts described in (iv) are Annual Additions solely for purposes of the dollar limitation under Section 5.07(b)(4)(i).

(2) "Excess Annual Addition" means the excess of the Annual Additions credited to the Participant for the Limitation Year under the Plan and plans aggregated with the Plan under Sections 5.07(a)(2) and 5.07(a)(3) over the Maximum Annual Addition for the Limitation Year under Section 5.07(b)(4).

(3) "Limitation Year" means the calendar year. However, if the Participant is in control of an employer pursuant to Section 5.07(a)(3) above, the Limitation Year shall be the Limitation Year in the defined contribution plan controlled by the Participant.

(4) "Maximum Annual Addition" means that the Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

- (i) \$57,000 for 2020, adjusted for increases in the cost-of-living under Code Section 415(d) thereafter; or

- (ii) 100% of the Participant's Includible Compensation for the Limitation Year.

## **ARTICLE VI.**

### **VESTING**

A Participant (or in the event of the Participant's death, the Beneficiary) shall always be 100% Vested in his or her Account at all times.

## **ARTICLE VII.**

### **LOANS**

#### **Section 7.01. Loans Generally.**

(a) To the extent (i) a Vendor has been approved by the Administrator to allow loans under the Plan and (ii) loans are permitted by the terms governing the applicable Investment Arrangement, loans shall be available to a Participant who is an Employee from his or her Vested Accounts other than his or her Roth Elective Deferral Account, Roth Rollover Contribution Account, and Discretionary Nonelective Contribution Account; provided, however,

that effective June 1, 2020, or as soon as administratively practicable thereafter, loans shall also be available to a Participant who is an Employee from his or her Roth Elective Deferral Account and Roth Rollover Contribution Account.

(b) Loans shall be subject to all applicable requirements and restrictions of the Code, including the provisions of Code Section 72(p) and the regulations thereunder. A Participant who has defaulted on a loan shall not be entitled to a future loan under the Plan until it has been fully repaid to the Plan.

(c) All loans shall be subject to the approval of the Vendor. The Vendor may charge a reasonable processing fee with respect to any loan.

**Section 7.02. Loan Procedures.** The Vendor shall establish written procedures to govern Participant loans under the Plan, which may be amended from time to time. All loans shall comply with such procedures, and shall be administered subject to the terms of the applicable Investment Arrangement.

**Section 7.03. Loan Limits.**

(a) No loan to a Participant under the Plan may exceed the lesser of:

(1) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Vendor (not taking into account any payments made during such one-year period); or

(2) One-half of the value of the Participant's Vested Account (as of the valuation date immediately preceding the date on which such loan is approved by the Vendor).

(b) For purposes of this Section, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a Vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

(c) The Administrator shall take such steps as appropriate to coordinate the limitations on loans, including collection of information from Vendors, and transmission of information requested by any Vendor. The Administrator may delegate this responsibility to a Vendor or to another service provider pursuant to Section 11.02.

**ARTICLE VIII.**

**BENEFIT DISTRIBUTIONS**

**Section 8.01. Distribution of Account.**

(a) A Participant may request a distribution of his or her Vested Account at such time that the Participant:

- (1) has a Severance from Employment;
- (2) dies;
- (3) becomes Disabled;
- (4) attains age 59 ½;
- (5) has a financial hardship under Section 8.03.

(b) The distribution restrictions in paragraph (a) do not apply to Pre-Tax Elective Deferrals to an Annuity Contract under the Plan prior to January 1, 1989 (not including earnings thereon) provided such Pre-Tax Elective Deferrals are separately accounted for under the Plan.

(c) Subject to the terms governing the applicable Investment Arrangement, Participants may elect to have either Roth Elective Deferrals or Pre-Tax Elective Deferrals distributed from the Plan first. Unless provided otherwise under the terms governing the applicable Investment Arrangement, if the Participant fails to make an election, Pre-Tax Elective Deferrals will be distributed from the Plan first.

(d) Notwithstanding paragraph (a), a Participant may request a distribution of his or her Rollover Contribution Account at any time, if separately accounted for by the Vendor.

(e) The Administrator shall certify to the Vendor whether the Participant has had a Severance from Employment or become Disabled.

**Section 8.02. Forms of Distribution.**

(a) A Participant may elect to receive his or her Vested Account under any payment option available under and subject to the terms governing the applicable Investment Arrangement.

(b) Effective June 1, 2020, or as soon as administratively practicable thereafter, to the extent permitted under the terms governing the applicable Investment Arrangement, distributions may be made in the form of a lump sum payment without the consent of the Participant or Beneficiary if the Participant's Accumulated Benefit (including any amounts in a Rollover Contribution Account) does not exceed \$1,000.

**Section 8.03. Hardship Distributions.**

(a) To the extent (i) a Vendor has been approved by the Administrator to allow hardship withdrawals under the Plan and (ii) a hardship withdrawal is permitted by the terms governing the applicable Investment Arrangement, distribution of Pre-Tax Elective Deferrals and, effective June 1, 2020, or as soon as administratively practicable thereafter, Roth Elective Deferrals (excluding any earnings on such Elective Deferrals after December 31, 1988) may be made to a Participant who is an Employee in the event of hardship. A hardship distribution is not permitted from a Discretionary Nonelective Employer Contribution Account. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need. Participants may be charged a reasonable processing fee per hardship withdrawal.

(b) The following are the only financial needs considered immediate and heavy:

(1) expenses incurred or necessary for medical care described in Code Section 213(d) (without regard to whether the expenses exceed 7.5% of adjusted gross income) of the Participant, the Participant's Spouse, primary Beneficiary, or dependents (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(2) the purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) payment of tuition and related educational fees and room and board expenses for the next 12 months of post-secondary education for the Participant, the Participant's Spouse, primary Beneficiary, or dependents (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(4) payments necessary to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;

(5) payments for funeral or burial expenses for the Participant's deceased parent, Spouse, primary Beneficiary, or any dependent (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(6) expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income and effective January 1, 2020, without regard to Code Section 165(h)(5));

(7) effective January 1, 2020, expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; and

(8) such other circumstances as the Commissioner of Internal Revenue determines constitute financial hardship under Code Section 401(k) or the Treasury Regulations thereunder.

(c) A distribution will be considered necessary to satisfy an immediate and heavy financial need of the Participant only if:

(1) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);

(2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer (except to the extent such actions would be counterproductive to alleviating the financial need); provided, however, that effective January 1, 2020, a Participant shall not be required to obtain any such nontaxable loans;

(3) For distributions on or before December 31, 2019, all plans maintained by the Employer provide that the Participant's Elective Deferrals will be suspended for six months after the receipt of the hardship distribution;

(4) For distributions made on or after January 1, 2020, the Participant represents that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need; and

(5) The Participant has met any such additional or alternative requirements as may be prescribed in Treasury Regulation Section 1.401(k)-1(d)(3)(iv)(E) or subsequent promulgations.

(d) A Participant must provide substantiation of the reason for and the amount of the immediate and heavy financial need to the Vendor. The Vendor shall approve all hardship distributions under this Section 8.03.

(e) The Administrator shall take such steps as appropriate to coordinate the hardship distribution rules, including collection of information from Vendors, and transmission of information requested by any Vendor. The Administrator may delegate this responsibility to a Vendor or to another service provider pursuant to Section 11.02.

#### **Section 8.04. Required Distribution Rules.**

(a) General Rules Regarding Minimum Distribution Requirements. Unless and to the extent otherwise permitted by law and in regulations or other rules of general applicability published by the Department of the Treasury or the Internal Revenue Service, the Plan shall comply with the minimum distribution requirements of Code Section 401(a)(9) and the regulations thereunder in accordance with paragraphs (a) through (f). The distribution requirements in paragraphs (b) through (f) generally apply to a Participant's entire Accumulated Benefit. However, these requirements do not apply to the undistributed portion of a Participant's Accumulated Benefit valued as of December 31, 1986, exclusive of subsequent earnings (the

pre-1987 account balance), provided that the applicable requirements of Treasury Regulation Section 1.401(a)(9)-6(e)(6) are satisfied. In this case, a Participant's pre-1987 account balance shall be distributed in accordance with the incidental benefit requirements of Treasury Regulation Section 1.401-1(b)(1)(i). To the extent permitted under Treasury Regulation Section 1.403(b)-6(e)(7) and the Investment Arrangements, a Participant's Investment Arrangements under the Plan may be aggregated and the minimum distribution requirements satisfied by distribution from any one or more of the Investment Arrangements.

(b) Required Minimum Distributions. Distribution of the Participant's Accumulated Benefit will begin no later than the first day of April following the later of the calendar year in which the Participant attains age 70 ½ (age 72 for distributions required to be made after December 31, 2019, with respect to Participants who obtain age 70 ½ after December 31, 2019) or the calendar year in which the Participant retires from employment (the "required beginning date") over (i) the life of the Participant, (ii) the lives of the Participant and Beneficiary, or (iii) a period certain not extending beyond the life expectancy of the Participant or the joint and last survivor expectancy of the Participant and Beneficiary.

(1) If the Participant's Accumulated Benefit is not distributed as an annuity, the amount to be distributed each year, beginning with the calendar year the Participant attains age 70 ½ (age 72 for distributions required to be made after December 31, 2019, with respect to Participants who obtain age 70½ after December 31, 2019) or retires and continuing through the year of death, shall not be less than the quotient obtained by dividing the value of the Accumulated Benefit, including outstanding rollovers and transfers, as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of his or her birthday in the year. However, if the Participant's sole Beneficiary is his or her surviving Spouse and such Spouse is more than 10 years younger than the Participant, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of Treasury Regulation Section 1.401(a)(9)-9, using the ages as of the Participant's and Spouse's birthdays in the year.

(2) If the Participant's Accumulated Benefit is distributed as an annuity, the distribution periods described in subsection (1) cannot exceed the periods specified in Treasury Regulation Section 1.401(a)(9)-6. Payments must be made in periodic payments at intervals of no longer than one year and must be either non-increasing or they may increase only as provided in Q&As-1 and -4 of Treasury Regulation Section 1.401(a)(9)-6. In addition, any distribution must satisfy the incidental benefit requirements specified in Q&A-2 of Treasury Regulation Section 1.401(a)(9)-6.

(3) The required minimum distribution for the year the Participant attains age 70 ½ (age 72 for distributions required to be made after December 31, 2019, with respect to Participants who obtain age 70½ after December 31, 2019) or retires (or first required annuity payment) can be made as late as the required beginning date. The required minimum distribution (or required annuity payment) for any other year, including the year that contains the required beginning date, must be made by the end of such year.



(c) Death On or After Required Beginning Date or Date Required Annuity Payments Begin. If the Participant's Accumulated Benefit is distributed as an annuity and the Participant dies on or after required payments begin, the remaining portion of the Participant's interest will continue to be distributed under the option chosen. If the Participant's Accumulated Benefit is not distributed as an annuity and the Participant dies on or after the required beginning date, the remaining portion of the Participant's interest will be distributed at least as rapidly as follows:

(1) If the Beneficiary is someone other than the Participant's surviving Spouse, the remaining interest will be distributed over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the Beneficiary's age as of his or her birthday in the year following the year of the Participant's death, or over the period described in subsection (3) below if longer.

(2) If the Participant's sole Beneficiary is the Participant's surviving Spouse, the remaining interest will be distributed over the Spouse's life or over the period described in subsection (3) below if longer. Any interest remaining after the spouse's death will be distributed over the Spouse's remaining life expectancy determined using the Spouse's age as of his or her birthday in the year of the Spouse's death, or, if the distributions are being made over the period described in subsection (3) below, over such period.

(3) If there is no Beneficiary, or if applicable by operation of subsection (1) or (2) above, the remaining interest will be distributed over the Participant's remaining life expectancy determined in the year of the Participant's death.

(4) The amount to be distributed each year under subsection (1), (2), or (3) above, beginning with the calendar year following the calendar year of the Participant's death, is the quotient obtained by dividing the value of the Accumulated Benefit as of the end of the preceding year by the remaining life expectancy specified in such subsection. Life expectancy is determined using the Single Life Table in Q&A-1 of Treasury Regulation Section 1.401(a)(9)-9. If distributions are being made to a surviving Spouse as the sole Beneficiary, the Spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such Spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's or Participant's age in the year specified in subsection (1), (2) or (3) above and reduced by one for each subsequent year.

(d) Death Before Required Beginning Date or Date Required Annuity Payments Begin. If the Participant dies before the required beginning date (or the date required payments begin, in the case of an annuity), his or her entire interest will be distributed at least as rapidly as follows:

(1) If the Beneficiary is someone other than the Participant's surviving Spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant's death, over the remaining life expectancy of the Beneficiary, with such life expectancy determined using the age of the Beneficiary as of his or her birthday in the year following the year of the Participant's death, or, if

elected, in accordance with subsection (3) below.

(2) If the Participant's Beneficiary is the Participant's surviving Spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant's death or by the end of the calendar year in which the Participant would have attained age 70 ½, if later (age 72 for distributions required to be made after December 31, 2019, with respect to Participants who obtain age 70½ after December 31, 2019), over the Spouse's life, or, if elected, in accordance with subsection (3) below. If the surviving Spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the Spouse's death, over the Spouse's Beneficiary's remaining life expectancy determined using the Beneficiary's age as of his or her birthday in the year following the death of the Spouse, or, if elected, will be distributed in accordance with subsection (3) below. If the surviving Spouse dies after distributions are required to begin, any remaining interest will be distributed under the contract option chosen, in the case of an annuity, or over the Spouse's remaining life expectancy determined using the Spouse's age as of his or her birthday in the year of the Spouse's death.

(3) If there is no Beneficiary, or if applicable by operation of subsection (1) or (2) above, the entire interest, to the extent required by regulations, will be distributed by the end of the calendar year containing the fifth anniversary of the Participant's death (or of the Spouse's death in the case of the surviving spouse's death before distributions are required to begin under subsection (2) above).

(e) Except in the case of a distribution as an annuity, the amount to be distributed each year under paragraph (d)(1) or (2) is the quotient obtained by dividing the value of the account as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Treasury Regulation Section 1.401(a)(9)-9. If distributions are being made to a surviving spouse as the designated Beneficiary, the spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to the spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the Beneficiary's age in the year specified in paragraph (d)(1) or (2) and reduced by one for each subsequent year. The "value" of the Accumulated Benefit or the "interest" in the annuity includes the amount of any outstanding rollover and transfer and the actuarial value of any other benefits provided under the annuity such as guaranteed death benefits, to the extent required under applicable regulations.

(f) For purposes of paragraphs (c) and (d) above, required annuity payments are considered to begin on the Participant's required beginning date or, if applicable, on the date distributions are required to begin to the surviving spouse under paragraph (d)(2) above. However, if distributions start prior to the applicable date in the preceding sentence, on an irrevocable basis (except for acceleration) under an Annuity Contract meeting the requirements of Treasury Regulation Section 1.401(a)(9)-6, then required annuity payments are considered to begin on the annuity starting date.

(g) The Vendor(s) shall be solely responsible for complying with the provisions of this Section 8.04. The Vendor(s) shall calculate the amounts required to be distributed to a

Participant under this Section and notify such Participant of such distributions at least 60 days prior to the date distributions must begin.

**Section 8.05. Death Benefits.** If a Participant dies before the entire distribution of his or her Account has been made, his or her remaining Account, if any, will be distributed to his or her Beneficiary as soon as administratively feasible after the Participant's death, unless the Beneficiary elects a later payment date on the appropriate form as designated and furnished by the Vendor, subject to the minimum distribution requirements of Code Section 401(a)(9) and regulations thereunder. A Beneficiary may elect to receive the deceased Participant's Account under any payment option available under and subject to the terms governing the applicable Investment Arrangement.

**Section 8.06. Rollover Distributions from the Plan.**

(a) **Direct Rollovers.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution that is equal to at least \$500 paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. If an Eligible Rollover Distribution is less than \$500, a Distributee may not make the election described in the preceding sentence to roll over only a portion of the Eligible Rollover Distribution.

(b) **Definitions.**

(1) "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse and the Employee's or former Employee's Spouse or former Spouse who is the Alternate Payee, are Distributees with regard to the interest of the Spouse or former Spouse. A Distributee also includes the Participant's non-Spouse designated Beneficiary. In the case of a non-Spouse Beneficiary, the Direct Rollover may be made only to a an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is established on behalf of the Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). The determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A-17 and 18, 2007 I.R.B. 395.

(2) "Direct Rollover" means an Eligible Rollover Distribution by the Plan to the Eligible Retirement Plan specified by the Distributee.

(3) "Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

(i) any distribution that is 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 designated beneficiary, or for a period of ten years or more;

- (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9) (other than amounts that would have been required but for a statutory waiver of the Code Section 401(a)(9) requirements);
- (iii) any hardship distribution;
- (iv) the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities);
- (v) any distribution(s) that is reasonably expected to total less than \$200 during a year;
- (vi) any corrective distribution of excess amounts under Code Sections 402(g), 401(k), 401(m), and/or 415(c) and income allocable thereto;
- (vii) any loans that are treated as deemed distributions pursuant to Code Section 72(p);
- (viii) dividends paid on employer securities as described in Code Section 404(k);
- (ix) the costs of life insurance coverage (P.S. 58 costs);
- (x) prohibited allocations that are treated as deemed distributions pursuant to Code Section 409(p); and
- (xi) a distribution that is a permissible withdrawal from an eligible automatic contribution arrangement within the meaning of Code Section 414(w).

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (i) an individual retirement account or annuity described in Code Section 408(a) or 408(b), respectively, or (ii) a qualified plan described in Code Section 401(a) or 403(a) or a tax-sheltered annuity described in Code Section 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(4) "Eligible Retirement Plan" means a qualified plan described in Code Section 401(a), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an individual retirement account or annuity described in Code Section 408(a) or 408(b), a simple retirement account described in Code Section 408(p)(1) following the two-year period described in Code Section 72(t)(6), or an eligible plan under Code Section 457(b) which is maintained by a State and which agrees to separately account for amounts transferred into such plan from this Plan, that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan

shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee.

(c) Written Explanation of Right to Direct Rollover. The Vendor shall provide, within a reasonable time period before making an Eligible Rollover Distribution, a written explanation to the Participant that satisfies the requirements of Code Section 402(f).

(d) Roth Elective Deferrals.

(1) A Direct Rollover of a distribution from a Roth Elective Deferral Account under the Plan will be made only to another Roth Elective Deferral Account under an applicable retirement plan described in Code Section 402A(e)(1) or to a Roth IRA described in Code Section 408A, and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(2) The Plan will not provide for a Direct Rollover for distributions from a Participant's Roth Elective Deferral Account if the amounts of the distributions that are Eligible Rollover Distributions are reasonably expected to total less than \$200 during a year. In addition, any distribution from a Participant's Roth Elective Deferral Account is not taken into account in determining whether distributions from a Participant's other Accounts are reasonably expected to total less than \$200 during a year. However, Eligible Rollover Distributions from a Participant's Roth Elective Deferral Account are taken into account in determining whether the total amount of the Participant's Accumulated Benefits under the Plan exceeds \$1,000 for purposes of mandatory distributions from the Plan.

(3) The provisions of the Plan that allow a Participant to elect a Direct Rollover of only a portion of an Eligible Rollover Distribution but only if the amount rolled over is at least \$500 is applied by treating any amount distributed from the Participant's Roth Elective Deferral Account as a separate distribution from any amount distributed from the Participant's other Accounts in the Plan, even if the amounts are distributed at the same time.

**Section 8.07. Permissive Service Credit Transfer.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Accumulated Benefit transferred to the defined benefit governmental plan; provided, however, that no portion of the Participant's Accumulated Benefit attributable to Roth Elective Deferrals or Discretionary Nonelective Contributions may be transferred under this Section. A transfer under this Section may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under this Section only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

**ARTICLE IX.**

**ACCOUNTING**

**Section 9.01. Participant Accounts.** The Vendor(s) shall establish and maintain adequate records to reflect the Accounts of each Participant and Beneficiary. Credits and charges shall be made to such Accounts to reflect additions, distributions, and withdrawals, and to reflect gains or losses pursuant to the terms of each Investment Arrangement. The maintenance of individual Accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

**Section 9.02. Participant Statements.** The Vendor(s) shall provide to each Participant a quarterly statement reflecting the value of the Participant's Account as of the end of each quarter, and shall provide similar information to the Administrator upon its request.

**Section 9.03. Value of Account.** The value of the Account of a Participant as of any valuation date is the value of the Account Balance as determined by the Vendor. All transactions and Account records shall be based on fair market value.

**ARTICLE X.**

**INVESTMENT OF CONTRIBUTIONS**

**Section 10.01. Manner of Investment.** All Elective Deferrals, Discretionary Nonelective Contributions, Rollover Contributions, or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Investment Arrangements, and all income attributable to such amounts, property, or rights will be held and invested in one or more Annuity Contracts or Custodial Accounts.

**Section 10.02. Exclusive Benefit.** Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries.

**Section 10.03. Investment of Contributions.**

(a) Each Participant or Beneficiary shall direct the investment of his or her Account among the Investment Options available under the Investment Arrangement in accordance with the terms governing the Investment Arrangement.

(b) In the event that a Participant or Beneficiary fails to designate the Investment Options under the Investment Arrangement to which Contributions are to be made, the Contributions shall be invested in a default fund selected by the Employer in its sole discretion in accordance with ERISA Section 404(c)(5). The default fund shall be a qualified default investment alternative within the meaning of Section 2550.404c-5(b)(3) of the Department of Labor regulations.

**Section 10.04. Information Sharing.** Each Vendor and the Administrator shall

exchange such information as may be necessary to satisfy Code Section 403(b) or other requirements of applicable law.

**Section 10.05. Investment Changes.** A Participant or Beneficiary is permitted to change the investment of his or her Accounts among the Vendors of Investment Arrangements approved for use under the Plan. An investment change that includes an investment with a Former Vendor or other vendor that is not eligible to receive Contributions under the Plan is not permitted; provided, however, that a Participant or Beneficiary is permitted to change the investment of his or her Account from an investment with a Former Vendor to an Investment Option with a current Vendor.

**Section 10.06. Current Vendors.** The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan and set forth in Appendix A.

**Section 10.07. Former Vendors.** The Employer shall make a good faith reasonable effort to enter into an information sharing agreement with each Former Vendor to the extent that any existing agreement with that Former Vendor does not already provide for such information sharing on a continuing basis. The agreement will provide for mutual sharing of information necessary for the resulting Annuity Contract or Custodial Account, or any other Annuity Contract or Custodial Account to which contributions have been made by the Employer, to satisfy Code Section 403(b) and other tax requirements. This includes (i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Former Vendor when the Participant has had a Severance from Employment for purposes of the Plan benefit distribution restrictions, and (ii) the Employer and/or Former Vendor providing information concerning the Participant's or Beneficiary's after-tax employee contributions in order for a Vendor and/or the Former Vendor to determine the extent to which a distribution is includible in gross income.

## **ARTICLE XI.**

### **PLAN ADMINISTRATION**

#### **Section 11.01. Administrator.**

(a) The Administrator shall have the authority to control and manage the operation and administration of the Plan. The Administrator shall have all power necessary or convenient to enable it to exercise its authority under the Plan. The Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may from time to time amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process.

(b) The Plan shall be administered, and the provisions of the various documents comprising the Plan shall be coordinated, in accordance with the terms of the Plan and the requirements of Code Section 403(b). These provisions and requirements include but are not limited to:

- (1) Determining whether an Employee is eligible to participate in the Plan.

- (2) Determining whether contributions comply with the applicable limitations.
- (3) Determining whether hardship withdrawals comply with applicable requirements and limitations.
- (4) Determining that any rollovers or purchases of service credit comply with applicable requirements and limitations.
- (5) Determining that the requirements of the Plan and Code Section 403(b) are properly applied, including whether the Employer is a member of a controlled group.
- (6) Determining the status of domestic relations orders or qualified domestic relations orders.

Administrative functions, including functions to comply with Code Section 403(b) and other tax requirements, may be allocated among various persons pursuant to service agreements or other written documents. In no case shall administrative functions be allocated to Participants (other than permitting Participants to make investment elections for self-directed accounts). Any administrative functions not allocated to other persons are reserved to the Administrator.

(c) The Administrator shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Administrator may deem expedient and, subject to the Plan's claim procedures, the Administrator shall be the sole and final judge of such expediency. Any action by the Administrator which is not found to be an abuse of discretion, shall be final, conclusive, and binding on all individuals affected thereby.

(d) Benefits are payable under the Plan only if the Administrator, in its sole discretion, determines the benefits are payable under the provisions of the Plan.

#### **Section 11.02. Delegation by Administrator.**

(a) The Administrator may from time to time delegate in writing to a committee or to a duly authorized officer certain of its duties or other responsibilities under the Plan. A delegation of the Administrator's duties or responsibilities may be revoked without cause or advance notice. To the extent permitted under applicable law, such committee or officer shall have the same power and authority with respect to such delegated duties or other responsibilities as the Administrator has under the Plan. The Administrator shall not be liable for any act of omission of such committee or duly authorized officer in carrying out such responsibilities.

(b) The Administrator has designated the Vendor to be responsible for providing information to Participants regarding enrollment, Investment Options, and performance; processing contributions, withdrawal requests, transfers, and changes in Investment Options; and providing record keeping services and such other services as provided for under agreements between the Vendors and the Employer.



**Section 11.03. Employment of Consultants.** The Administrator may employ one or more persons to render advice with regard to its responsibilities under the Plan.

**Section 11.04. Requests for Information Concerning Eligibility, Participation and Contributions.** Requests for information concerning eligibility, participation, contributions, or any other aspects of the operation of the Plan, and service of legal process, should be in writing and directed to the Administrator of the Plan.

**Section 11.05. Requests for Information Concerning Annuity Contracts and Custodial Accounts.** Requests for information concerning the Annuity Contracts and Custodial Accounts and their terms, conditions, and interpretations thereof, claims thereunder, any requests for review of such claims, and service of legal process, should be in writing and directed to the Vendor.

**Section 11.06. Plan Expenses.** All reasonable expenses of administering the individual Accounts in the Plan will be charged against and paid from the Participants' Accounts, subject to the terms of the Investment Arrangements, unless paid by the Employer. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with Internal Revenue Service rules.

## **ARTICLE XII.**

### **AMENDMENT AND PLAN TERMINATION**

**Section 12.01. Termination of Contributions.** The Employer has adopted the Plan with the intention and expectation that contributions shall be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may, by resolution of the Board, discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance, subject to the terms of any collective bargaining agreement.

**Section 12.02. Amendment and Termination.** The Employer reserves the authority to amend or terminate this Plan at any time by resolution of the Board, subject to the terms of any collective bargaining agreement and/or Board policies.

**Section 12.03. Distribution upon Termination of the Plan.** Upon termination of the Plan and subject to any restrictions contained in the terms governing the applicable Investment Arrangement, all Accounts will be distributed, provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative 403(b) contract that is not part of the Plan during the period beginning on the date of Plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by Treasury Regulations. For purposes of distributing all assets from the Plan in the event of a Plan termination, delivery of a fully paid individual insurance annuity contract shall be treated as a distribution.

## ARTICLE XIII.

### MISCELLANEOUS

**Section 13.01. Non-Assignability.** Except as provided in Section 13.02 for a domestic relations order or Section 13.03 for an Internal Revenue Service levy, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary will have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

**Section 13.02. Domestic Relations Orders.** Notwithstanding Section 13.01, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Accumulated Benefit shall be paid in the manner and to the person or persons so directed in the domestic relations order to the extent that it is a "qualified domestic relations order" ("QDRO") under Code Section 414(p). Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator or Vendor will establish reasonable procedures for determining the status of any such decree or order as a QDRO and for effectuating distribution pursuant to the QDRO. Participants may be charged a reasonable processing fee per domestic relations order.

**Section 13.03. Internal Revenue Service Levy.** Notwithstanding Section 13.01, the Administrator may pay from a Participant's or Beneficiary's Accumulated Benefit the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**Section 13.04. Protection of Persons Who Serve in a Uniformed Service.**

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the USERRA, effective January 1, 2009, the Heroes Earnings Assistance and Relief Tax Act of 2008; Code Section 414(u), and Code Section 401(a)(37). For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(b) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service may elect to make Elective Deferrals upon resumption of employment with the Employer up to the maximum Elective Deferrals that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave,

reduced by the Elective Deferrals, if any, actually made for the Participant during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for the lesser of (i) five years following the resumption of employment or (ii) a period equal to three times the period of the interruption or leave. Such Elective Deferrals by the Participant may only be made during such period and while the Participant is reemployed by the Employer.

(c) If a Participant who is eligible for Discretionary Nonelective Contributions under Section 4.03 timely resumes employment with the Employer in accordance with USERRA, the Employer shall make the Discretionary Nonelective Contributions that would have been made if the Participant had remained employed during the Participant's qualified military service. Discretionary Nonelective Contributions must be made no later than 90 days after the date of reemployment or when Discretionary Nonelective Contributions are normally due for the year in which the qualified military service was performed, if later.

(d) Effective January 1, 2009, a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer, shall be treated as an Employee of the Employer who is eligible to make Elective Deferrals during such service and the differential wage payment shall be treated as Includible Compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(e) In addition, the survivors of any Participant who dies on or after January 1, 2007, while performing qualified military service are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan had the Participant resumed employment and then terminated employment on account of death.

**Section 13.05. Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals, which constitute wages under Code Section 3121). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Code Section 3401 and the Treasury Regulations thereunder), except to the extent that it is a Qualified Distribution. A payee will provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

**Section 13.06. Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator or the Vendor, benefits will be paid to a court appointed guardian or in accordance with the terms of a court order. Such payments will be considered a payment to such Participant or Beneficiary and will, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**Section 13.07. Mistaken Contributions.** If any contribution (or any portion of a

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

**Section 13.08. Procedure When Distributee Cannot Be Located.** The Vendor will make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. If the Vendor is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Investment Arrangement will continue to hold the benefits due such person, subject to any applicable state law.

**Section 13.09. Incorporation of Terms Governing Investment Arrangements.** The Plan, together with the terms governing the Investment Arrangements, is intended to satisfy the requirements of Code Section 403(b) and the Treasury Regulations thereunder. Terms and conditions governing the Investment Arrangements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Code Section 403(b).

**Section 13.10. Federal and State Taxes.** It is intended that contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries, except to the extent that the contribution is a Roth Elective Deferral. However, the Administrator does not guarantee that any particular Federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

**Section 13.11. Erroneous Payments.** If the Vendor makes any payment that, according to the terms of the Plan and the benefits provided thereunder, should not have been made, the Vendor may recover that incorrect payment by whatever means necessary, whether or not it was made due to the error of the Administrator or the Vendor, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Vendor may deduct it when making any future payments directly to that Participant.

**Section 13.12. Limitation on Rights and Obligations.** Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor the purchase of any Annuity Contract or Custodial Account, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

- (a) as conferring upon any Participant, Beneficiary, or any other person any right or claim against the Employer or the Administrator, except to the extent that such right or claim will be specifically expressed and provided in the Plan;
- (b) as creating any responsibility or liability of the Employer for the validity or effect of the Plan;
- (c) as a contract or agreement between the Employer and any Participant or other person;

(d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) as giving any Participant the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or other person at any time; provided, however, that the foregoing will not be deemed to modify the provisions of any collective bargaining agreements which may have been entered into by the Employer with the bargaining representatives of any Participant.

**Section 13.13. Counterparts.** The Plan may be executed in any number of counterparts, each of which will be deemed to be an original. All counterparts will constitute but one and the same instrument and will be evidenced by any one counterpart.

IN WITNESS WHEREOF, the Employer has caused this Plan amendment and restatement to be executed by its duly authorized representative as of the date written below, but effective as of the Effective Date.

**MILWAUKEE PUBLIC SCHOOLS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **APPENDIX A**

### **MILWAUKEE PUBLIC SCHOOLS 403(b) PLAN**

#### **CURRENT AND FORMER VENDORS**

The current selection of Vendors is not intended to limit future additions or deletions of Vendors. The Employer reserves the right to add or delete Vendors at any time, in its sole discretion. Any such change shall be effective on the date adopted by the Employer and shall be reflected on an updated Appendix A.

#### **I. CURRENT VENDORS**

As of the Effective Date of this restatement, the Employer has approved the following Vendor(s) under the Plan for Contributions:

- (a) Voya formerly known as ING Life Insurance and Annuity Company
- (b) Metropolitan Life Insurance Company
- (c) TIAA-CREF
- (d) WEA TSA Trust

#### **II. FORMER VENDORS**

As of the Effective Date of this restatement, the Former Vendors under the Plan are as follows:

- (a) Prudential Insurance Company of America
- (b) American United Life Insurance Company
- (c) Franklin Templeton Bank and Trust F.S.B.
- (d) Commonwealth Annuity and Life Insurance Company, for itself, Protective Life, and Kemper Investors Life
- (e) Security Benefit Life
- (f) The Lincoln National Life Insurance Company

Appendix A is hereby dated January 1, 2020.

## MILWAUKEE PUBLIC SCHOOLS 403(b) PLAN

### APPENDIX B

#### DISCRETIONARY NONELECTIVE CONTRIBUTIONS

This Appendix B sets forth the current Discretionary Nonelective Contributions under the Plan. Subject to any applicable collective bargaining agreements and Board policies, the Employer reserves the right to amend Appendix B. Any such change shall be effective on the date adopted by the Employer and shall be reflected on an updated Appendix B.

#### ACCUMULATED LEAVE PROGRAM

Pursuant to Section 4.03, the Employer shall make Discretionary Nonelective Contributions to the Plan under the Accumulated Leave Program as follows:

**Section 1. Eligibility to Participate in the Accumulated Leave Program.** For each Plan Year, the following Employees who have satisfied the eligibility requirements, and who were hired or rehired prior to July 1, 2013, shall be eligible to participate and shall receive Discretionary Nonelective Contributions:

- (a) Superintendent;
- (b) Board Clerk and Director, Office of Board Governance;
- (c) Chief Accountability and Efficiency Officer;
- (d) Cabinet Employees;
- (e) Exempt Administrators and Supervisors;
- (f) Exempt Clerical Technical unit;
- (g) Office of Accountability and Efficiency;
- (h) Office of Board Governance;
- (i) Represented Employees as specified in and during the terms of their respective collective bargaining agreements through their expiration date of either June 30, 2012, or June 30, 2013, that were in effect on the date of the Employee's Severance from Employment with the Employer; and
- (j) Effective upon the expiration of the collective bargaining agreements on either June 30, 2012, or June 20, 2013, Employees in the following units (or in positions that would be in any such unit but for the unit's decertification):
  - (i) Administrators and Supervisors unit;
  - (ii) Bookkeeper/Accountants unit;

- (iii) Building Engineers unit;
- (iv) Building Service Helpers unit;
- (v) Building Trades unit;
- (vi) Clerical-Technical unit;
- (vii) Educational Assistants/Safety Assistants unit;
- (viii) Food Service, HCA, SNA unit;
- (ix) Psychologists unit;
- (x) Teachers unit; and
- (xi) Warehouse and Distribution Services Buyers, F&M Services, Grounds Keepers, Seasonal Laborers, Parent Information Specialists, Social Work Aides, Radio and TV and Technology unit.

**Section 2. Participation in the Accumulated Leave Program.** An Employee who satisfies the eligibility requirements described in Sections 1 and 3 herein as of the date of Severance from Employment with the Employer shall become a Participant in the Accumulated Leave Program for purposes of Discretionary Nonelective Contributions as follows:

- (a) For non-represented Employees listed in Section 1, as of the later of May 1, 2006, or when such Participant first satisfies Section 1.
- (b) For represented Employees, as of the later of the date specified in the applicable collective bargaining agreement or when such Participant first satisfies Sections 1 and 3.

**Section 3. Discretionary Nonelective Contributions.** The amount of the Discretionary Nonelective Contributions made on behalf of Participants who have satisfied the requirements of Sections 1, 2, and 3 herein shall be as follows:

- (a) A flat dollar contribution (not to exceed the Participant's annual additions limit under Code Section 415(c) for that year), which the Employer shall contribute to the Discretionary Nonelective Contribution Account of a Participant in the Plan Year in which the Participant has a Severance from Employment with the Employer, in an amount to be determined by reference to the total amount of accumulated accrued sick leave that such Participant has accrued during his or her employment with the Employer as follows:
  - (i) An amount not to exceed a maximum of 40 accumulated full days of sick leave in excess of 70% of the maximum full-days accumulation (excluding half days). The maximum full-day accumulations are 1,160 hours for 10-month employees and 1,200 hours for 12-month employees for Employees



eligible under Section 1, and who retire prior to July 1, 2012, or July 1, 2013, as more specifically set forth in this Section 3(a)(i) below.

(A) Dates of Retirement prior to July 1, 2012, apply to the following:

- (1) Bookkeeper/Accountants unit;
- (2) Building Engineers unit;
- (3) Building Service Helpers unit;
- (4) Building Trades unit;
- (5) Clerical-Technical unit;
- (6) Educational Assistants/Safety Assistants unit;
- (7) Food Service, HCA, SNA unit; and
- (8) Warehouse and Distribution Services Buyers, F&M Services, Grounds Keepers, Seasonal Laborers, Parent Information Specialists, Social Work Aides, Radio and TV and Technology unit.

(B) Dates of Retirement prior to July 1, 2013 apply to the following:

- (1) Superintendent;
- (2) Board Clerk and Director, Office of Board Governance;
- (3) Chief Accountability and Efficiency Officer;
- (4) Cabinet Employees;
- (5) Administrators and Supervisors unit;
- (6) Exempt Administrators and Supervisors;
- (7) Exempt Clerical Technical unit;
- (8) Office of Accountability and Efficiency;
- (9) Office of Board Governance;
- (10) Psychologists unit; and
- (11) Teachers unit.

- (ii) An amount not to exceed a maximum of 10 accumulated full days of sick leave in excess of 70% of the maximum full-days accumulation (excluding half days). The maximum full-day accumulations are 1,160 hours for 10-month employees and 1,200 hours for 12-month employees for Employees eligible under Section 1, and who retire on July 1, 2012, through June 30, 2013, as more specifically set forth in this Section 3(a)(ii) below.
  - (A) Dates of Retirement on July 1, 2012, through June 30, 2013, apply to the following:
    - (1) Bookkeeper/Accountants unit;
    - (2) Building Engineers unit;
    - (3) Building Service Helpers unit;
    - (4) Building Trades unit;
    - (5) Clerical-Technical unit;
    - (6) Educational Assistants/Safety Assistants unit;
    - (7) Food Service, HCA, SNA unit; and
    - (8) Warehouse and Distribution Services Buyers, F&M Services, Grounds Keepers, Seasonal Laborers, Parent Information Specialists, Social Work Aides, Radio and TV and Technology unit.
- (iii) Effective with dates of retirement on or after July 1, 2013, for Employees eligible under Section 1 and as more specifically set forth in this Section 3(a)(iii) below and who are also (i) age 60 or older, and (ii) have achieved 20 or more years of Milwaukee Public Schools service, and (iii) who have a sick leave balance in excess of 90% of the maximum full-days accumulation, shall be eligible for up to 10 accumulated full-days of sick leave in excess of the 90% of the maximum full-days accumulation (excluding half-days):
  - (A) Superintendent;
  - (B) Board Clerk and Director, Office of Board Governance;
  - (C) Chief Accountability and Efficiency Officer;
  - (D) Cabinet Employees;
  - (E) Administrators and Supervisors unit;
  - (F) Exempt Administrators and Supervisors;

- (G) Bookkeeper/Accountants unit;
- (H) Building Engineers unit;
- (I) Building Service Helpers unit;
- (J) Building Trades unit;
- (K) Clerical-Technical unit;
- (L) Exempt Clerical Technical unit;
- (M) Educational Assistants/Safety Assistants unit;
- (N) Food Service, HCA, SNA unit;
- (O) Office of Accountability and Efficiency;
- (P) Office of Board Governance;
- (Q) Psychologists unit;
- (R) Teachers unit; and
- (S) Warehouse and Distribution Services Buyers, F&M Services, Grounds Keepers, Seasonal Laborers, Parent Information Specialists, Social Work Aides, Radio and TV and Technology unit.

(iv) Sunset Provision: As an alternative to the foregoing provisions for Employees hired or rehired prior to July 1, 2013, who are eligible under Section 1, who retire between July 1, 2013, through June 30, 2015, and who (i) are age 55 or older at the time of retirement AND (ii) have achieved 30 or more years of Milwaukee Public Schools service: such Employees are eligible to receive up to 10 accumulated full-days of sick leave in excess of the 90% of the maximum full-days accumulation (excluding half-days).

(b) Under no circumstance shall a Participant have the right, directly or indirectly, to receive cash in lieu of the Discretionary Nonelective Contributions. The terms of this Accumulated Leave Program shall supersede any conflicting provision in any other Board policy or employment agreement between the Employer and any Participant who is not a member of a collective bargaining unit. A Participant shall be fully vested in Discretionary Nonelective Contributions made to his or her Participant account under the 403(b) Plan.

**Section 4. General Information.**

(a) This Accumulated Leave Program shall be effective as of May 1, 2006. The Employer reserves the right to amend this Accumulated Leave Program and/or the 403(b) Plan subject to applicable collective bargaining agreements and Board

policies. Notwithstanding the foregoing, no amendment to this Accumulated Leave Program and/or the 403(b) Plan shall be effective if it authorizes or permits any part of the annuity contracts (other than such part as is required to pay taxes and administration expenses) funding benefits under the 403(b) Plan to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their beneficiaries; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the annuity contracts to revert to or become property of the Employer.

- (b) This Accumulated Leave Program and/or the 403(b) Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Accumulated Leave Program and/or the 403(b) Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of the 403(b) Plan.
- (c) The 403(b) Plan is intended to satisfy the definition of a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974. The Accumulated Leave Program shall be construed in accordance with the laws of the State of Wisconsin. The Employer shall comply with all state and federal laws and regulations applicable to the services to be performed.
- (d) Headings are for convenience of reference only. Headings do not limit or expand the scope of the text and are not intended to emphasize any portion thereof.