

BOARD OF TRUSTEES
BUFFALO & ERIE COUNTY PUBLIC LIBRARY
MEETING DATE: May 19, 2022

AGENDA ITEM NUMBER: E.2.a.

RESOLUTION: 2022-17
Amend 403(b) Plan Document

BACKGROUND:

Pursuant to the B&ECPL's labor contract with the Librarians' Association, in the 1990s the Association selected a provider to offer a tax sheltered retirement plan under Section 403(b) of the Internal Revenue Code. The contract further provided that: 1) all respective costs under such a plan are the direct obligation, through payroll deduction, of participating librarians; and 2) the implementation and continuation of such program is contingent upon there being no additional cost, direct or indirect to the Library, over and above that normally attributable to other payroll deductions currently provided to the bargaining unit herein. Employee participation in the program was voluntary, and the 403(b) program was in addition to the New York State Retirement System defined benefit pension program available to all employees.

On January 1, 2009, Internal Revenue Service regulations implementing major changes affecting the administration of 403(b) tax deferred compensation plans went into effect. These regulations implemented changes intended to allow greater monitoring of 403(b) plan compliance that would also add cost, time, and responsibilities to the B&ECPL as an employer that were not envisioned in the bargaining unit agreement.

To address these changes, the B&ECPL researched options and contracted for specialized expert legal consultation regarding 403(b) and 457(b) plan administration. As a result of this review, the B&ECPL Board of Trustees on December 18, 2008 adopted Resolution 2008-60, which directed all contributions to the 403(b) plan be discontinued effective December 31, 2008, which in effect froze the plan. For future tax deferred deductions, current employees are eligible to enroll in Erie County's 457(b) tax deferred plan. On December 17, 2009, the Board approved Resolution 2009-54, formally adopting a plan document for the frozen plan.

Even a frozen plan must be periodically reviewed and adjusted to remain in compliance with the law. The plan was last amended in September 2015 (Resolution 2015-26). Tax law has changed since then, including changes effective January 1, 2020 that must be incorporated into plan documents by 2022. Because the Plan is frozen, these changes have no impact on the Library's responsibilities. This resolution would adopt the amended and restated plan document (attached). A version with changes highlighted is also attached for informational purposes.

ACTION REQUIRED:

Motion to approve Resolution 2022-17.

PROPOSED RESOLUTION 2022-17

WHEREAS, pursuant to the Buffalo & Erie County Public Library's labor contract with the Librarians' Association, employees had been eligible to participate in a tax sheltered retirement plan under Section 403(b) of the Internal Revenue Code, and

WHEREAS, the contract further provided that: 1) all respective costs under such a plan are the direct obligation, through payroll deduction, of participating librarians; and 2) the implementation and continuation of such program is contingent upon there being no additional cost, direct or indirect to the Library, over and above that normally attributable to other payroll deductions currently provided to the bargaining unit herein, and

WHEREAS, as of January 1, 2009, new Internal Revenue Service regulations implementing major changes affecting the administration of 403(b) tax deferred compensation plans went into effect, and

WHEREAS, to address these changes, the B&ECPL researched options and contracted for specialized expert legal consultation regarding 403(b) and 457(b) plan administration, and

WHEREAS, as a result of this review, the B&ECPL Board of Trustees on December 18, 2008 adopted Resolution 2008-60, which directed all contributions to the 403(b) plan be discontinued effective December 31, 2008, which in effect froze the plan, and

WHEREAS, on December 17, 2009, the B&ECPL Board adopted Resolution 2009-54 formally adopting a plan document which continued the frozen status of the plan, and

WHEREAS, even a frozen plan must be periodically reviewed and adjusted to remain in compliance with the law, and

WHEREAS, since the plan was last amended in September 2015 via Resolution 2015-26, tax laws have changed, including changes effective January 1, 2020 that must be incorporated into plan documents by 2022, now therefore be it

RESOLVED, that the Board of Trustees of the Buffalo & Erie County Public Library adopts the attached AMENDED AND RESTATED BUFFALO & ERIE COUNTY PUBLIC LIBRARY CODE SECTION 403(B) PLAN DOCUMENT effective January 1, 2020 (except as otherwise noted therein), and be it further

RESOLVED, that the Board of Trustees of the Buffalo & Erie County Public Library authorizes the officers of the B&ECPL, on behalf of the B&ECPL, to execute the Amended and Restated Code Section 403(b) Plan Document and to take such other action as they deem appropriate to effectuate the purposes of the foregoing resolution.

**BUFFALO AND ERIE COUNTY PUBLIC LIBRARY
AMENDED AND RESTATED
CODE SECTION 403(B) PLAN DOCUMENT**

*Reflecting the provisions of the Plan
as of January 1, 2020
(except as otherwise noted)*

**BUFFALO AND ERIE COUNTY PUBLIC LIBRARY
CODE SECTION 403(B) PLAN
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**BUFFALO AND ERIE COUNTY PUBLIC LIBRARY
CODE SECTION 403(B) PLAN**

PREAMBLE

The Buffalo and Erie County Public Library Code Section 403(b) Plan (the “Plan”) is a governmental plan of an organization described in Code §501(c)(3), and is intended to be a “custodial account plan” and “tax sheltered annuity plan” meeting the requirements of the applicable sections of the Code. All contributions to the Plan were discontinued effective December 31, 2008, but a Plan document was executed in December 2009 and made effective as of January 1, 2009. This amended and restated Plan document is intended to incorporate sample provisions issued by the Internal Revenue Service in March 2015 for Code §403(b) prototype plans, but which are also relevant to Code §403(b) individually designed plans. Like the original Plan document, the terms of this amended and restated Plan document do not apply to any Investment Arrangement held: (i) for a person who is not an employee of the Employer or a Participating Employer (as those terms are defined herein) on or after January 1, 2009; (ii) for a beneficiary of a deceased employee of the Employer or a Participating Employer on January 1, 2009; and (iii) by a Vendor that has not received contributions from the Employer or a Participating Employer after December 31, 2004.

In addition, notwithstanding any provision of the Plan to the contrary, unless otherwise required under Code §403(b), the administrative duties, functions and responsibilities of the Employer and all Participating Employers relating to the Plan and any Investment Arrangement shall be limited, in accordance with Revenue Procedure 2007-71 (and any additional guidance issued by the Internal Revenue Service or the Treasury Department), to making a reasonable, good faith effort to: (i) collect information concerning Vendors and provide them with contact information for the person in charge of administering the Plan so they can coordinate information necessary for any Investment Arrangement they maintain to satisfy Code §403(b) requirements; or (ii) upon being contacted by a Vendor, provide and exchange employment and other information with the Vendor needed in order for any Investment Arrangement maintained by it to satisfy Code §403(b) requirements.

ARTICLE I **DEFINITIONS**

Wherever used in this Plan document, including the Preamble, the following words and phrases have the meanings set forth below, unless a different meaning is indicated by the context:

1.1 “Account” means the account maintained for the benefit of a Participant or Beneficiary under an Investment Arrangement.

1.2 “Account Balance” means the total benefit to which a Participant or his Beneficiary is entitled under an Investment Arrangement, taking into account all contributions made to the Investment Arrangement and all earnings or losses (including expenses) allocable to the Participant’s Account, any rollover contributions or transfers held under the Participant’s Account, and any distribution made to the Participant, his 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 §403(c) (or another applicable provision of the Code) applies.

1.3 “Accumulated Benefit” means the sum of a Participant’s or Beneficiary’s Account Balances under all Investment Arrangements.

1.4 “Administrator” means the Employer.

1.5 “Alternate Payee” means a person who has been awarded part or all of a Participant’s Accumulated Benefit pursuant to a domestic relations order described in Section 11.2.

1.6 “Annual Additions” means the following amounts credited to a Participant under the Plan or any other plan aggregated with the Plan under Section 3.3: (i) Employer or Participating Employer contributions (other than age 50 catch up contributions described in Code §414(v) and contributions that have been distributed to the Participant as Excess Elective Deferrals); (ii) after-tax Employee contributions; and (iii) forfeitures allocated to the Participant’s Account. Amounts described in (i), (ii), and (iii) are annual additions for purposes of both the dollar limit and the percentage of Compensation limit in Section 1.22. If the Participant is in control of an Employer as described in Section 3.3(b), Annual Additions also include: (i) amounts allocated to an individual medical account, as defined in Code §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 §419A(d)(3), under a welfare benefit fund, as defined in Code §419(e) (but only for purposes of the dollar limitation under Section 1.22); and (ii) allocations under a simplified employee pension (for purposes of both the dollar limitation and the percentage of compensation limitation in Section 1.22).

1.7 “Annuity Contract” means a nontransferable group or individual contract as defined in Code §§403(b)(1) and 401(g), established for a Participant by the Employer or a Participating Employer, or by a Participant individually, issued by an insurance company qualified to issue annuities in a State, and that includes payment in the form of an annuity, but excluding any such contract held: (i) for a person who is not an Employee on or after January 1, 2009; (ii) for a Beneficiary of a deceased Employee on January 1, 2009; and (iii) by an insurance company that has not received contributions from the Employer or a Participating Employer after December 31, 2004. References in this Plan document to an Annuity Contract include the agreements and documents relating to, and issued by, the insurance company maintaining the Annuity Contract.

1.8 “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 the applicable Investment Arrangement.

1.9 “Code” means the Internal Revenue Code of 1986, as amended. References in this Plan document to the Code or a section of the Code include the Treasury Regulations issued thereunder.

1.10 “Compensation” for purposes of Compensation Reduction Elections, means all cash compensation for services to the Employer or a Participating Employer, including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in the Employee’s gross income for the calendar year and amounts that would be cash compensation includible in gross income but for a reduction election under Code §§125, 132(f), 401(k), 403(b), or 457(b) (including a Compensation Reduction Election under the Plan).

1.11 “Compensation Reduction Election” means an election to have his Compensation reduced by an amount to be contributed by the Employer or a Participating Employer as an Elective Deferral on his behalf to one or more Investment Arrangements.

1.12 “Custodial Account” means a group or individual custodial account or accounts, as defined in Code §403(b)(7), established for a Participant by the Employer or a Participating Employer, or by a Participant individually, to hold assets of the Plan, but excluding any custodial account held: (i) for a person who is not an Employee on or after January 1, 2009; (ii) for a Beneficiary of a deceased Employee on January 1, 2009; and (iii) by a custodian who has not received contributions from the Employer or a Participating Employer after December 31, 2004. References in this Plan document to a Custodial Account include the agreements and documents relating to, and issued by, the custodian maintaining the Custodial Account.

1.13 “Disabled” means a condition that makes an individual unable 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. 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 same meaning as above unless an alternative definition is provided in the Investment Arrangement.

1.14 “Elective Deferral” means contributions made by the Employer or a Participating Employer to the Plan at the election of a Participant in lieu of receiving cash compensation. The term “Elective Deferral” as used in this Plan document does not include Roth Elective Deferrals, as no Roth Elective Deferrals under the Plan have been, or shall be, permitted. All Elective Deferrals, and all property, rights and income attributable thereto, shall be held and invested in an Investment Arrangement.

1.15 “Employee” means any common law employee of the Employer or a Participating Employer.

1.16 “Employer” means the Buffalo and Erie County Public Library, and any successor thereto that adopts this Plan document.

1.17 “Excess Annual Addition” means the excess of: (i) the Annual Additions credited to the Participant for the Limitation Year under this Plan and plans aggregated with this Plan under Section 3.3; over (ii) his Maximum Annual Addition for the Limitation Year.

1.18 “Excess Elective Deferrals” means Elective Deferrals in excess of the limit described in Section 3.2.

1.19 “Includible Compensation” means an Employee’s compensation received from the Employer or Participating Employer and includible in the Participant’s gross income for Federal income tax purposes (computed without regard to Code §911, relating to United States citizens or residents living abroad), including differential wage payments under Code §3401(h) for the most recent period that is a Year of Service. Includible Compensation also includes any Elective Deferral or other amount contributed or deferred by the Employer at the election of the Employee that would be includible in gross income but for the rules of Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). Includible Compensation does not include any compensation received during a period when the Employer or Participating Employer was not an eligible employer within the meaning of Treasury Regulation §1.403(b)-2(b)(8). The amount of Includible Compensation is determined without regard to any community property laws. Except as provided in Treasury Regulation §1.401(a)(17)-1(d)(4)(ii) with respect to eligible participants in governmental plans, the amount of Includible Compensation of each Participant taken into account in determining contributions shall not exceed the applicable dollar amount established under Code §417(a)(17), as adjusted for increases in the cost-of-living pursuant to Code §401(a)(17)(B). For purposes of applying the limitations on Annual Additions to non-elective contributions pursuant to Code

§415, Includible Compensation for a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)) is the compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled.

1.20 “Investment Arrangement” means an Annuity Contract or Custodial Account that satisfies the requirements of Treasury Regulation §1.403(b)-3 and is issued or established for funding amounts held under the Plan. Appendix A attached hereto is a list of Vendors of Investment Arrangements under the Plan, which may be modified from time to time. A modification of Appendix A is not an amendment of the Plan. The terms governing each Investment Arrangement, excluding those terms that are inconsistent with the Plan or Code §403(b), are hereby incorporated by reference in the Plan.

1.21 “Limitation Year” means the calendar year. However, if the Participant is in control of an Employer as described in Section 3.3(b), the Limitation Year shall be the Limitation Year in the defined contribution plan controlled by the Participant.

1.22 “Maximum Annual Addition” means the maximum amount that may be contributed or allocated to a Participant’s account under the Plan for any Limitation Year. The Maximum Annual Addition shall not exceed the lesser of: (i) the applicable dollar amount established under Code §415(c)(1)(a), as adjusted for increases in the cost-of-living pursuant to Code §415(d), or (ii) 100% of the Participant’s Includible Compensation for the Limitation Year, excluding any contribution for medical benefits after separation from service (within the meaning of Code §401(h) or Code §419A(f)(2)) which is otherwise treated as an Annual Addition.

1.23 “Participant” means an individual for whom contributions have been made under the Plan and who has not received a distribution of his entire benefit under the Plan.

1.24 “Participating Employer” means a contracting library of the Employer, and any successor thereof, that is an eligible employer within the meaning of Treasury Regulation §1.403(b)-2(b)(8) and that adopted this Plan prior to January 1, 2009. All Participating Employers are shown on Attachment A of the original Plan document effective December 31, 2008 with the signature of the appropriate officer of the Participating Employer evidencing adoption of this Plan document (which Attachment is incorporated herein by reference), and also shown on Appendix B attached hereto.

1.25 “Plan” means the Buffalo and Erie County Public Library Code Section 403(b) Plan, which is governed by this document and the agreements and documents relating to Investment Arrangements.

1.26 “Plan Year” means the 12 consecutive month period commencing on January 1 and each anniversary thereof.

1.27 “Related Employer” means an entity that is under common control with the Employer or a Participating Employer under Code §414(b), (c), (m) or (o), based on a reasonable, good faith standard, and taking into account Treasury Regulation §1.414(c)(5) and the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

1.28 “Responsible Person” means the person(s) (e.g., Vendor, recordkeeper, service provider, the Employer or a Participating Employer) responsible for performing, or having the authority to perform, a particular administrative function under the Plan.

1.29 “Roth Elective Deferral” means an elective deferral made under another plan that is irrevocably designated (at the time the elective deferral is made) as a Roth elective deferral that is being made in lieu of all or a portion of a pre-tax elective deferral, and is treated 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 the elective deferral.

1.30 “Severance from Employment” means the cessation of an Employee’s employment with the Employer, a Participating Employer, or a Related Employer that is eligible to maintain a Code §403(b) plan under Treasury Regulation §1.403(b)-2(b)(8) (an “eligible employer”), even if the Employee remains employed with another entity that is a Related Employer where either (i) such Related Employer is not an eligible employer or (b) the Employee is employed in a capacity that is not employment with an eligible employer.

1.31 “Spouse” means an individual’s spouse for Federal tax purposes, determined in accordance with Internal Revenue Service Notice 2014-19 and any related subsequent regulations or other guidance.

1.32 “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 §7701(a)(10)). An Indian tribal government is treated as a State pursuant to Code §7871(a)(6)(B) for purposes of Code §403(b)(1)(A)(ii).

1.33 “Vendor” means the provider of an Investment Arrangement.

1.34 “Year of Service,” for purposes of determining Includible Compensation, means each full year during which an individual is a full-time Employee, plus fractional credit for each part of a year during which the individual is either a full-time Employee for a part of a year or a part-time Employee. 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.

ARTICLE II **PARTICIPATION**

2.1 Eligibility to Participate, Enrollment and Commencement of Participation. Prior to January 1, 2009, all Employees were eligible to participate in the Plan on the date their employment commenced. Each Employee enrolled in the Plan and became a Participant on the date he made a Compensation Reduction Election. Each Participant provided any information necessary or advisable for the administration of the Plan at the time of enrollment (including any information required under the terms governing the Investment Arrangement), and shall continue to provide such information.

2.2 Participation Frozen as of December 31, 2008. No Employee whose employment with the Employer or a Participating Employer commenced or commences after December 31, 2008 shall be eligible to participate in the Plan.

ARTICLE III **ELECTIVE DEFERRALS AND LIMITATIONS**

3.1 Compensation Reduction Elections. Subject to Section 3.4, an Employee may execute and file a Compensation Reduction Election to reduce his Compensation and have an amount equal to the reduction contributed, on his behalf, as an Elective Deferral to one or more Investment Arrangements. Compensation Reduction Elections shall be made: (i) through a written agreement with, and provided by, the Employer or Participating Employer under which the Employee agrees to be bound by all the terms and conditions of the Plan; and (ii) in an amount equal to any whole percentage of the Participant's Compensation or in a designated whole dollar amount of that Compensation. Subject to Section 3.4, each Compensation Reduction Election must be made prior to the beginning of the first payroll period for which it is effective, and shall remain in effect until a new Compensation Reduction Election is filed. Unless a Compensation Reduction Election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan continue to the extent that Compensation continues. The Employee's elections with respect to Investment Arrangements and allocations (and reallocations) among Accounts, if not included in the Compensation Reduction Election, shall be included in other Plan records. Subject to Section 3.4 and the terms governing the applicable Investment Arrangement (but not less than once every year), a Participant may change his: (i) Compensation Reduction Election as of the first day of any future payroll period chosen by the Participant; and (ii) choice of Investment Arrangements, and designated Beneficiary, as provided under the Investment Arrangement. Elective Deferrals must be transferred to the applicable Vendor within a reasonable time for proper administration of the Plan, but not later than 15 business days after the amounts would have been paid to the Employee. Each Participant shall be immediately one hundred percent (100%) vested in his Elective Deferrals.

3.2 Limitations on Elective Deferrals.

(a) Subject to Subsections (b) through (d) below, the maximum amount of the Elective Deferral under the Plan for any calendar year shall not exceed the applicable dollar amount established under Code §402(g)(1)(B), adjusted for cost-of-living increases pursuant to Code §402(g)(4).

(b) Subject to Section 3.4, an Employee who is age 50 or older by the end of a calendar year is permitted to elect additional Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum age 50 catch-up Elective Deferrals for a year shall not exceed the applicable dollar amount established under Code §402(v)(2)(A), adjusted for cost-of-living increases pursuant to Code §402(v)(2)(C).

(c) In no event can the amount of the Elective Deferrals for a year be more than the Participant's Compensation for the year.

(d) If the Participant is or has been a participant in one or more other plans under Code §403(b) (and any other plan that permits elective deferrals under Code §402(g)), then this Plan and all such other plans shall be considered as one plan for purposes of applying the limitations in this Section 3.2. For this purpose, any such other plan for which the Participant provides sufficient information concerning his participation therein, and any such other Code §403(b) plan maintained by any Related Employer, shall be taken into account.

(e) If the Elective Deferrals on behalf of a Participant for any calendar year exceed the limitations described above, then such excess Elective Deferrals (adjusted for any income or loss in value, if any, allocable thereto through the end of the applicable calendar year), shall be distributed to the Participant.

3.3 Limitations on Aggregate Annual Additions.

(a) If Annual Additions are credited to a Participant under any Code §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 Code §403(b) plans may not exceed his Maximum Annual Addition.

(b) 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 Code §403(b) plans of the Employer, any defined contribution plans maintained by controlled employers, and any Code §403(b) plans of any other employers may not exceed his Maximum Annual Addition. For purposes of this paragraph, a Participant is in control of an employer based upon the rules of Code §§414(b), 414(c), and 415(h); and a defined contribution plan means a defined contribution plan that is qualified under Code §401(a) or 403(a), a Code §403(b) plan, or a simplified employee pension within the meaning of Code

§408(k).

(c) The Annual Additions which may be credited to a Participant under this Plan for any Limitation Year will not exceed his Maximum Annual Addition, reduced by the Annual Additions credited to the Participant under any other Code §403(b) plans of the Employer in addition to this Plan and, if the Participant is in control of an employer, any defined contribution plans maintained by controlled employers and Code §403(b) plans of any other employers. Contributions to the Participant's Accounts under this Plan will be reduced to the extent necessary to prevent this limitation from being exceeded.

(d) If, notwithstanding Subsections (a) through (c) a Participant's Annual Additions under this Plan, or under this Plan and plans aggregated with this Plan under Subsections (b) through (c), 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 §401(a) or a simplified employee pension maintained by an Employer controlled by the Participant will be deemed to have been credited first. If an Excess Annual Addition is credited to a Participant under this Plan and another Code §403(b) plan of the Employer on the same date, the Excess Annual Addition attributable to this Plan will be the product of: (i) the total Excess Annual Addition credited as of such date; times (ii) the ratio of the Annual Additions credited to the Participant for the Limitation Year as of such date under this Plan to the total Annual Additions credited to the Participant for the Limitation Year as of such date under this Plan and all other plans aggregated with this Plan. Any Excess Annual Addition attributable to this Plan will be corrected in the manner described in Subsection (e).

(e) 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 will be credited in the year of the excess to a separate account under the Plan for such Excess Annual Additions which will 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 §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.

(f) For each year a Participant has Elective Deferrals, he shall receive written or electronic notice explaining the limitation in Subsection (b) above in a manner calculated to be understood by the average Participant and informing him of his responsibility to provide information to a Responsible Person that is necessary to satisfy Subsection (b). The notice will advise the Participant that the application of the limitations in Subsection (b) will take into account information supplied by the Participant and that failure to provide necessary and correct information could result in adverse tax consequences to the Participant, including the inability to exclude contributions to the Plan under Code §403(b).

(g) For purposes of this Section 3.3, “Employer” means the Employer (and any Related Employer with respect to the Employer), and any Participating Employer (and any Related Employer with respect to the Participating Employer).

3.4 Elective Deferrals Frozen as of December 31, 2008. Notwithstanding Sections 3.1 through 3.3 above, no Elective Deferrals shall be permitted under the Plan after December 31, 2008.

ARTICLE IV **DISTRIBUTIONS AND LOANS**

4.1 General. Distributions of Elective Deferrals from a Participant’s Account may not be made earlier than the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59-¹/₂, except as permitted in the case of: (i) pre-1989 Elective Deferral contributions (excluding earnings thereon) to an Annuity Contract that are separately accounted for; (ii) amounts rolled over into the Plan; (iii) a distribution made in the event of hardship; (iv) a qualified reservist distribution as defined in Code §72(t)(2)(G); (v) termination of the Plan; a payment pursuant to Section 11.2 or 11.3; or (vi) as may otherwise be provided by law and in regulations or other rules of general applicability published by the Department of the Treasury or the Internal Revenue Service and permitted by the terms governing the applicable Investment Arrangement (including a qualified birth or adoption distribution as described in Code §72(t)(2)(H). For purposes of this Section 4.1, a Participant shall be treated as having a Severance from Employment during any period the Participant is performing service in the uniformed services described in Code §3401(h)(2)(A). A Participant who elects to receive a distribution pursuant to the preceding sentence may not make an Elective Deferral during the six month period beginning on the date of the distribution. The available forms of distribution will be based on the terms governing the applicable Investment Arrangement.

4.2 Small Account Balances. To the extent permitted under the terms governing the applicable Investment Arrangement, distributions may be made in the form of a lump-sum payment, unless the Participant’s Accumulated Benefit (determined without regard to any separate account that holds rollover contributions) exceeds \$5,000 or any lesser amount specified in the Investment Arrangement. Any such distribution shall comply with the requirements of Code §401(a)(31)(B) (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

4.3 Minimum Distribution Requirements. The Plan shall comply with the minimum distribution requirements of Code §401(a)(9) and the regulations thereunder in accordance with the terms governing each Investment Arrangement, 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. For purposes of applying the distribution rules of Code §401(a)(9), each Investment Arrangement is

treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Treasury Regulation §1.408-8, except as provided in Treasury Regulation §1.403(b)-6(e).

4.4 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 a Responsible Person, 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.

(a) An Eligible Rollover Distribution is 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 10 years or more; (ii) any distribution to the extent such distribution is required under Code §401(a)(9) (other than amounts that would have been required but for a statutory waiver of the Code §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 §§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 §72(p); (viii) dividends paid on employer securities as described in Code §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 §409(p); and (xi) a distribution that is a permissible withdrawal from an eligible automatic contribution arrangement within the meaning of Code §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 §408(a) or 408(b), respectively, or (ii) a qualified plan described in Code §401(a) or 403(a) or a tax-sheltered annuity described in Code §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.

(b) An Eligible Retirement Plan is a qualified plan described in Code §401(a), an annuity plan described in Code §403(a), an annuity contract described in Code §403(b), an individual retirement account or annuity described in Code §408(a) or 408(b), or an eligible plan under Code §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 under a domestic relations order as described in Section 11.2.

(c) A 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 under a domestic relations order as described in Section 11.2, 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 an individual retirement account or annuity described in Code §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 §402(c)(11). Also, in this case, the determination of any required minimum distribution under Code §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.

(d) A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

4.5 Automatic Rollovers. In the event of a mandatory distribution greater than \$1,000, in accordance with the provisions of Section 4.2, if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly, then a Responsible Person will pay the distribution in a Direct Rollover to an individual retirement plan designated by a Responsible Person. For purposes of determining whether a mandatory distribution is greater than \$1,000, the portion of the Participant's distribution attributable to any rollover contribution is included.

4.6 Written Explanation of Right to Direct Rollover. The payor 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 §402(f).

4.7 Hardship Distributions. To the extent permitted by the terms governing the applicable Investment Arrangement, distribution of Elective Deferrals (but not earnings thereon) may be made to a Participant on account of a hardship. A distribution is made on account of hardship only if it is made on account of an immediate and heavy financial need of the Participant and is necessary to satisfy the financial need. Whether a Participant has an immediate and heavy financial need will be determined based on all the relevant facts and circumstances and in accordance with Treas. Reg. 1.403(b)-6. A financial need may be immediate and heavy even if it was reasonably foreseeable or voluntarily incurred by the Participant. A distribution is deemed to be made on account of an immediate and heavy

financial need if it is for: (i) expenses for (or necessary to obtain) medical care that would be deductible under Code §213(d), determined without regard to the limitations in Code §213(a) (relating to the applicable percentage of adjusted gross income and the recipients of the medical care) provided that, if the recipient of the medical care is not listed in Code §213(a), the recipient is a primary Beneficiary under the Plan; (ii) costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments); (iii) payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the Participant, or for the Participant's spouse, child or dependent (as defined in Code §152 without regard to Code §§152(b)(1), 152(b)(2) and 152 (d)(1)(B)), or for a primary Beneficiary under the Plan; (iv) payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; (v) payments for burial or funeral expenses for the Participant's deceased parent, spouse, child or dependent (as defined in Code §152 without regard to Code §152(d)(1)(B)), or for a deceased primary Beneficiary under the Plan; (vi) expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to Code §165(h)(5) and whether the loss exceeds 10% of adjusted gross income); or (vii) 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. A distribution made pursuant to this Section 4.7 may not exceed amount of need. A distribution is treated as necessary to satisfy an immediate and heavy financial need of an Participant only: (i) to the extent the amount of the distribution is not in excess of the amount required to satisfy the financial need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution) and only if each of the following requirements is satisfied; (i) the Participant has obtained all other currently available distributions under the Plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the Employer; (ii) the Participant has provided to the Responsible Person a representation in writing (including by using an electronic medium as defined in Treas. Reg. §1.401(a)-21(e)(3)), or in such other form as may be prescribed by the Commissioner of the Internal Revenue Service, that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need; and (iii) neither the Employer nor the Responsible Person has actual knowledge that is contrary to the representation.

4.8 Loans Prohibited. No Participant or Beneficiary shall be permitted to take a loan from his Account(s).

ARTICLE V
ROLLOVERS AND TRANSFERS

5.1 Rollover Contributions. To the extent permitted under the terms of the applicable Investment Arrangement, the Plan will accept rollover contributions as provided in this Section.

(a) 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 (other than any portion attributable to a Roth Elective Deferral). Such rollover contributions shall be made in the form of cash only. A Responsible Person may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code §402 and to reasonably conclude such plan is an Eligible Retirement Plan.

(b) For purposes of this Section 5.1, 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 10 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 §401(a)(9).

(c) For purposes of this Section 5.1, an Eligible Retirement Plan means a qualified trust described in Code §401(a), an annuity plan described in Code §403(a) or 403(b), an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), or an eligible governmental plan described in Code §457(b).

(d) A rollover of an Eligible Rollover Distribution that includes after-tax employee contributions will only be accepted if a Responsible Person obtains information regarding the Participant's tax basis under Code §72 in the amount rolled over.

(e) Separate accounts shall be established and maintained for the Participant for any Eligible Rollover Distribution, and for the after-tax portion of any such Eligible Rollover Distribution, paid to the Plan.

(f) To the extent permitted under the terms of the applicable Investment Arrangement, if the Plan benefit of a Participant or Beneficiary is levied upon in a case to which Code §6343(b) or (d)(2)(A) applies and is returned to the Participant or Beneficiary, the amount described in Code §6343(f) will be accepted as a rollover contribution; provided the contribution is made within the time period allowed in, and in accordance with, Code §6343(f) and any Treasury Regulations issued thereunder.

5.2 Transfers to This Plan. To the extent permitted under the terms of the applicable Investment Arrangement, the Plan will accept a transfer of assets from another Code §403(b) plan for a Participant or Beneficiary if: (i) the other plan provides for direct transfers of assets; (ii) the Participant is an Employee or former Employee of the Employer or a Participating Employer; (iii) the Participant or Beneficiary whose assets are being transferred has an Accumulated Benefit immediately after the transfer at least equal to the Accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer; (iv) the transferred amounts are subject to statutory restrictions on distributions that are not less stringent than those imposed under the transferor plan; and (v) the transferor plan provides and shares information necessary for the Investment Arrangements involved in the transfer to satisfy Code §403(b). Upon such transfer, the liability to pay benefits from the transferor Investment Arrangement shall be discharged to the extent of the amount transferred.

5.3 Transfers to Another Plan. To the extent permitted under the terms of the applicable Investment Arrangement, the Plan will permit the transfer of assets from this Plan to another Code §403(b) plan for a Participant or Beneficiary if: (i) the Participant is an Employee or former Employee of the Employer or a Participating Employer; (ii) the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer; (iii) the transferred amounts are subject to statutory restrictions on distributions that are not less stringent than those imposed under the transferor Plan; and (iv) this Plan and the other plan provide and share information necessary for the Investment Arrangements involved in the transfer to satisfy Code §403(b). Upon such transfer, the liability to pay benefits from the transferor Investment Arrangement shall be discharged to the extent of the amount transferred.

5.4 Exchanges. To the extent permitted under the terms of the applicable Investment Arrangement, a Participant or Beneficiary may change the investment of his Accumulated Benefit among Vendors' Investment Arrangements approved for use under the Plan. However, an investment change that includes an investment with a Vendor that is not eligible to receive new contributions (referred to below as an exchange) is not permitted unless the conditions in Subsections (a) through (e) below are satisfied. Upon an exchange, the liability to pay benefits from the transferor Investment Arrangement shall be discharged to the extent of the amount exchanged. Vendors may prescribe procedures and standards for exchanges to and from the Investment Arrangement that they maintain.

(a) The Participant or Beneficiary must have an Accumulated Benefit immediately after the exchange that is at least equal to the Accumulated benefit of that Participant or Beneficiary immediately before the exchange (taking into account the Accumulated Benefit of that Participant or Beneficiary under both Code §403(b) contracts or custodial accounts immediately before the exchange).

(b) The exchanged amounts must be subject to statutory restrictions on distributions that are not less stringent than those imposed before the exchange.

(c) The exchange must be permitted and satisfy conditions required under Code §403(b).

(d) The requirements established by the Vendor accepting the exchange must be satisfied (e.g., requirements regarding the cash or other property acceptable to it, documentation from the other Vendor necessary to effectuate the exchange in accordance with Code §403(b), and confirmation that the Investment Arrangement meets Code §403(b) requirements).

(e) The Vendors involved in the exchange must provide and share information necessary for the Investment Arrangements involved in the exchange to satisfy Code §403(b).

(f) The Employer shall make a reasonable, good faith effort to: (i) collect information concerning Vendors and provide them with contact information for the person in charge of administering the Plan so they can coordinate information necessary for Investment Arrangements they maintain to satisfy Code §403(b) requirements; or (ii) upon being contacted by a Vendor, provide and exchange with it employment and other information needed in order for any Investment Arrangement maintained by it to satisfy Code §403(b) requirements.

5.5 Service Credit Purchases. To the extent permitted under the terms of the applicable Investment Arrangement, purchases of service credit shall be permitted under the Plan as provided in this Section.

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code §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. A transfer may be made before the Participant has had a Severance from Employment.

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

ARTICLE VI **INVESTMENTS**

6.1 Manner of Investment. All Elective Deferrals or other amounts contributed to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Investment Arrangements.

6.2 Exclusive Benefit. Each Investment Arrangement 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 Investment Arrangement to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

6.3 Investment Direction. Each Participant and each Beneficiary of a deceased Participant may direct the investment of all amounts credited under each of his Investment Arrangements among the investment options available under such Investment Arrangement, in accordance with procedures established by the Vendor maintaining such Investment Arrangement.

ARTICLE VII **PLAN ADMINISTRATION**

7.1 General. 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 §403(b). These provisions and requirements include but are not limited to: (i) determining whether an Employee is eligible to participate in the Plan; (ii) determining whether contributions comply with the applicable limitations; (iii) determining whether hardship withdrawals comply with applicable requirements and limitations; (iv) determining that any transfers, rollovers, or purchases of service credit comply with applicable requirements and limitations; (v) determining that the requirements of the Plan and Code §403(b) are properly applied (including whether the Employer and each Participating Employer is a member of a controlled group); and (vi) determining the status of domestic relations orders.

7.2 Administrative Functions and Responsible Persons. Administrative functions, including functions to comply with Code §403(b) and other tax requirements, may be allocated among various Responsible Persons pursuant to service agreements or other written documents. However, in no case shall administrative functions be allocated to Participants (other than permitting Participants and Beneficiaries of deceased Participants to give investment directions). No Responsible Person shall have duties with respect to the Plan except: (i) duties required of the Responsible Person by law; (ii) duties set forth in the Plan document; and (iii) except as provided in Article VIII, duties set forth in an

Investment Arrangement, recordkeeping agreement or other service provider agreement. Subject to the terms of the Plan and Code requirements, a Responsible Person may establish rules with respect to, and decide all matters regarding, its Plan administrative functions. Neither the Employer nor any Participating Employer shall receive compensation for services as a Responsible Person. Any compensation or reimbursement of expenses for any other Responsible Person for services as a Responsible Person shall be in accordance with the applicable Investment Arrangement, recordkeeping or other service provider agreement for the Plan and relating to the Responsible Person. Unless otherwise provided in such Investment Arrangement, recordkeeping or other service provider agreement, or unless required by law, the Responsible Person shall not be required to give any bond or other security in any jurisdiction.

7.3 Claims. A Participant or Beneficiary may apply for benefits under an Investment Arrangement by filing the appropriate forms with the Vendor maintaining the Investment Arrangement. All such applications shall be processed in accordance with the Investment Arrangement and procedures established by the Vendor.

7.4 Information Sharing. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy Code §403(b) or other requirements of applicable law. In the case of a Vendor which is not eligible to receive Elective Deferrals under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals under the Plan and a Vendor holding assets under the Plan), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy Code §403(b) requirements or other requirements of applicable law. Each Vendor shall exchange such information as is necessary for any Investment Arrangement it maintains to satisfy the requirements of Code §403(b), including, but not limited to, requirements relating to exchanges and transfers to and from, and to withdrawals and distributions from, such Investment Arrangement.

ARTICLE VIII

LIMIT ON EMPLOYER AND PARTICIPATING EMPLOYER RESPONSIBILITIES

8.1 General Limitation. Notwithstanding Article VII or any other provision of the Plan to the contrary:

(a) Unless otherwise required under Code §403(b), the administrative duties, functions and responsibilities of the Employer and all Participating Employers relating to the Plan and any Investment Arrangement shall be limited, in accordance with Revenue Procedure 2007-71 (and any additional guidance issued by the Internal Revenue Service or Treasury Department), to making a reasonable, good faith effort to: (i) collect information concerning Vendors and provide them with contact information for the person in charge of administering the Plan so they can coordinate information necessary for any Investment

Arrangement they maintain to satisfy Code §403(b) requirements; or (ii) upon being contacted by a Vendor, provide and exchange employment and other information with the Vendor needed in order for any Investment Arrangement maintained by it to satisfy Code §403(b) requirements.

(b) If any provision of the Plan or an Investment Arrangement would require or cause the Employer or a Participating Employer to take some action beyond the limited action described in Section 8.1(a), and such action is not required of the Employer or Participating Employer under Code §403(b), then such provision shall be ineffective.

ARTICLE IX

PARTICIPATING EMPLOYERS

9.1 Adoption of Plan Document. With the consent of the Employer, each Participating Employer has adopted this Plan for the benefit of its Employees.

9.2 Employer's Authority. By adopting this Plan document, each Participating Employer consents to the powers, authority, and discretion given to the Employer in this Plan document.

9.3 Participating Employer's Discontinuance. Any Participating Employer may discontinue its participation in the Plan at any time by executing a document evidencing its intent to do so and delivering the same to the Employer.

ARTICLE X

AMENDMENT AND TERMINATION

10.1 Plan Termination. The Employer reserves the authority to terminate this Plan at any time. Upon termination of the Plan, all non-vested amounts under the Plan will be fully vested and, subject to any restrictions contained in the terms governing the applicable Investment Arrangement, all Accounts will be distributed (in accordance with applicable Treasury Regulations and the distribution procedure permitted in IRS Notice 2020-23), provided that the Employer and any Participating Employer or Related Employer on the date of termination do not make contributions to an alternative Code §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.

10.2 Plan Amendment. The Employer reserves the authority to amend the Plan at any time and from time to time, and retroactively if deemed necessary or appropriate, to modify or amend, in whole or in part, any or all of the provisions of the Plan.

ARTICLE XI

MISCELLANEOUS

11.1 Military Service Benefits. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code §414(u). 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.

11.2 Domestic Relations Orders. 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. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. A Responsible Person shall establish procedures for determining the status of any such decree or order, and for effectuating distribution pursuant to the domestic relations order.

11.3 IRS Levy. A Responsible Person may pay from a Participant’s or Beneficiary’s Accumulated Benefit the amount that the Responsible Person 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.

11.4 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 a Responsible Person, the amount of the mistaken contribution (adjusted for any income or loss in value allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Responsible Person, to the Employer or appropriate Participating Employer.

11.5 No Employment Contract. Nothing contained in this Plan document shall be construed as a contract of employment between the Employer or a Participating Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer or a Participating Employer, or as a limitation of the right of the Employer or a Participating Employer to discharge any of its Employees with or without cause.

11.6 Compliance with Code. If and to the extent a provision in an Investment Arrangement is required for such Investment Arrangement to satisfy the requirements of

Code §403(b) and that provision conflicts with the terms of this Plan document, the conflicting provision of the Investment Arrangement shall control over the conflicting provision of this Plan document. If and to the extent a provision in this Plan document is required for the Plan to satisfy the requirements of Code §403(b) and that provision conflicts with the terms of an Investment Arrangement, the conflicting provision of this Plan document shall control over the conflicting provision of the Investment Arrangement.

11.7 Applicable Law. The provisions of the Plan shall be construed, administered and enforced according to applicable federal law and, where not preempted by federal law, the laws of the State of New York.

11.8 Non-Alienation Provision. Except as provided in Section 11.2 or other applicable law: (i) no benefit under an Investment Arrangement shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void; and (ii) no benefit under an Investment Arrangement shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person. The Employer, Participating Employers, Vendors and Responsible Persons shall not in any manner be liable hereunder for or be subject hereunder to, the debts, contracts, liabilities, engagements or torts of any person entitled to a benefit under an Investment Arrangement.

11.9 Tax Withholding. Elective Deferrals are subject to applicable employment taxes (including applicable Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals that constitute wages under Code §3121). Any withdrawal or distribution from an Investment Arrangement is subject to applicable income tax withholding requirements (including Code §3401). A payee shall provide such information as the Vendor may need to satisfy income tax withholding obligations.

11.10 Payments to Incompetents. If a Participant or Beneficiary entitled to receive benefits under an Investment Arrangement 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 Vendor maintaining such Investment Arrangement, to the extent permitted by the Investment Arrangement, benefits may be paid to such person as the Vendor may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of the Vendor, all Responsible Persons, the Employer and Participating Employers for any liability for such payments.

11.11 Headings. Headings have been inserted herein for convenience of reference only and are to be ignored in any construction of the provisions hereof.

11.12 Gender. Pronouns used in this Plan document in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

11.13 Source of Benefits. The Investment Arrangements shall be the sole source of benefits under the Plan. No Employee or Beneficiary shall have any right to, or interest in, any assets of the Employer or a Participating Employer upon termination of employment or otherwise.

IN WITNESS WHEREOF, the Employer and Participating Employers have caused this Plan document to be executed, effective _____, 2022.

Buffalo and Erie County Public Library

By: _____

Title: _____

Date: _____, 2022

**APPENDIX A
TO THE
BUFFALO AND ERIE COUNTY PUBLIC LIBRARY
CODE SECTION 403(B) PLAN
LIST OF VENDORS OF INVESTMENT ARRANGEMENTS**

Allianz Global Funds
American Funds
Calvert Investments
Citi Street LLC
Colonial Bank N.A.
Copeland Companies
Evergreen Management Company
Federated Funds
Fidelity Investments
Franklin Templeton
FTJ FundChoice, LLC (HNB Passive Custodian)
Guggenheim Investments
Invesco Investment Services
Janus Funds
The Legend Group
Lincoln Investments
Met Life
MFS Investment Management
Nationwide Financial
New York Life Insurance Company
Oppenheimer Funds
Putnam Investments
Security Benefit Life Insurance
Security Funds
T. Rowe Price Trust
Vanguard Fiduciary Trust
Van Kampen Funds
Waddel & Reed / Ivy Funds

**APPENDIX B
TO THE
BUFFALO AND ERIE COUNTY PUBLIC LIBRARY
CODE SECTION 403(B) PLAN**

LIST OF PARTICIPATING EMPLOYERS

Amherst Public Library
Angola Public Library
Aurora Town Public Library
Boston Free Library
Cheektowaga Public Library
Clarence Public Library
Collins Public Library
Hulbert Library of the Town of Concord
Eden Library
Elma Public Library
Ewell Free Library
Grand Island Memorial Library
Hamburg Public Library
Lackawanna Public Library
Lancaster Public Library
Marilla Free Library
Newstead Public Library
Town of North Collins Public Library
Orchard Park Public Library
City of Tonawanda Public Library
Town of Tonawanda Public Library
West Seneca Public Library

**BUFFALO AND ERIE COUNTY PUBLIC LIBRARY
AMENDED AND RESTATED
CODE SECTION 403(B) PLAN DOCUMENT**

*Reflecting the provisions of the Plan
as of January 1, ~~2015~~2020
(except as otherwise noted)*

**BUFFALO AND ERIE COUNTY PUBLIC LIBRARY
CODE SECTION 403(B) PLAN
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**BUFFALO AND ERIE COUNTY PUBLIC LIBRARY
CODE SECTION 403(B) PLAN**

PREAMBLE

The Buffalo and Erie County Public Library Code Section 403(b) Plan (the “Plan”) is a governmental plan of an organization described in Code §501(c)(3), and is intended to be a “custodial account plan” and “tax sheltered annuity plan” meeting the requirements of the applicable sections of the Code. All contributions to the Plan were discontinued effective December 31, 2008, but a Plan document was executed in December 2009 and made effective as of January 1, 2009. This amended and restated Plan document is intended to incorporate sample provisions issued by the Internal Revenue Service in March 2015 for Code §403(b) prototype plans, but which are also relevant to Code §403(b) individually designed plans. Like the original Plan document, the terms of this amended and restated Plan document do not apply to any Investment Arrangement held: (i) for a person who is not an employee of the Employer or a Participating Employer (as those terms are defined herein) on or after January 1, 2009; (ii) for a beneficiary of a deceased employee of the Employer or a Participating Employer on January 1, 2009; and (iii) by a Vendor that has not received contributions from the Employer or a Participating Employer after December 31, 2004.

In addition, notwithstanding any provision of the Plan to the contrary, unless otherwise required under Code §403(b), the administrative duties, functions and responsibilities of the Employer and all Participating Employers relating to the Plan and any Investment Arrangement shall be limited, in accordance with Revenue Procedure 2007-71 (and any additional guidance issued by the Internal Revenue Service or the Treasury Department), to making a reasonable, good faith effort to: (i) collect information concerning Vendors and provide them with contact information for the person in charge of administering the Plan so they can coordinate information necessary for any Investment Arrangement they maintain to satisfy Code §403(b) requirements; or (ii) upon being contacted by a Vendor, provide and exchange employment and other information with the Vendor needed in order for any Investment Arrangement maintained by it to satisfy Code §403(b) requirements.

ARTICLE I **DEFINITIONS**

Wherever used in this Plan document, including the Preamble, the following words and phrases have the meanings set forth below, unless a different meaning is indicated by the context:

1.1 “Account” means the account maintained for the benefit of a Participant or Beneficiary under an Investment Arrangement.

1.2 “Account Balance” means the total benefit to which a Participant or his Beneficiary is entitled under an Investment Arrangement, taking into account all contributions made to the Investment Arrangement and all earnings or losses (including expenses) allocable to the Participant’s Account, any rollover contributions or transfers held under the Participant’s Account, and any distribution made to the Participant, his 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 §403(c) (or another applicable provision of the Code) applies.

1.3 “Accumulated Benefit” means the sum of a Participant’s or Beneficiary’s Account Balances under all Investment Arrangements.

1.4 “Administrator” means the Employer.

1.5 “Alternate Payee” means a person who has been awarded part or all of a Participant’s Accumulated Benefit pursuant to a domestic relations order described in Section 11.2.

1.6 “Annual Additions” means the following amounts credited to a Participant under the Plan or any other plan aggregated with the Plan under Section 3.3: (i) Employer or Participating Employer contributions (other than age 50 catch up contributions described in Code §414(v) and contributions that have been distributed to the Participant as Excess Elective Deferrals); (ii) after-tax Employee contributions; and (iii) forfeitures allocated to the Participant’s Account. Amounts described in (i), (ii), and (iii) are annual additions for purposes of both the dollar limit and the percentage of Compensation limit in Section 1.22. If the Participant is in control of an Employer as described in Section 3.3(b), Annual Additions also include: (i) amounts allocated to an individual medical account, as defined in Code §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 §419A(d)(3), under a welfare benefit fund, as defined in Code §419(e) (but only for purposes of the dollar limitation under Section 1.22); and (ii) allocations under a simplified employee pension (for purposes of both the dollar limitation and the percentage of compensation limitation in Section 1.22).

1.7 “Annuity Contract” means a nontransferable group or individual contract as defined in Code §§403(b)(1) and 401(g), established for a Participant by the Employer or a Participating Employer, or by a Participant individually, issued by an insurance company qualified to issue annuities in a State, and that includes payment in the form of an annuity, but excluding any such contract held: (i) for a person who is not an Employee on or after January 1, 2009; (ii) for a Beneficiary of a deceased Employee on January 1, 2009; and (iii) by an insurance company that has not received contributions from the Employer or a Participating Employer after December 31, 2004. References in this Plan document to an Annuity Contract include the agreements and documents relating to, and issued by, the insurance company maintaining the Annuity Contract.

1.8 “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 the applicable Investment Arrangement.

1.9 “Code” means the Internal Revenue Code of 1986, as amended. References in this Plan document to the Code or a section of the Code include the Treasury Regulations issued thereunder.

1.10 “Compensation” for purposes of Compensation Reduction Elections, means all cash compensation for services to the Employer or a Participating Employer, including salary, wages, fees, commissions, bonuses and overtime pay, that is includible in the Employee’s gross income for the calendar year and amounts that would be cash compensation includible in gross income but for a reduction election under Code §§125, 132(f), 401(k), 403(b), or 457(b) (including a Compensation Reduction Election under the Plan).

1.11 “Compensation Reduction Election” means an election to have his Compensation reduced by an amount to be contributed by the Employer or a Participating Employer as an Elective Deferral on his behalf to one or more Investment Arrangements.

1.12 “Custodial Account” means a group or individual custodial account or accounts, as defined in Code §403(b)(7), established for a Participant by the Employer or a Participating Employer, or by a Participant individually, to hold assets of the Plan, but excluding any custodial account held: (i) for a person who is not an Employee on or after January 1, 2009; (ii) for a Beneficiary of a deceased Employee on January 1, 2009; and (iii) by a custodian who has not received contributions from the Employer or a Participating Employer after December 31, 2004. References in this Plan document to a Custodial Account include the agreements and documents relating to, and issued by, the custodian maintaining the Custodial Account.

1.13 “Disabled” means a condition that makes an individual unable 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. 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 same meaning as above unless an alternative definition is provided in the Investment Arrangement.

1.14 “Elective Deferral” means contributions made by the Employer or a Participating Employer to the Plan at the election of a Participant in lieu of receiving cash compensation. The term “Elective Deferral” as used in this Plan document does not include Roth Elective Deferrals, as no Roth Elective Deferrals under the Plan have been, or shall be, permitted. All Elective Deferrals, and all property, rights and income attributable thereto, shall be held and invested in an Investment Arrangement.

1.15 “Employee” means any common law employee of the Employer or a Participating Employer.

1.16 “Employer” means the Buffalo and Erie County Public Library, and any successor thereto that adopts this Plan document.

1.17 “Excess Annual Addition” means the excess of: (i) the Annual Additions credited to the Participant for the Limitation Year under this Plan and plans aggregated with this Plan under Section 3.3; over (ii) his Maximum Annual Addition for the Limitation Year.

1.18 “Excess Elective Deferrals” means Elective Deferrals in excess of the limit described in Section 3.2.

1.19 “Includible Compensation” means an Employee’s compensation received from the Employer or Participating Employer and includible in the Participant’s gross income for Federal income tax purposes (computed without regard to Code §911, relating to United States citizens or residents living abroad), including differential wage payments under Code §3401(h) for the most recent period that is a Year of Service. Includible Compensation also includes any Elective Deferral or other amount contributed or deferred by the Employer at the election of the Employee that would be includible in gross income but for the rules of Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). Includible Compensation does not include any compensation received during a period when the Employer or Participating Employer was not an eligible employer within the meaning of Treasury Regulation §1.403(b)-2(b)(8). The amount of Includible Compensation is determined without regard to any community property laws. Except as provided in Treasury Regulation §1.401(a)(17)-1(d)(4)(ii) with respect to eligible participants in governmental plans, the amount of Includible Compensation of each Participant taken into account in determining contributions shall not exceed the applicable dollar amount established under Code §417(a)(17), as adjusted for increases in the cost-of-living pursuant to Code §401(a)(17)(B). For purposes of applying the limitations on Annual Additions to non-elective contributions pursuant to Code

§415, Includible Compensation for a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)) is the compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled.

1.20 “Investment Arrangement” means an Annuity Contract or Custodial Account that satisfies the requirements of Treasury Regulation §1.403(b)-3 and is issued or established for funding amounts held under the Plan. Appendix A attached hereto is a list of Vendors of Investment Arrangements under the Plan, which may be modified from time to time. A modification of Appendix A is not an amendment of the Plan. The terms governing each Investment Arrangement, excluding those terms that are inconsistent with the Plan or Code §403(b), are hereby incorporated by reference in the Plan.

1.21 “Limitation Year” means the calendar year. However, if the Participant is in control of an Employer as described in Section 3.3(b), the Limitation Year shall be the Limitation Year in the defined contribution plan controlled by the Participant.

1.22 “Maximum Annual Addition” means the maximum amount that may be contributed or allocated to a Participant’s account under the Plan for any Limitation Year. The Maximum Annual Addition shall not exceed the lesser of: (i) the applicable dollar amount established under Code §415(c)(1)(a), as adjusted for increases in the cost-of-living pursuant to Code §415(d), or (ii) 100% of the Participant’s Includible Compensation for the Limitation Year, excluding any contribution for medical benefits after separation from service (within the meaning of Code §401(h) or Code §419A(f)(2)) which is otherwise treated as an Annual Addition.

1.23 “Participant” means an individual for whom contributions have been made under the Plan and who has not received a distribution of his entire benefit under the Plan.

1.24 “Participating Employer” means a contracting library of the Employer, and any successor thereof, that is an eligible employer within the meaning of Treasury Regulation §1.403(b)-2(b)(8) and that adopted this Plan prior to January 1, 2009. All Participating Employers are shown on Attachment A of the original Plan document effective December 31, 2008 with the signature of the appropriate officer of the Participating Employer evidencing adoption of this Plan document (which Attachment is incorporated herein by reference), and also shown on Appendix B attached hereto.

1.25 “Plan” means the Buffalo and Erie County Public Library Code Section 403(b) Plan, which is governed by this document and the agreements and documents relating to Investment Arrangements.

1.26 “Plan Year” means the 12 consecutive month period commencing on January 1 and each anniversary thereof.

1.27 “Related Employer” means an entity that is under common control with the Employer or a Participating Employer under Code §414(b), (c), (m) or (o), based on a reasonable, good faith standard, and taking into account Treasury Regulation §1.414(c)(5) and the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

1.28 “Responsible Person” means the person(s) (e.g., Vendor, recordkeeper, service provider, the Employer or a Participating Employer) responsible for performing, or having the authority to perform, a particular administrative function under the Plan.

1.29 “Roth Elective Deferral” means an elective deferral made under another plan that is irrevocably designated (at the time the elective deferral is made) as a Roth elective deferral that is being made in lieu of all or a portion of a pre-tax elective deferral, and is treated 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 the elective deferral.

1.30 “Severance from Employment” means the cessation of an Employee’s employment with the Employer, a Participating Employer, or a Related Employer that is eligible to maintain a Code §403(b) plan under Treasury Regulation §1.403(b)-2(b)(8) (an “eligible employer”), even if the Employee remains employed with another entity that is a Related Employer where either (i) such Related Employer is not an eligible employer or (b) the Employee is employed in a capacity that is not employment with an eligible employer.

1.31 “Spouse” means an individual’s spouse for Federal tax purposes, determined in accordance with Internal Revenue Service Notice 2014-19 and any related subsequent regulations or other guidance.

1.32 “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 §7701(a)(10)). An Indian tribal government is treated as a State pursuant to Code §7871(a)(6)(B) for purposes of Code §403(b)(1)(A)(ii).

1.33 “Vendor” means the provider of an Investment Arrangement.

1.34 “Year of Service,” for purposes of determining Includible Compensation, means each full year during which an individual is a full-time Employee, plus fractional credit for each part of a year during which the individual is either a full-time Employee for a part of a year or a part-time Employee. 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.

ARTICLE II **PARTICIPATION**

2.1 Eligibility to Participate, Enrollment and Commencement of Participation. Prior to January 1, 2009, all Employees were eligible to participate in the Plan on the date their employment commenced. Each Employee enrolled in the Plan and became a Participant on the date he made a Compensation Reduction Election. Each Participant provided any information necessary or advisable for the administration of the Plan at the time of enrollment (including any information required under the terms governing the Investment Arrangement), and shall continue to provide such information.

2.2 Participation Frozen as of December 31, 2008. No Employee whose employment with the Employer or a Participating Employer commenced or commences after December 31, 2008 shall be eligible to participate in the Plan.

ARTICLE III **ELECTIVE DEFERRALS AND LIMITATIONS**

3.1 Compensation Reduction Elections. Subject to Section 3.4, an Employee may execute and file a Compensation Reduction Election to reduce his Compensation and have an amount equal to the reduction contributed, on his behalf, as an Elective Deferral to one or more Investment Arrangements. Compensation Reduction Elections shall be made: (i) through a written agreement with, and provided by, the Employer or Participating Employer under which the Employee agrees to be bound by all the terms and conditions of the Plan; and (ii) in an amount equal to any whole percentage of the Participant's Compensation or in a designated whole dollar amount of that Compensation. Subject to Section 3.4, each Compensation Reduction Election must be made prior to the beginning of the first payroll period for which it is effective, and shall remain in effect until a new Compensation Reduction Election is filed. Unless a Compensation Reduction Election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan continue to the extent that Compensation continues. The Employee's elections with respect to Investment Arrangements and allocations (and reallocations) among Accounts, if not included in the Compensation Reduction Election, shall be included in other Plan records. Subject to Section 3.4 and the terms governing the applicable Investment Arrangement (but not less than once every year), a Participant may change his: (i) Compensation Reduction Election as of the first day of any future payroll period chosen by the Participant; and (ii) choice of Investment Arrangements, and designated Beneficiary, as provided under the Investment Arrangement. Elective Deferrals must be transferred to the applicable Vendor within a reasonable time for proper administration of the Plan, but not later than 15 business days after the amounts would have been paid to the Employee. Each Participant shall be immediately one hundred percent (100%) vested in his Elective Deferrals.

3.2 Limitations on Elective Deferrals.

(a) Subject to Subsections (b) through (d) below, the maximum amount of the Elective Deferral under the Plan for any calendar year shall not exceed the applicable dollar amount established under Code §402(g)(1)(B), adjusted for cost-of-living increases pursuant to Code §402(g)(4).

(b) Subject to Section 3.4, an Employee who is age 50 or older by the end of a calendar year is permitted to elect additional Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum age 50 catch-up Elective Deferrals for a year shall not exceed the applicable dollar amount established under Code §402(v)(2)(A), adjusted for cost-of-living increases pursuant to Code §402(v)(2)(C).

(c) In no event can the amount of the Elective Deferrals for a year be more than the Participant's Compensation for the year.

(d) If the Participant is or has been a participant in one or more other plans under Code §403(b) (and any other plan that permits elective deferrals under Code §402(g)), then this Plan and all such other plans shall be considered as one plan for purposes of applying the limitations in this Section 3.2. For this purpose, any such other plan for which the Participant provides sufficient information concerning his participation therein, and any such other Code §403(b) plan maintained by any Related Employer, shall be taken into account.

(e) If the Elective Deferrals on behalf of a Participant for any calendar year exceed the limitations described above, then such excess Elective Deferrals (adjusted for any income or loss in value, if any, allocable thereto through the end of the applicable calendar year), shall be distributed to the Participant.

3.3 Limitations on Aggregate Annual Additions.

(a) If Annual Additions are credited to a Participant under any Code §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 Code §403(b) plans may not exceed his Maximum Annual Addition.

(b) 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 Code §403(b) plans of the Employer, any defined contribution plans maintained by controlled employers, and any Code §403(b) plans of any other employers may not exceed his Maximum Annual Addition. For purposes of this paragraph, a Participant is in control of an employer based upon the rules of Code §§414(b), 414(c), and 415(h); and a defined contribution plan means a defined contribution plan that is qualified under Code §401(a) or 403(a), a Code §403(b) plan, or a simplified employee pension within the meaning of Code

§408(k).

(c) The Annual Additions which may be credited to a Participant under this Plan for any Limitation Year will not exceed his Maximum Annual Addition, reduced by the Annual Additions credited to the Participant under any other Code §403(b) plans of the Employer in addition to this Plan and, if the Participant is in control of an employer, any defined contribution plans maintained by controlled employers and Code §403(b) plans of any other employers. Contributions to the Participant's Accounts under this Plan will be reduced to the extent necessary to prevent this limitation from being exceeded.

(d) If, notwithstanding Subsections (a) through (c) a Participant's Annual Additions under this Plan, or under this Plan and plans aggregated with this Plan under Subsections (b) through (c), 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 §401(a) or a simplified employee pension maintained by an Employer controlled by the Participant will be deemed to have been credited first. If an Excess Annual Addition is credited to a Participant under this Plan and another Code §403(b) plan of the Employer on the same date, the Excess Annual Addition attributable to this Plan will be the product of: (i) the total Excess Annual Addition credited as of such date; times (ii) the ratio of the Annual Additions credited to the Participant for the Limitation Year as of such date under this Plan to the total Annual Additions credited to the Participant for the Limitation Year as of such date under this Plan and all other plans aggregated with this Plan. Any Excess Annual Addition attributable to this Plan will be corrected in the manner described in Subsection (e).

(e) 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 will be credited in the year of the excess to a separate account under the Plan for such Excess Annual Additions which will 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 §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.

(f) For each year a Participant has Elective Deferrals, he shall receive written or electronic notice explaining the limitation in Subsection (b) above in a manner calculated to be understood by the average Participant and informing him of his responsibility to provide information to a Responsible Person that is necessary to satisfy Subsection (b). The notice will advise the Participant that the application of the limitations in Subsection (b) will take into account information supplied by the Participant and that failure to provide necessary and correct information could result in adverse tax consequences to the Participant, including the inability to exclude contributions to the Plan under Code §403(b).

(g) For purposes of this Section 3.3, “Employer” means the Employer (and any Related Employer with respect to the Employer), and any Participating Employer (and any Related Employer with respect to the Participating Employer).

3.4 Elective Deferrals Frozen as of December 31, 2008. Notwithstanding Sections 3.1 through 3.3 above, no Elective Deferrals shall be permitted under the Plan after December 31, 2008.

ARTICLE IV **DISTRIBUTIONS AND LOANS**

4.1 General. Distributions of Elective Deferrals from a Participant’s Account may not be made earlier than the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59-1/2, except as permitted in the case of: (i) pre-1989 Elective Deferral contributions (excluding earnings thereon) to an Annuity Contract that are separately accounted for; (ii) amounts rolled over into the Plan; (iii) a distribution made in the event of hardship; (iv) a qualified reservist distribution as defined in Code §72(t)(2)(G); (v) termination of the Plan; a payment pursuant to Section 11.2 or 11.3; or (vi) as may otherwise be provided by law and in regulations or other rules of general applicability published by the Department of the Treasury or the Internal Revenue Service, and permitted by the terms governing the applicable Investment Arrangement (including a qualified birth or adoption distribution as described in Code §72(t)(2)(H). For purposes of this Section 4.1, a Participant shall be treated as having a Severance from Employment during any period the Participant is performing service in the uniformed services described in Code §3401(h)(2)(A). A Participant who elects to receive a distribution pursuant to the preceding sentence may not make an Elective Deferral during the six month period beginning on the date of the distribution. The available forms of distribution will be based on the terms governing the applicable Investment Arrangement.

4.2 Small Account Balances. To the extent permitted under the terms governing the applicable Investment Arrangement, distributions may be made in the form of a lump-sum payment, unless the Participant’s Accumulated Benefit (determined without regard to any separate account that holds rollover contributions) exceeds \$5,000 or any lesser amount specified in the Investment Arrangement. Any such distribution shall comply with the requirements of Code §401(a)(31)(B) (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

4.3 General Rules Regarding Minimum Distribution Requirements. The Plan shall comply with the minimum distribution requirements of Code §401(a)(9) and the regulations thereunder in accordance with the terms governing each Investment Arrangement, 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 §401(a)(9) and the~~

~~regulations thereunder in accordance with this Section 4.3.~~ For purposes of applying the distribution rules of Code §401(a)(9), each Investment Arrangement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of ~~Treasury Regulation §1.408-8, except as provided in Treasury Regulation §1.403(b)-6(e).~~ The distribution requirements in this Section 4.3 generally apply to a Participant's entire Accumulated Benefit. However, they 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-'87 account balance), provided that the applicable requirements of Treasury Regulation §1.401(a)(9)-6(e)(6) are satisfied. In this case, a Participant's pre-'87 account balance shall be distributed in accordance with the incidental benefit requirements of Treasury Regulation §1.401-1(b)(1)(i). To the extent permitted under Treasury Regulation §1.403(b)-6(e)(7), a Participant's Investment Arrangements under the Plan, or under the Plan and other Code §403(b) plans in which the Participant participates as an Employee, may be aggregated and the minimum distribution requirements satisfied by distribution from any one or more of the Investment Arrangements. Treasury Regulation §1.408-8, except as provided in Treasury Regulation §1.403(b)-6(e).

(a) — ~~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^{1/2} 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.~~

(b) — ~~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^{1/2} 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 §1.401(a)(9)-9, using the Participant's age as of his birthday in the year. However, if the Participant's sole Beneficiary is his 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 §1.401(a)(9)-9, using the ages as of the Participant's and Spouse's birthdays in the year.~~

(c) — ~~If the Participant's Accumulated Benefit is distributed as an annuity, the distribution periods described in Subsection (b) above cannot exceed the periods specified in Treasury Regulation §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 §1.401(a)(9)-6. In addition, any distribution must satisfy the incidental benefit requirements specified in~~

~~Q&A-2 of Treasury Regulation §1.401(a)(9)-6.~~

~~(d) — The required minimum distribution for the year the Participant attains age 70⁺_{1/2} 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.~~

~~(e) — 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 payment 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:~~

~~(i) — 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 birthday in the year following the year of the Participant's death, or over the period described in Subsection (e)(iii) below if longer.~~

~~(ii) — 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 (e)(iii) 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 her birthday in the year of the Spouse's death, or, if the distributions are being made over the period described in Subsection (e)(iii) below, over such period.~~

~~(iii) — If there is no Beneficiary, or if applicable by operation of Subsections (e)(i) or (e)(ii) above, the remaining interest will be distributed over the Participant's remaining life expectancy determined in the year of the Participant's death.~~

~~(iv) — The amount to be distributed each year under Subsections (e)(i), (e)(ii) or (e)(iii), 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 paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of Treasury Regulation §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 Subsections (e)(i), (e)(ii) or (e)(iii) and reduced by one for each subsequent year.~~

~~(f) — If the Participant dies before the required beginning date (or the date required payments begin, in the case of an annuity), his entire interest will be distributed at least as rapidly as follows:~~

~~(i) — 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 birthday in the year following the year of the Participant's death, or, if elected, in accordance with Subsection (f)(iii) below.~~

~~(ii) — 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^{1/2}, if later), over the Spouse's life, or, if elected, in accordance with Subsection (f)(iii) 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 birthday in the year following the death of the Spouse, or, if elected, will be distributed in accordance with Subsection (f)(iii) 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 her birthday in the year of the Spouse's death.~~

~~(iii) — If there is no Beneficiary, or if applicable by operation of Subsection (f)(i) or (f)(ii) 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 (f)(ii) above).~~

~~(g) — Except in the case of a distribution as an annuity, the amount to be distributed each year under Subsection (f)(i) or (f)(ii) 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 §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 Subsection (f)(i) or (f)(ii) and reduced by 1 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.~~

~~(h) — For purposes of Subsections (e) and (f) 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 Subsection (f)(ii) 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 § 1.401(a)(9)-6 then required annuity payments are considered to begin on the annuity starting date.~~

~~(i) — If a Participant has a separate account attributable to rollover contributions to the Plan, then, to the extent permitted by the terms governing the applicable Investment Arrangement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.~~

4.4 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 a Responsible Person, 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.

(a) An Eligible Rollover Distribution is 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 10 years or more; (ii) any distribution to the extent such distribution is required under Code §401(a)(9) (other than amounts that would have been required but for a statutory waiver of the Code §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 §§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 §72(p); (viii) dividends paid on employer securities as described in Code §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 §409(p); and (xi) a distribution that is a permissible withdrawal from an eligible automatic contribution arrangement within the meaning of Code §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 §408(a) or 408(b), respectively, or (ii) a qualified plan described in Code §401(a) or 403(a) or a tax-sheltered annuity described in Code §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.

(b) An Eligible Retirement Plan is a qualified plan described in Code §401(a), an annuity plan described in Code §403(a), an annuity contract described in Code §403(b), an individual retirement account or annuity described in Code §408(a) or 408(b), or an eligible plan under Code §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 under a domestic relations order as described in Section 11.2.

(c) A 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 under a domestic relations order as described in Section 11.2, 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 an individual retirement account or annuity described in Code §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 §402(c)(11). Also, in this case, the determination of any required minimum distribution under Code §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.

(d) A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

4.5 Automatic Rollovers. In the event of a mandatory distribution greater than \$1,000, in accordance with the provisions of Section 4.2, if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly, then a Responsible Person will pay the distribution in a Direct Rollover to an individual retirement plan designated by a Responsible Person. For purposes of determining whether a mandatory distribution is greater than \$1,000, the portion of the Participant's distribution attributable to any rollover

contribution is included.

4.6 Written Explanation of Right to Direct Rollover. The payor 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 §402(f).

~~4.7~~ 4.7 Hardship Distributions. To the extent permitted by the terms governing the applicable Investment Arrangement, distribution of Elective Deferrals (but not earnings thereon) may be made to a Participant ~~in the event on account~~ of a hardship. A distribution is made on account of hardship ~~distribution may only be if it is~~ 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. ~~The following are the only financial needs considered~~ Whether a Participant has an immediate and heavy financial need will be determined based on all the relevant facts and circumstances and in accordance with Treas. Reg. 1.403(b)-6. A financial need may be immediate and heavy; even if it was reasonably foreseeable or voluntarily incurred by the Participant. A distribution is deemed to be made on account of an immediate and heavy financial need if it is for: (i) expenses incurred for (or necessary for to obtain) medical care, described that would be deductible under Code §213(d), determined without regard to the limitations in Code §213(d), of a (relating to the Participant, applicable percentage of adjusted gross income and the Participant's Spouse or dependents, or the Participant's recipients of the medical care) provided that, if the recipient of the medical care is not listed in Code §213(a), the recipient is a primary Beneficiary (as defined in Q&A 5 of IRS Notice 2007-7); the under the Plan; (ii) costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant; (excluding mortgage payments); (iii) payment of tuition and, related educational fees for, and room and board expenses, for up to the next 12 months of post-secondary education for the Participant, or for the Participant's spouse, children or dependents, child or dependent (as defined in Code §152 without regard to Code §§152(b)(1), 152(b)(2) and 152 (d)(1)(B)), or the Participant's for a primary Beneficiary; under the Plan; (iv) payments necessary to prevent the eviction of the Participant from, the Participant's principal residence or a foreclosure on the mortgage of, the Employee's principal on that residence; (v) payments for burial or funeral or burial expenses for the Participant's deceased parent, spouse, child or dependent, (as defined in Code §152 without regard to Code §152(d)(1)(B)), or the Participant's for a deceased primary Beneficiary; and under the Plan; (vi) expenses for the repair of damage to the Participant's principal residence that would qualify for a the casualty loss deduction under Code §165 (determined without regard to Code §165(h)(5) and whether the loss exceeds 10 percent of adjusted gross income). A distribution will be considered % of adjusted gross income); or (vii) 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. A distribution made pursuant to this

Section 4.7 may not exceed amount of need. A distribution is treated as necessary to satisfy an immediate and heavy financial need of thean Participant only ~~if:~~

~~(a) —: (i) to the extent the amount of~~ the distribution is not in excess of the amount ~~of required to satisfy~~ the ~~immediate and heavy~~ financial need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution);

~~) and only if each of the following requirements is satisfied; (i) the Participant has obtained all other currently available distributions, other than hardship distributions, and all nontaxable loans under under the Plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the Employer or Participating; (ii) the Participant has provided to the Responsible Person a representation in writing (including by using an electronic medium as defined in Treas. Reg. §1.401(a)-21(e)(3)), or in such other form as may be prescribed by the Commissioner of the Internal Revenue Service, that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need; and (iii) neither the Employer (except to the extent such actions would be counterproductive to alleviating the financial need); and nor the Responsible Person has actual knowledge that is contrary to the representation.~~

~~(b) — All plans maintained by the Employer or any Participating Employer provide that the Participant's Elective Deferrals (and after-tax contributions) will be suspended for six months after the receipt of the hardship distribution.~~

4.8 Loans Prohibited. No Participant or Beneficiary shall be permitted to take a loan from his Account(s).

ARTICLE V

ROLLOVERS AND TRANSFERS

5.1 Rollover Contributions. To the extent permitted under the terms of the applicable Investment Arrangement, the Plan will accept rollover contributions as provided in this Section.

(a) 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 (other than any portion attributable to a Roth Elective Deferral). Such rollover contributions shall be made in the form of cash only. A Responsible Person may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code §402 and to ~~confirm that~~reasonably conclude such plan is an Eligible Retirement Plan.

(b) For purposes of this Section 5.1, 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 10 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 §401(a)(9).

(c) For purposes of this Section 5.1, an Eligible Retirement Plan means a qualified trust described in Code §401(a), an annuity plan described in Code §403(a) or 403(b), an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), or an eligible governmental plan described in Code §457(b).

(d) A rollover of an Eligible Rollover Distribution that includes after-tax employee contributions will only be accepted if a Responsible Person obtains information regarding the Participant's tax basis under Code §72 in the amount rolled over.

(e) Separate accounts shall be established and maintained for the Participant for any Eligible Rollover Distribution, and for the after-tax portion of any such Eligible Rollover Distribution, paid to the Plan.

(f) To the extent permitted under the terms of the applicable Investment Arrangement, if the Plan benefit of a Participant or Beneficiary is levied upon in a case to which Code §6343(b) or (d)(2)(A) applies and is returned to the Participant or Beneficiary, the amount described in Code §6343(f) will be accepted as a rollover contribution; provided the contribution is made within the time period allowed in, and in accordance with, Code §6343(f) and any Treasury Regulations issued thereunder.

(g) 5.2 Transfers to This Plan. To the extent permitted under the terms of the applicable Investment Arrangement, the Plan will accept a transfer of assets from another Code §403(b) plan for a Participant or Beneficiary if: (i) the other plan provides for direct transfers of assets; (ii) the Participant is an Employee or former Employee of the Employer or a Participating Employer; (iii) the Participant or Beneficiary whose assets are being transferred has an Accumulated Benefit immediately after the transfer at least equal to the Accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer; (iv) the transferred amounts are subject to statutory restrictions on distributions that are not less stringent than those imposed under the transferor plan; and (v) the transferor plan provides and shares information necessary for the Investment Arrangements involved in the transfer to satisfy Code §403(b). Upon such transfer, the liability to pay benefits from the transferor Investment Arrangement shall be discharged to the extent of the amount transferred.

5.3 Transfers to Another Plan. To the extent permitted under the terms of the applicable Investment Arrangement, the Plan will permit the transfer of assets from this Plan to another Code §403(b) plan for a Participant or Beneficiary if: (i) the Participant is an Employee or former Employee of the Employer or a Participating Employer; (ii) the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer; (iii) the transferred amounts are subject to statutory restrictions on distributions that are not less stringent than those imposed under the transferor Plan; and (iv) this Plan and the other plan provide and share information necessary for the Investment Arrangements involved in the transfer to satisfy Code §403(b). Upon such transfer, the liability to pay benefits from the transferor Investment Arrangement shall be discharged to the extent of the amount transferred.

5.4 Exchanges. To the extent permitted under the terms of the applicable Investment Arrangement, a Participant or Beneficiary may change the investment of his Accumulated Benefit among Vendors' Investment Arrangements approved for use under the Plan. However, an investment change that includes an investment with a Vendor that is not eligible to receive new contributions (referred to below as an exchange) is not permitted unless the conditions in Subsections (a) through (e) below are satisfied. Upon an exchange, the liability to pay benefits from the transferor Investment Arrangement shall be discharged to the extent of the amount exchanged. Vendors may prescribe procedures and standards for exchanges to and from the Investment Arrangement that they maintain.

(a) The Participant or Beneficiary must have an Accumulated Benefit immediately after the exchange that is at least equal to the Accumulated benefit of that Participant or Beneficiary immediately before the exchange (taking into account the Accumulated Benefit of that Participant or Beneficiary under both Code §403(b) contracts or custodial accounts immediately before the exchange).

(b) The exchanged amounts must be subject to statutory restrictions on distributions that are not less stringent than those imposed before the exchange.

(c) The exchange must be permitted and satisfy conditions required under Code §403(b).

(d) The requirements established by the Vendor accepting the exchange must be satisfied (e.g., requirements regarding the cash or other property acceptable to it, documentation from the other Vendor necessary to effectuate the exchange in accordance with Code §403(b), and confirmation that the Investment Arrangement meets Code §403(b) requirements).

(e) The Vendors involved in the exchange must provide and share information necessary for the Investment Arrangements involved in the exchange to satisfy Code §403(b).

(f) The Employer shall make a reasonable, good faith effort to: (i) collect information concerning Vendors and provide them with contact information for the person in charge of administering the Plan so they can coordinate information necessary for Investment Arrangements they maintain to satisfy Code §403(b) requirements; or (ii) upon being contacted by a Vendor, provide and exchange with it employment and other information needed in order for any Investment Arrangement maintained by it to satisfy Code §403(b) requirements.

5.5 Service Credit Purchases. To the extent permitted under the terms of the applicable Investment Arrangement, purchases of service credit shall be permitted under the Plan as provided in this Section.

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code §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. A transfer may be made before the Participant has had a Severance from Employment.

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

ARTICLE VI **INVESTMENTS**

6.1 Manner of Investment. All Elective Deferrals or other amounts contributed to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Investment Arrangements.

6.2 Exclusive Benefit. Each Investment Arrangement 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 Investment Arrangement to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

6.3 Investment Direction. Each Participant and each Beneficiary of a deceased Participant may direct the investment of all amounts credited under each of his Investment Arrangements among the investment options available under such Investment Arrangement, in accordance with procedures established by the Vendor maintaining such Investment Arrangement.

ARTICLE VII **PLAN ADMINISTRATION**

7.1 General. 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 §403(b). These provisions and requirements include but are not limited to: (i) determining whether an Employee is eligible to participate in the Plan; (ii) determining whether contributions comply with the applicable limitations; (iii) determining whether hardship withdrawals comply with applicable requirements and limitations; (iv) determining that any transfers, rollovers, or purchases of service credit comply with applicable requirements and limitations; (v) determining that the requirements of the Plan and Code §403(b) are properly applied (including whether the Employer and each Participating Employer is a member of a controlled group); and (vi) determining the status of domestic relations orders.

7.2 Administrative Functions and Responsible Persons. Administrative functions, including functions to comply with Code §403(b) and other tax requirements, may be allocated among various Responsible Persons pursuant to service agreements or other written documents. However, in no case shall administrative functions be allocated to Participants (other than permitting Participants and Beneficiaries of deceased Participants to give investment directions). No Responsible Person shall have duties with respect to the Plan except: (i) duties required of the Responsible Person by law; (ii) duties set forth in the Plan document; and (iii) except as provided in Article VIII, duties set forth in an

Investment Arrangement, recordkeeping agreement or other service provider agreement. Subject to the terms of the Plan and Code requirements, a Responsible Person may establish rules with respect to, and decide all matters regarding, its Plan administrative functions. Neither the Employer nor any Participating Employer shall receive compensation for services as a Responsible Person. Any compensation or reimbursement of expenses for any other Responsible Person for services as a Responsible Person shall be in accordance with the applicable Investment Arrangement, recordkeeping or other service provider agreement for the Plan and relating to the Responsible Person. Unless otherwise provided in such Investment Arrangement, recordkeeping or other service provider agreement, or unless required by law, the Responsible Person shall not be required to give any bond or other security in any jurisdiction.

7.3 Claims. A Participant or Beneficiary may apply for benefits under an Investment Arrangement by filing the appropriate forms with the Vendor maintaining the Investment Arrangement. All such applications shall be processed in accordance with the Investment Arrangement and procedures established by the Vendor.

7.4 Information Sharing. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy Code §403(b) or other requirements of applicable law. In the case of a Vendor which is not eligible to receive Elective Deferrals under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals under the Plan and a Vendor holding assets under the Plan), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy Code §403(b) requirements or other requirements of applicable law. Each Vendor shall exchange such information as is necessary for any Investment Arrangement it maintains to satisfy the requirements of Code §403(b), including, but not limited to, requirements relating to exchanges and transfers to and from, and to withdrawals and distributions from, such Investment Arrangement.

ARTICLE VIII

LIMIT ON EMPLOYER AND PARTICIPATING EMPLOYER RESPONSIBILITIES

8.1 General Limitation. Notwithstanding Article VII or any other provision of the Plan to the contrary:

(a) Unless otherwise required under Code §403(b), the administrative duties, functions and responsibilities of the Employer and all Participating Employers relating to the Plan and any Investment Arrangement shall be limited, in accordance with Revenue Procedure 2007-71 (and any additional guidance issued by the Internal Revenue Service or Treasury Department), to making a reasonable, good faith effort to: (i) collect information concerning Vendors and provide them with contact information for the person in charge of administering the Plan so they can coordinate information necessary for any Investment

Arrangement they maintain to satisfy Code §403(b) requirements; or (ii) upon being contacted by a Vendor, provide and exchange employment and other information with the Vendor needed in order for any Investment Arrangement maintained by it to satisfy Code §403(b) requirements.

(b) If any provision of the Plan or an Investment Arrangement would require or cause the Employer or a Participating Employer to take some action beyond the limited action described in Section 8.1(a), and such action is not required of the Employer or Participating Employer under Code §403(b), then such provision shall be ineffective.

ARTICLE IX

PARTICIPATING EMPLOYERS

9.1 Adoption of Plan Document. With the consent of the Employer, each Participating Employer has adopted this Plan for the benefit of its Employees.

9.2 Employer's Authority. By adopting this Plan document, each Participating Employer consents to the powers, authority, and discretion given to the Employer in this Plan document.

9.3 Participating Employer's Discontinuance. Any Participating Employer may discontinue its participation in the Plan at any time by executing a document evidencing its intent to do so and delivering the same to the Employer.

ARTICLE X

AMENDMENT AND TERMINATION

10.1 Plan Termination. The Employer reserves the authority to terminate this Plan at any time. Upon termination of the Plan, all non-vested amounts under the Plan will be fully vested and, subject to any restrictions contained in the terms governing the applicable Investment Arrangement, all Accounts will be distributed; (in accordance with applicable Treasury Regulations and the distribution procedure permitted in IRS Notice 2020-23), provided that the Employer and any Participating Employer or Related Employer on the date of termination do not make contributions to an alternative Code §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.

10.2 Plan Amendment. The Employer reserves the authority to amend the Plan at any time and from time to time, and retroactively if deemed necessary or appropriate, to modify or amend, in whole or in part, any or all of the provisions of the Plan.

ARTICLE XI

MISCELLANEOUS

11.1 Military Service Benefits. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code §414(u). 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.

11.2 Domestic Relations Orders. 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. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. A Responsible Person shall establish procedures for determining the status of any such decree or order, and for effectuating distribution pursuant to the domestic relations order.

11.3 IRS Levy. A Responsible Person may pay from a Participant’s or Beneficiary’s Accumulated Benefit the amount that the Responsible Person 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.

11.4 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 a Responsible Person, the amount of the mistaken contribution (adjusted for any income or loss in value allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Responsible Person, to the Employer or appropriate Participating Employer.

11.5 No Employment Contract. Nothing contained in this Plan document shall be construed as a contract of employment between the Employer or a Participating Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer or a Participating Employer, or as a limitation of the right of the Employer or a Participating Employer to discharge any of its Employees with or without cause.

11.6 Compliance with Code. If and to the extent a provision in an Investment Arrangement is required for such Investment Arrangement to satisfy the requirements of

Code §403(b) and that provision conflicts with the terms of this Plan document, the conflicting provision of the Investment Arrangement shall control over the conflicting provision of this Plan document. If and to the extent a provision in this Plan document is required for the Plan to satisfy the requirements of Code §403(b) and that provision conflicts with the terms of an Investment Arrangement, the conflicting provision of this Plan document shall control over the conflicting provision of the Investment Arrangement.

11.7 Applicable Law. The provisions of the Plan shall be construed, administered and enforced according to applicable federal law and, where not preempted by federal law, the laws of the State of New York.

11.8 Non-Alienation Provision. Except as provided in Section 11.2 or other applicable law: (i) no benefit under an Investment Arrangement shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void; and (ii) no benefit under an Investment Arrangement shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person. The Employer, Participating Employers, Vendors and Responsible Persons shall not in any manner be liable hereunder for or be subject hereunder to, the debts, contracts, liabilities, engagements or torts of any person entitled to a benefit under an Investment Arrangement.

11.9 Tax Withholding. Elective Deferrals are subject to applicable employment taxes (including applicable Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals that constitute wages under Code §3121). Any withdrawal or distribution from an Investment Arrangement is subject to applicable income tax withholding requirements (including Code §3401). A payee shall provide such information as the Vendor may need to satisfy income tax withholding obligations.

11.10 Payments to Incompetents. If a Participant or Beneficiary entitled to receive benefits under an Investment Arrangement 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 Vendor maintaining such Investment Arrangement, to the extent permitted by the Investment Arrangement, benefits may be paid to such person as the Vendor may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of the Vendor, all Responsible Persons, the Employer and Participating Employers for any liability for such payments.

11.11 Headings. Headings have been inserted herein for convenience of reference only and are to be ignored in any construction of the provisions hereof.

11.12 Gender. Pronouns used in this Plan document in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

11.13 Source of Benefits. The Investment Arrangements shall be the sole source of benefits under the Plan. No Employee or Beneficiary shall have any right to, or interest in, any assets of the Employer or a Participating Employer upon termination of employment or otherwise.

IN WITNESS WHEREOF, the Employer and Participating Employers have caused this Plan document to be executed, effective ~~January 1, 2015~~, 2022.

Buffalo and Erie County Public Library

By: _____

Title: _____

Date: _____,

20152022

**APPENDIX A
TO THE
BUFFALO AND ERIE COUNTY PUBLIC LIBRARY
CODE SECTION 403(B) PLAN
LIST OF VENDORS OF INVESTMENT ARRANGEMENTS**

Allianz Global Funds
American Funds
Calvert Investments
Citi Street LLC
Colonial Bank N.A.
Copeland Companies
Evergreen Management Company
Federated Funds
Fidelity Investments
Franklin Templeton
FTJ FundChoice, LLC (HNB Passive Custodian)
Guggenheim Investments
Invesco Investment Services
Janus Funds
The Legend Group
Lincoln Investments
Met Life
MFS Investment Management
Nationwide Financial
New York Life Insurance Company
Oppenheimer Funds
Putnam Investments
Security Benefit Life Insurance
Security Funds
T. Rowe Price Trust
Vanguard Fiduciary Trust
Van Kampen Funds
Waddel & Reed / Ivy Funds

**APPENDIX B
TO THE
BUFFALO AND ERIE COUNTY PUBLIC LIBRARY
CODE SECTION 403(B) PLAN**

LIST OF PARTICIPATING EMPLOYERS

Amherst Public Library
Angola Public Library
Aurora Town Public Library
Boston Free Library
Cheektowaga Public Library
Clarence Public Library
Collins Public Library
Hulbert Library of the Town of Concord
Eden Library
Elma Public Library
Ewell Free Library
Grand Island Memorial Library
Hamburg Public Library
Lackawanna Public Library
Lancaster Public Library
Marilla Free Library
Newstead Public Library
Town of North Collins Public Library
Orchard Park Public Library
City of Tonawanda Public Library
Town of Tonawanda Public Library
West Seneca Public Library