

# Section 1

# Deferred Compensation Committee

## Erie County, New York

### Request for Proposals

#### Retirement Plan Record Keeping Services

##### Provider Questions and Responses

February 29, 2016

Thank you for your interest in responding to this Request for Proposal. We have included every question, request for clarification and request for confirmation received from potential bidders by the deadline stated in the RFP document. We changed the text of some of the questions and/or requests so they read better and/or to fix typographical errors.

1. Does the Committee have preferences as to the number of education days, both at conversion and ongoing, that are included in initial pricing?
  - No. As part of this formal RFP process, the Committee would encourage you to consider what has worked (or not) with your firm and propose an effective educational service model that your firm believes will drive results.
2. Does the Committee have available information on the composition of the active participants in terms of grouping by age and assets? How many active plan participants are retiring in the next 10 years and what does this group represent in terms of total plan assets?
  - Please see the table below covering the breakdown of all participants.

Age	Assets	%
Under 20	\$647	0.0%
20-29	\$874,619	0.4%
30-39	\$7,674,831	3.6%
40-49	\$27,966,653	13.1%
50-59	\$82,209,086	38.7%
60-65	\$55,135,653	25.9%
65 and over	\$38,741,759	18.2%

It is impossible to predict and inappropriate to even estimate how many employees will retire or otherwise separate from service in the future.

3. What is the current level of on-site educational service being delivered by the plan provider or their designated educational service provider? Specifically, how many total service hours and days are being currently provided? Does the Committee feel that the current level of on-site presence is sufficient?
  - In 2014, there were 432 coverage days on-site. VALIC conducted 56 group presentations, enrolled 357 new employees, and conducted 1,705 account reviews. In 2015, there were 421 coverage days on-site. VALIC conducted 40 group presentations, enrolled 318 new employees, and conducted 1,368 account reviews. It is important to note that the current educational service model is in large

part irrelevant to what the Committee hopes to see as part of the proposals received. We would encourage you to consider what has worked (or not) with your firm and propose an effective model that your firm believes will drive results.

4. The plan currently has in excess of 160 plan investment options. Does the Committee intend to keep this line-up?
  - In its fiduciary duty, the Committee regularly reviews the fund lineup. The trend in the industry is to reduce investment menus and the Committee will consider lowering the number of investment options offered. However, that decision has not been made and the Committee may elect to keep the current lineup if that is in the best interest of participants.
5. Please provide information on the current plan fixed option (\$58.3 million). Is this a stable value fund or the current plan provider's General Account product?
  - The Fixed Account is a general account-type product.
6. Please confirm that the Committee has given approval to the current solicitation and marketing of outside proprietary IRA products in accordance with Section 9004.1 of the NYS Deferred Compensation Board Rules and Regulations.
  - There is no current solicitation and marketing of outside proprietary IRS products and, therefore, approval has not been requested nor given.
7. Please provide information on the fixed funds in the plan today. What is the current crediting rate? What are the expense ratios?
  - The current crediting rate is 3.0% and is guaranteed through August 31, 2016. There is no stated expense ratio.
8. What are the current fees for the plan today with your provider?
  - There are no additional fees outside investment option expense ratios and fees for managed account services. The expense ratios have been disclosed in an attachment to the RFP document while the managed account fee structure ranges from 0.45% to 0.60%. It is important to note that the current fees are in large part irrelevant and the Committee is hoping to see competitive pricing as part of this formal RFP process.
9. Please provide the current service agreements with your provider.
  - Please see attached.
10. Please provide the current plan document.
  - Please see attached.
11. Please indicate if any of the revenue produced by the fund line-up is kept by the recordkeeper or returned to the plan and/or the participants.
  - The amount of revenue returned to the Plan, if any, is in large part irrelevant to this process.

12. Please provide a list of any ancillary fees that are currently being charged to the plan and or its participants. i.e.) QDRO's, financial advice, etc.
  - Please see Question 8.
  
13. Is it the intent of the plan to map the current participants and assets in the managed account program into a managed account program with the successful vendor?
  - This has not yet been decided.
  
14. What is the desired length of the contract?
  - The Committee cannot offer guidance in terms of pricing methodologies or answer pricing questions that may steer firms one way or another. However, we would encourage you to answer questions related to pricing and quotes as requested.
  
15. How many on-site service representatives are currently assigned to the plan? How many group meetings did they conduct in 2015? How many individual meetings in 2015?
  - Please see Question 3. There are currently four participant representatives servicing the Plan participants.
  
16. Is the plan looking to consolidate the fund lineup? Does the plan want us to confirm that we can offer the existing fund lineup? If not, is the plan interested in a proposed lineup?
  - Please see Question 4. This RFP is for recordkeeping services and one criteria is investment flexibility. Confirming the ability to offer the existing lineup or proposing another lineup is not necessary. However, the ability to partner with the Committee to build the most appropriate lineup once hired is important.
  
17. Is the Exhibit Binder being requested in an electronic format only or would you also like hard copies? If hard copies are requested, how many would you like?
  - Please send both in electronic format as well as hard copies (five hard copies).
  
18. Please confirm, as the incumbent provider, that the 50 points for Transition in the scoring matrix would be automatically given.
  - The incumbent will not automatically receive 50 points for this section.
  
19. Would the Committee prefer different pricing scenarios in which on-site services are included and excluded?
  - Please see Question 14.
  
20. According to the RFP document there are 4,255 account balances while only 2,490 are contributing employees. Is the Committee looking to clean up the accounts that are associated with employees who have separated service and kept their balances in the plan? If so, can you provide the number of separated participant accounts that remain in the plan and the assets associated with those accounts?

- In its fiduciary duty, the Committee is always looking to enhance the Plan and would consider compelling/requesting participants with smaller account balances to separate from the Plan through de minimis distributions. But the Committee has not yet made any decisions in this regard. According to VALIC, there are 906 accounts related to participants who have separated from service and this represents approximately \$60 million in assets.

21. We have noticed that the plan is currently utilizing the Guided Portfolio Services with VALIC. Is it the Committee's intent to continue to offer a managed account solution?

- Please see Question 13.

22. Related to investment advice, what type of services does the Plans currently have?

- VALIC currently offers two types of services for participants who would like assistance in managing their accounts:

#### Traditional Advice Service

Portfolio Advisor provides retirement income forecasting, an advised investment portfolio, and a recommended savings rate and retirement age aimed at helping participants achieve their desired retirement income with reasonable probability. Portfolio Advisor first calculates the probability that a participant will receive his/her desired retirement income at his/her desired retirement age based on the participant's current strategy then recommends a savings rate, retirement age, and investment portfolio that will help close the gap between the current forecast and the participant's goal. When the participant revisits their advice each year (or more frequently if desired) they can input changes and receive updated advice and recommendations. Over time, the investment advice provided to each participant will follow a personalized glide path based on each participant's unique financial circumstances. Portfolio Advisor uses advanced Monte Carlo stochastic simulation techniques to make sure that its investment advice factors in a wide range of economic and financial market scenarios. Upon receiving this advice, participants can choose whether to implement the advice in whole, in part, or not at all.

#### Managed Account Service

Portfolio Manager, just like Portfolio Advisor, provides retirement income forecasting, an advised investment portfolio, and a recommended savings rate and retirement age aimed at helping participants achieve their desired retirement income with reasonable probability. Portfolio Manager first calculates the probability that a participant will receive his/her desired retirement income at his/her desired retirement age based on the participant's current strategy then recommends a savings rate, retirement age, and investment portfolio that will help close the gap between the current forecast and the participant's goal. For participants who elect Portfolio Manager, this investment advice is automatically implemented in their plan, followed by quarterly reviews of their managed account to rebalance the portfolio, as necessary. In addition, the program automatically regenerates participant retirement readiness analysis, investment advice, and recommendations at least annually and automatically implements any corresponding adjustments to their advised portfolio. Portfolio Manager is delivered by our financial advisors, online, or by telephone via our

Asset Management Center. Over time, the account management for each participant follows a personalized glide path based on each participant's unique financial circumstances. Portfolio Manager uses the same advanced Monte Carlo stochastic simulation techniques as Portfolio Advisor to make sure that its investment advice factors in a wide range of economic and financial market scenarios. Under the managed account service, investment advice is automatically implemented in the plan recordkeeping system.

23. What are improvement areas for communication/education?

- Among other items, the Committee overseeing the Plan would appreciate an enhanced Plan website offered by the Firm featuring more options, functionality and regularly-updated, real-time information for Plan participants.

24. Any need for secondary language content?

- No.

# Section 2

**Deferred Compensation Committee**  
**Erie County, New York**  
**Request for Proposals**  
**Retirement Plan Record Keeping Services**  
**Amendment to**  
**Provider Questions and Responses**  
**March 2, 2016**

Question 2 in the original response to provider questions asked about active participants. VALIC provided data covering all participants. In an effort to expedite the delivery of all answers and/or clarifications, we distributed the answer as-is. Below is the original question with an updated answer.

1. Does the Committee have available information on the composition of the active participants in terms of grouping by age and assets? How many active plan participants are retiring in the next 10 years and what does this group represent in terms of total plan assets?

- Please see the table below covering the breakdown of [active](#) participants.

Age	Assets	%
Under 20	\$0	0.0%
20-29	\$699,639	0.6%
30-39	\$6,612,181	5.8%
40-49	\$23,426,713	20.6%
50-59	\$58,717,370	51.5%
60-65	\$20,611,756	18.1%
65 and over	\$3,916,918	3.4%

Active participant means one who is currently contributing. It is impossible to predict and inappropriate to even estimate how many employees will retire or otherwise separate from service in the future.

# Section 3



# COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

June 25, 2015

Commissioner Jerry Boone, President  
New York State Department of Civil Service  
Agency Building 1, Empire State Plaza  
Albany, New York 12239

**Re: Submission of Amended Model Plan – Erie County Deferred  
Compensation Plan**

Dear Commissioner Boone:

Please find attached the amended and updated Model Plan for the Erie County  
Deferred Compensation Plan.

These documents are being filed as required by Subtitle II, Section 9002.2(a) of  
the Rules and Regulations of the New York State Deferred Compensation Board.

If you have any questions concerning this submission, please contact me at (716)  
858-8460. If you could please acknowledge this submission, I would be appreciative.  
Thank you.

Sincerely,

David Palmer, Chairman  
Erie County Deferred Compensation Committee

Attachments: Model Plan and Resolution

cc: David Fischer, Executive Director, New York State Deferred Compensation  
Board  
Anita Greer, Esq.

**Erie County Deferred Compensation Committee  
Resolution to Amend and Restate the Model Plan**

WHEREAS, the New York State Deferred Compensation Board (the "Board"), pursuant to Section 5 of the New York State Finance Law ("Section 5") and the Regulations of the New York State Deferred Compensation Board (the "Regulations"), has promulgated a Plan Document of the Deferred Compensation Plan for Employees of local governments (the "Model Plan") and offers the Model Plan for adoption by local employers;

WHEREAS, Erie County, pursuant to Section 5 and the Regulations, has adopted and currently administers the Model Plan known as the Deferred Compensation Plan for Employees of Erie County which is administered by the Erie County Deferred Compensation Committee ("Committee");

WHEREAS, the Board has offered for adoption the amended and restated Model Plan to each Model Plan sponsored by a local employer in accordance with the regulations; and

WHEREAS, upon due deliberation, the Committee has concluded that it is prudent and appropriate to amend the Deferred Compensation Plan for Employees of Erie County by adopting the amended Model Plan.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Deferred Compensation Committee hereby amends the Deferred Compensation Plan for Employees of Erie County by adopting the amended Model Plan effective May 1, 2015, including the optional provisions in Schedule A, in the form attached hereto as Exhibit A.

IN WITNESS WHEREOF, the undersigned has executed this Resolution in Erie County, New York on June 24, 2015 and directed that it be filed as appropriate with the New York State Deferred Compensation Board and the New York State Civil Service Commission.

  
\_\_\_\_\_  
David Palmer, Chairman  
Erie County Deferred Compensation Committee

**Plan Document for the  
DEFERRED COMPENSATION PLAN  
FOR EMPLOYEES OF  
ERIE COUNTY**

**Amended and Restated as of the Effective Date**

**Deferred Compensation Plan for Employees of Erie County, New York  
Plan Document**

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

**PURPOSE**

The purpose of the Plan is to encourage Employees to make and continue careers with the Employer by providing Employees with a convenient way to save on a regular and long term basis and thereby provide for their retirement as set forth herein. The Employer adopted this Plan by complying with the procedures set forth in the Regulations.

A Participant's benefit under the Plan is limited to the Plan Benefit, and the value of the Plan Benefit will depend upon the investment results achieved by the Investment Options in which the Participant chooses to invest. Each Participant shall be 100 percent vested at all times in his or her Plan Benefit in accordance with the terms of the Plan.

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

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

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

## **SECTION 1 DEFINITIONS**

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

1.1 "Account" means each separate account established and maintained for an Account Participant under the Plan, including, as applicable, each Before-Tax Deferral Account, Roth Account (if applicable), Rollover Account, Alternate Payee Account and Beneficiary Account.

1.2 "Account Participant" means each Participant, Beneficiary, Surviving Spouse, Alternate Payee or other individual with an Account.

1.3 "Administrative Service Agency" means an Administrative Service Agency as defined in the Regulations selected by the Committee to provide services in respect of the Plan.

1.4 "Alternate Payee" means any spouse, former spouse, child or other dependent of a Participant who is recognized by a Qualified Domestic Relations Order as having a right to receive all, or a portion of, the Plan Benefit with respect to such Participant.

1.5 "Alternate Payee Account" means the Account established for an Alternate Payee pursuant to a Qualified Domestic Relations Order.

1.6 "Amounts Deferred or Contributed" means the aggregate of Compensation deferred or contributed by a Participant pursuant to Sections 3.1 and 3.2, including Before-Tax Deferrals and Roth Contributions (if applicable).

1.7 "Before-Tax Deferral Account" means the Account or Accounts established under the Plan to record a Participant's Before-Tax Deferrals, and the income, gains and losses credited thereto. A Beneficiary Account or Alternate Payee Account corresponding to the deceased or relevant Participant's Before-Tax Deferrals may also be referred to as a Before-Tax Deferral Account.

1.8 "Before-Tax Deferrals" means that part of a Participant's Compensation which is deferred into the Plan and is not includable in the Participant's taxable income which, in the absence of a Participant's election to defer such Compensation under Section 3.1, would have been paid to the Participant and would have been includable in the Participant's taxable income.

1.9 "Beneficiary" means the beneficiary or beneficiaries designated by a Participant or Surviving Spouse of a Participant pursuant to Section 9 to receive the amount, if any, payable under the Plan upon the death of such Participant or Surviving Spouse.

1.10 "Beneficiary Account" means the Account established for a Beneficiary in accordance with Section 6.2.

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

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

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

1.14 "Compensation" means:

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

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

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

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

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

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

1.18 "Effective Date" means May 1, 2015.

1.19 "Eligible Retirement Plan" means:

- (a) an individual retirement account described in Section 408(a) of the Code;
- (b) an individual retirement annuity described in Section 408(b) of the Code;
- (c) a qualified trust under Section 401(a) or 401(k) of the Code;
- (d) an annuity contract or custodial account described in Section 403(b) of the Code;
- (e) an eligible deferred compensation plan described in Section 457 of the Code that is maintained by a state, political subdivision of a state, any agency or instrumentality of a state or political subdivision of a state; and
- (f) a Roth IRA.

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

1.21 "Employee" means any individual who receives Compensation for services from the Employer, including any elected or appointed officer or employee of the Employer, and any employee who is included in a unit of employees covered by a negotiated collective bargaining agreement that specifically provides for participation in the Plan. An Employee shall not include an independent contractor, a consultant or any other individual classified by the Employer as not eligible to participate in the Plan.

1.22 "Employer" means Erie County.

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

1.24 "Financial Organization" means a Financial Organization as defined in the Regulations selected by the Committee to provide services in respect of the Plan.

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

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

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

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

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

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

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

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

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

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

1.35 "Participation Agreement" means an agreement in writing or in such other form approved by the Committee, pursuant to which the Employee elects to reduce his or her

Compensation for future Enrollment Dates and to have amounts deferred or contributed into the Plan on his or her behalf in accordance with the terms of the Plan.

1.36 "Plan" means the Deferred Compensation Plan for Employees of Erie County, as the same may be amended from time to time.

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

1.38 "Plan Year" means the calendar year.

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

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

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

1.42 "Required Beginning Date" means April 1 of the calendar year following the later of the calendar year in which the Participant: (a) attains age 70½, or (b) Severs from Employment.

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

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

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

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

1.47 “Roth Contributions” means amounts contributed pursuant to Section 3.1 by a Participant to the extent that the Committee has resolved to implement a Roth Program to Section 3.1(c) of Schedule A, which amounts are:

- (a) designated irrevocably by the Participant at the time of the contribution election as Roth Contributions that are being made from Compensation pursuant to Section 3.1(c); and
- (b) treated by the Employer as includible in the Participant’s income at the time the Participant would have received that amount in Compensation.

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

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

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

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

1.52 “State” means the State of New York.

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

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

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

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

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

1.58 “Unforeseeable Emergency” means a (i) severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or

Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent, (ii) loss of the Participant's or Beneficiary's property because of casualty, or (iii) other similar extraordinary or unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary.

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

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

1.61 "Valuation Date" means each Business Day unless otherwise provided in the Plan or in an agreement between the Committee and a Financial Organization.

## **SECTION 2 PARTICIPATION**

### **2.1 Enrollment.**

#### **(a) Eligibility and Enrollment.**

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

#### **(b) Initial Enrollment and Subsequent Changes.**

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

### **2.2 Voluntary Participation.**

Participation in the Plan by Employees shall be voluntary.

### 2.3 Cessation of Participation.

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

### 2.4 Corrective Action.

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

## **SECTION 3 AMOUNTS DEFERRED OR CONTRIBUTED**

### 3.1 Participant Deferral and Contribution Authorization.

#### (a) Initial Authorization.

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

#### (b) Modifications.

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

#### (c) Roth Contributions.

To the extent that the Committee has resolved on or after January 1, 2011 to implement a Roth Program pursuant to Section 3.1(c) of Schedule A, a Participant shall

be permitted to make Roth Contributions from his or her Compensation by designating a percentage of his or her initial authorization or modified authorization described in Sections 3.1(a) and 3.1(b) as Roth Contributions, which designation shall be effective as soon as administratively practicable for all future payroll periods until modified or suspended, subject to the timing requirements set forth in Sections 2.1(a) and 2.1(b). For the avoidance of doubt, to the extent that the Committee has not resolved to implement a Roth Program pursuant to Section 3.1(c) of Schedule A, Participants shall not be permitted to make Roth Contributions and any provisions of the Plan as they relate to Roth Contributions, Roth Accounts, Rollover Contributions from Qualified Roth Contribution Programs and in-Plan rollovers into Roth Accounts shall not apply.

(d) Discontinuance or Suspension.

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

(e) Deferrals and Contributions After a HEART Act Distribution or Unforeseeable Emergency Withdrawal.

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

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

(a) In General.

The aggregate amount of Before-Tax Deferrals and Roth Contributions (to the extent applicable) that may be deferred or contributed by a Participant for any pay period shall be a minimum of \$10 and shall not exceed the lesser of:

(i) An amount as may be permitted pursuant to Section 457(e)(15) of the Code, and

(ii) 100% of the Participant's Includible Compensation for the Plan Year; provided, however, the maximum amount that a Participant may defer or contribute for any Plan Year may be calculated after accounting for mandatory and permissive payroll deductions, as reasonably determined by the Employer.

(b) 457 Catch-Up.

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

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

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

(c) Age 50 Catch-Up.

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

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

(d) Dual Eligibility.

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

- (i) the 457 catch-up contribution amount under Section 3.2(b); and
- (ii) the age 50 catch-up contribution amount under Section 3.2(c).

(e) USERRA.

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

(f) Excess Deferrals and Contributions.

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

## **SECTION 4 INVESTMENT OF AMOUNTS DEFERRED OR CONTRIBUTED AND ROLLOVER CONTRIBUTIONS**

### 4.1 Remittance of Deferrals and Contributions.

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

reinvested in accordance with the applicable agreement entered into by the Committee or the Trustee with each such Financial Organization.

#### 4.2 Allocation of Deferrals and Contributions.

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

#### 4.3 Continuation of Deferral and Contribution Allocation.

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

#### 4.4 Transfer of Assets Among Investment Options.

##### (a) Transfer of Assets.

As of any Valuation Date an Account Participant may direct the Administrative Service Agency, by giving notice in writing or in such other manner as the Committee may authorize, to liquidate his or her interest in any of the Investment Options and transfer the proceeds thereof to one or more other Investment Options in the proportions directed by such Participant. Account Participants may make separate transfer directions for their Before Tax Deferral Accounts and Accounts relating to Rollover Contributions involving before-tax deferrals and their Roth Accounts and Accounts relating to Rollover Contributions involving Roth contributions (to the extent applicable). Such direction must be made in accordance with the requirements and procedures established by the Committee and in effect at the time and in a multiple of one percent or one dollar increments of the Account Participant's interest in the applicable Investment Option.

##### (b) Committee's Right to Reduce or Deny Transfer Request.

If the Trustee or any Financial Organization appointed by the Committee advises the Committee, or the Committee otherwise determines, that it is not reasonably able to

prudently liquidate the necessary amount and transfer it from one of the Investment Options to another, the amount to be transferred with respect to each Account Participant who duly requested such a transfer may be reduced in proportion to the ratio which the aggregate amount that the Trustee or the Financial Organization has advised the Committee may not prudently be so transferred bears to the aggregate amount that all Account Participants have duly requested be so transferred. Regardless of any Account Participant's investment direction, no transfer between Investment Options may be made in violation of any restriction imposed by the terms of the agreement between the Committee or the Trustee and a Financial Organization providing any Investment Option or of any applicable law.

Notwithstanding anything in this Section 4.4(b) or the Plan to the contrary, the Committee, the Trustee or the Financial Organization shall have the right, without prior notice to any Account Participant, to suspend, for a limited period of time, daily transfers between and among Investment Options for one or more days if the Committee, the Trustee or the Financial Organization determines that such action is necessary or advisable (i) in light of unusual market conditions, (ii) in response to technical or mechanical problems with the Plan's or the Administrative Service Agency's record keeping systems, (iii) in connection with any suspension of normal trading activity on the New York Stock Exchange or other major securities exchange, (iv) as a result of strikes, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or other similar events, losses or interruptions of power, other utility outages or malfunctions, or malfunctions in communications or computer services, in each case, that make it necessary or advisable to suspend trading activity, or (v) in accordance with Section 4.10.

#### 4.5 Administrative Actions with Regard to Investment Directions.

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

#### 4.6 Account Participant Responsibility for Deferrals, Contributions and Investment Allocations.

Each Participant is solely responsible for the allocation of his or her Amounts Deferred or Contributed, and each Account Participant is solely responsible for the investment allocation of his or her Account, in each case, in and among the Investment Options. Each Account Participant shall assume all risk in connection with the allocation

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

#### 4.7 Investment Allocation of Alternate Payee Accounts.

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

#### 4.8 Investment Allocation of Beneficiary Accounts.

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

#### 4.9 Initial and Ongoing Investment Allocation with respect to Rollover Contributions and Section 457 Transfers.

Unless otherwise directed by the Account Participant, the same deferral and contribution allocation direction applicable to an Account Participant pursuant to Section 4.2 or 4.3, as applicable, shall apply to all Section 457 Transfers and Rollover Contributions. Notwithstanding the foregoing, in accordance with procedures established by the Administrative Service Agency, an Account Participant may make an alternative initial allocation election in accordance with the procedures set forth in Section 4.4 for any applicable Section 457 Transfer or Rollover Contribution. Thereafter, such Account Participant may direct the Administrative Service Agency to liquidate his or her interest in any of the Investment Options and transfer the proceeds thereof to one or more other Investment Options in accordance with Section 4.4 (in each case subject to the limitations set forth in Sections 4.5 and 4.6). All Rollover Contributions shall be invested by the Trustee in the Investment Options in accordance with such directions as soon as administratively practicable.

#### 4.10 Fund Mapping or Similar Activity.

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

### **SECTION 5 ROLLOVERS**

#### 5.1 Transfer from Another Governmental 457 Plan.

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

#### 5.2 Acceptance of Assets from an Eligible Retirement Plan.

(a) Rollover Contributions in General.

Amounts previously deferred or contributed by (or contributed on behalf of) a Participant, a Beneficiary or a spousal Alternate Payee under another Eligible Retirement Plan (other than a Roth IRA) that (i) are distributed to the Participant, the Beneficiary or the spousal Alternate Payee or (ii) are directly rolled over to the Plan as an eligible rollover distribution from such Eligible Retirement Plan, may be accepted as a Rollover Contribution by the Trustee in the form and in the manner specified by the Administrative Service Agency; provided, that Rollover Contributions of amounts from a Qualified Roth Contribution Program may be contributed only to the extent that the Committee has resolved to implement a Roth Program pursuant to Section 3.1(c) of Schedule A and any such contributions must be directly rolled over to the Plan. Notwithstanding the foregoing, other than Rollover Contributions from a Qualified Roth Contribution Program as described in the preceding sentence, the Administrative Service Agency shall not accept any Rollover Contribution, or any portion thereof, that represents deferrals or contributions under another Eligible Retirement Plan that were made from compensation that was included in the Participant, Beneficiary or spousal Alternate Payee's gross income in the year the amounts were deferred or contributed. The Administrative Service Agency may require such documentation from the distributing Eligible Retirement Plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an Eligible Retirement Plan.

(b) Written Request; Acceptance of Assets.

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

(c) Rollover Account.

The Rollover Contribution shall be maintained in a separate, fully vested Rollover Account for the benefit of the contributing Participant or the Beneficiary and, in the case of a spousal Alternate Payee, the Alternate Payee Account, and shall be invested in accordance with the investment direction of the applicable Account Participant pursuant to Section 4.9. All amounts so transferred shall be credited to the Account Participant's

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

### 5.3 Form of 457 Transfer or Rollover Contribution.

Each 457 Transfer and Rollover Contribution shall consist only of (i) cash and (ii) to the extent that the Employer has resolved to adopt a loan program pursuant to Section 7.3 of Schedule A, solely with respect to 457 Transfers and Rollover Contributions from another eligible deferred compensation plan under Section 457 of the Code maintained by a Public Employer or the Deferred Compensation Plan for Employees of the State of New York and Other Participating Jurisdictions, any outstanding loan to the applicable Account Participant under the transferring or distributing 457 plan, provided that (A) such outstanding loan will be subject to the same terms and conditions as in place under the transferring or distributing 457 plan, (B) an Account Participant may not make a Rollover Contribution that includes an outstanding loan unless the entire amount of such Account Participant's plan benefit under the transferring or distributing 457 plan is contributed into the Plan, (C) the source of the outstanding loan disbursement under the transferring or distributing 457 plan must have been from before-tax deferrals, and (D) the Account Participant does not have a loan outstanding, or a defaulted loan that has not yet been repaid, under the Plan at the time of the 457 Transfer or Rollover Contribution.

### 5.4 Rollover of Assets to Purchase Retirement Service Credit.

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

## **SECTION 6 ACCOUNTS AND RECORDS OF THE PLAN**

### 6.1 Participant Accounts.

(a) In General.

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

(b) Written Statement.

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

6.2 Beneficiary Accounts.

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

6.3 Alternate Payee Accounts.

The Administrative Service Agency shall establish and maintain one or more Alternate Payee Accounts, including, as applicable, separate Before-Tax Deferral Accounts, Roth Accounts (to the extent applicable), and Rollover Accounts with respect to each Alternate Payee. The Alternate Payee Account shall separately account for all amounts received (i) from the Participant's Rollover Account and (ii) from all amounts rolled into the Plan by a spousal Alternate Payee, pursuant to Section 5.1 or 5.2. Each such Account shall record the value of the portion of the Participant's Plan Benefit allocable to the Alternate Payee's Account, the value of the portion of the Plan Benefit, if any, that is invested in each Investment Option (both in the aggregate and by Account)

and other relevant data pertaining thereto. Each Alternate Payee shall be furnished with a written statement of his or her Alternate Payee Accounts in the same manner set forth in Section 6.1(b).

#### 6.4 Allocations and Credits.

The establishment and maintenance of, or allocations and credits to, the Account of any Account Participant shall not vest in such Account Participant or Beneficiary of a Participant any right, title or interest in and to any Trust Fund assets or Plan benefits except at the time or times and upon the terms and conditions and to the extent expressly set forth in the Plan and the Trust Agreement and, in the case of an Alternate Payee Account, the express terms of the Qualified Domestic Relations Order.

#### 6.5 Plan Benefit and Trust Fund.

##### (a) Plan Benefit Defined.

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

##### (b) Investment Options and Investment Funds.

The Trust Fund shall be invested at the direction of Account Participants, in accordance with Section 4, in and among the Investment Options made available through the Plan from time to time by the Committee. Investment Options may include (i) one or more Investment Funds, (ii) a brokerage account or similar investment window through which Account Participants may direct the investment of their Accounts into Mutual Funds (as defined below) or other available investment products that the Committee designates as available for investment through such window, (iii) an individual participant loan fund to record the value of an outstanding loan made to a Participant in accordance with Section 7.3, and (iv) any other investment alternative that the Committee

may make available through the Plan. Investment Funds may consist of open-end investment companies registered under the Investment Company Act of 1940, as amended ("Mutual Funds"), separately managed accounts, unregistered commingled funds, group or commingled trusts, or any combination thereof as approved from time to time by the Committee for the investment of the assets of the Trust Fund.

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

### **7.1 Distribution for an Unforeseeable Emergency.**

#### **(a) Amount of Distribution for an Unforeseeable Emergency.**

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

#### **(b) Evidence of Other Relief.**

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

### **7.2 Distribution from a Small Inactive Account.**

#### **(a) Elective Distribution.**

An Account Participant with a Plan Benefit, not including the amount in the Participant's Rollover Accounts, of \$5,000 or less (or such greater amount as may be permitted by Section 401(a)(11) of the Code) may elect at any time to receive a lump sum

distribution, not to exceed \$5,000 of his or her Account and Rollover Account, which distribution will be made in accordance with procedures established by the Administrative Service Agency, provided that both of the following conditions have been met: (i) there has been no Amount Deferred or Contributed by such Participant during the two-year period ending on the date of distribution; and (ii) there has been no prior distribution made to such Participant pursuant to this Section 7.2.

(b) Automatic Distribution.

With respect to a Participant or an Alternate Payee whose Plan Benefit, including any amounts attributable to an in-Plan Rollover Contribution to a Roth Account pursuant to Section Error! Reference source not found., but not including any amounts in the Participant or Alternate Payee's Rollover Accounts, does not exceed the amount set forth in Section 7.2(a), if and to the extent that the Committee has resolved to provide for automatic distributions pursuant to Section 7.2(b) of Schedule A, the Committee shall direct the automatic distribution of the Participant's Account and Rollover Account or the Alternate Payee's Alternate Payee Account as soon as practicable, to the extent provided in Section 7.2(b) of Schedule A: (i) following the Participant's Severance from Employment and (ii) upon an Account Participant's Plan Benefit falling below the value set forth in Section 7.2(b) of Schedule A, to the extent that the requirements of Section 7.2(a) are met; provided, however, that in the event any such distribution is greater than \$1,000, if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly in accordance with Section 8.1(b), then the Committee will pay the distribution in a direct rollover to an individual retirement plan designated by the Committee; and provided further, that such distribution shall made in accordance with the requirements of Section 401(a)(31) of the Code.

7.3 Loans.

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

(a) Eligibility.

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

(b) Loan Amount.

The principal amount of any Plan loan shall be for an amount equal to at least \$1,000, or such other amount as the Committee shall determine, and shall not exceed the

lesser of: (i) 50% of the value of the sum of the Participant's Accounts (including his or her Before-Tax Deferral Account and Roth Account (to the extent applicable)); and (ii) \$50,000 reduced by the highest value in the last twelve months of any loans by the Participant from the Plan and other Eligible Retirement Plans sponsored by the Employer or in which the Employer participates.

(c) Repayment Period.

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

(d) Rate of Interest.

Each Plan loan granted shall bear a rate of interest equal to one percentage point above the prime interest rate as published in the Wall Street Journal on the last 23 Business Day of the month preceding the application for the loan, or such other reasonable rate of interest as the Committee shall determine.

(e) Source of Loans; Security.

The Committee shall be required to designate under Section 7.3(e) of Schedule A the source(s) of Plan loans. Plan loans shall be made solely from the source(s) designated by the Committee. All Plan loans shall be made from the Trust Fund and notes evidencing such obligations shall be considered assets of the Trust Fund and shall be treated as a separate loan investment fund for purposes of determining the value as of any Valuation Date of a Participant's Accounts. All Plan loans shall be secured, as of the date of the Plan loan, by the sum of (i) the Participant's Before-Tax Deferral Account and Roth Account (to the extent applicable) and (ii) the Participant's Rollover Accounts, if applicable, provided, however, that no more than 50% of the aggregate value of such Participant's Accounts shall be used as security for the Plan loan.

(f) Default.

If a Participant fails to make any scheduled repayment of his or her Plan loan within the Loan Grace Period, such Participant shall be considered in default and the Administrative Service Agency shall declare a deemed distribution to have occurred with respect to such Plan loan, effective as of the date of the default and shall reduce the value of the Participant's Plan Benefit by the amount of the deemed distribution. Notwithstanding anything in Section 7.3 to the contrary, a Participant who has defaulted on a loan made under the Plan shall not be eligible to obtain another loan hereunder until

the defaulted loan and accrued interest has been repaid, and the new loan shall be subject to any other limitations required under Section 1.72(p) of the Treasury Regulations.

(g) Outstanding Loans.

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

(h) Administration and Fees.

The Committee may establish or change from time to time the standards or requirements for making any Plan loan, including assessing an administrative fee against the Participant or the Participant's Account for such Plan loan.

7.4 Death Prior to Distribution of Proceeds.

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

**SECTION 8  
DISTRIBUTIONS FROM THE PLAN AND OTHER ELIGIBLE RETIREMENT  
PLANS**

8.1 Distributions to Participants.

(a) Eligibility for Distribution.

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

(b) Distributions to Participants.

Upon a Participant's eligibility for a distribution pursuant to Section 8.1(a), the Participant shall be entitled to receive his or her Plan Benefit, which shall be paid in cash by the Trustee from the Trust Fund in accordance with one of the methods described in

Section 8.1(c) and as of the commencement date elected by the Participant in accordance with the procedures prescribed Section 8.1(e).

(c) Distribution Options.

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

(i) A total or partial lump sum payment. Any partial lump sum payment shall be an amount of at least the Minimum Lump Sum Amount, and the number of partial lump sum payments in any Plan Year may not exceed the Maximum Annual Number of Partial Distributions.

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

(iii) A Participant who elects to receive installment payments or who is currently receiving installment payments pursuant to Section 8.1(c)(ii) may elect, subject to any limitations set forth by the Committee and in accordance with procedures established by the Administrative Service Agency, to receive a portion of his or her Account distributed in a lump sum; provided, however, that no lump sum payment shall be less than the Minimum Lump Sum Amount; and provided further, that the number of such elections in any Plan Year may not exceed the Maximum Annual Number of Partial Distributions, as set forth in Section 8.1(c) of Schedule A. Such lump sum payments shall not result in a discontinuation of subsequent installment payments; provided, however, that such subsequent payments may be redetermined in accordance with methods and procedures established by the Administrative Service Agency.

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

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

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

(d) Calculation of Payments.

(i) If a Participant elects a total lump sum payment, pursuant to Section 8.1(c)(i), the Participant's Plan Benefit shall be determined as of the Valuation Date coincident with or last preceding the date on which the Plan Benefit is withdrawn from the Investment Options and liquidated for distribution. Such liquidated amount (i) shall be held in the Trust Fund in a payment account maintained by the Trustee for this purpose and (ii) shall not be credited with interest or investment gains or losses following the date of liquidation.

(ii) If a Participant elects to receive a partial lump sum payment pursuant to Section 8.1(c)(i) or (iii), installment payments pursuant to Section 8.1(c)(i), or payment of qualified health insurance premiums for an accident or health plan or long-term care insurance contract covering the Participant and his or her spouse

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

(e) Distribution Election.

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

(f) Rollover Accounts.

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

8.2 Distributions to Beneficiaries.

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

made in accordance with the provisions of Section 401(a)(9) of the Code and subject to Sections 8.6(d) and (e).

### 8.3 Distributions to Alternate Payees.

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

### 8.4 Eligible Rollover Distributions.

#### (a) Participant Rollover Distributions.

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

#### (b) Beneficiary Rollover Distributions.

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

#### (c) Roth IRA Rollover Distribution.

In connection with a Participant's Severance from Employment or upon a Participant's death, as the case may be, a Participant or a Beneficiary may elect, at the time and in the manner prescribed by the Administrative Service Agency, to have all or any portion of the Participant's Accounts that qualifies as an Eligible Rollover Distribution rolled over to a Roth individual retirement arrangement (as defined in Section 7701(a)(37) of the Code, and designated as a Roth arrangement at the time of its

establishment). Such amounts will be included in gross income as if the distribution had been made to such Participant or Beneficiary.

#### 8.5 Withholding.

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

#### 8.6 Required Minimum Distributions.

##### (a) In General.

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

##### (b) 2009 Waiver.

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

(c) Distributions During Participant's Life.

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

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

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

(a) The Beneficiary may elect to receive a distribution of the Plan Benefit over a period not exceeding the life expectancy of the Beneficiary; provided that the distribution commences no later than December 31 of the calendar year immediately following the calendar year in which the Participant dies; or

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

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

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

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

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

(ii) If the Participant does not have a designated Beneficiary, the remaining life expectancy of the Participant determined in accordance with Section 1.409(a)(9)-5 of the Treasury Regulations; provided, however, that if a Beneficiary so elects, the Participant's remaining Plan Benefit may be paid to the Beneficiary at any time in a lump sum so long as the entire Plan Benefit is paid at least as rapidly as it would be paid under Section 8.6(e)(i).

(f) Alternate Payee Accounts.

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

**8.7 Special Proceeds.**

If the Plan receives Special Proceeds (as defined below) that are allocable to an Account Participant who has received a final distribution of his or her entire Plan Benefit, then the Plan shall distribute such Special Proceeds to the former Participant, Beneficiary, or Alternate Payee (or in accordance with Section 9.2, if the Participant is deceased and no Beneficiary designation was in effect at the time of the Participant's death, or to the estate of Beneficiary or Alternate Payee, as applicable, if such person is deceased) in a lump sum as soon as practicable after the Plan receives such Special Proceeds unless, at the time of such mandatory distribution, the value of such distribution would exceed \$1,000. For purposes of Section 8.7, "Special Proceeds" means amounts attributable to a settlement of any dispute or controversy related to any of the assets previously attributable to any Account of the former Participant, Beneficiary, or Alternate Payee or any other amounts allocable under the Plan to a former Participant, Beneficiary, or Alternate Payee relating to an adjustment to the amount or value of any such Account.

**8.8 In-Plan Rollover to Roth Account.**

(a) A Participant who has not severed employment or a spousal Alternate Payee would be permitted to have all or any portion of the Participant's Plan Benefit not otherwise distributable under the Plan, and not attributable to Roth Contributions or outstanding loans, directly rolled over into a separately maintained Account within his or her Roth Account. Any such amounts will be included in gross income as if the distribution had been made to such Participant or spousal Alternate Payee. After a Participant or spousal Alternate Payee has made an in-Plan rollover into a Roth Account, such Participant or spousal Alternate Payee may elect to take distributions from such Account in accordance with Sections 8.1 or 8.3.

(b) Upon any distribution event pursuant to which a Participant, a Beneficiary who is a Participant's Surviving Spouse or a spousal Alternate Payee would be permitted to have all or any portion of the Participant's Plan Benefit that qualifies as an Eligible Rollover Distribution rolled over into another Eligible Retirement Plan, such Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee may elect to have the portion of such Eligible Rollover Distribution that is not attributable to Roth Contributions or outstanding loans directly rolled over into a separately maintained Account within his or her Roth Account. Any such amounts will be included in gross income as if the distribution had been made to such Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee. After a Participant, Beneficiary who is a Participant's Surviving Spouse or spouse Alternate Payee has made an in-Plan rollover into a Roth Account, such Participant, Beneficiary who is a Participant's Surviving Spouse or spousal Alternate Payee may elect to take distributions from such Account in accordance with any of the distribution options set forth in Section 8.1(c).

(c) The provisions in Section 8.8 shall be administered in accordance with procedures established by the Administrative Service Agency and shall be interpreted and administered in accordance with and subject to Section 402A(c)(4) of the Code and any rules, regulations or other guidance issued by the Internal Revenue Service in relation thereto.

## **SECTION 9 DESIGNATION OF BENEFICIARIES**

### **9.1 Written Designation of Beneficiaries.**

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

### **9.2 No Beneficiaries Designated.**

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

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

### 9.3 Surviving Spouse.

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

## **SECTION 10 QUALIFIED DOMESTIC RELATIONS ORDERS**

### 10.1 Qualified Domestic Relations Order.

Payments with respect to a Participant's Plan Benefit may be made by the Trustee from the Trust Fund to one or more Alternate Payees pursuant to the terms of a Qualified Domestic Relations Order. Upon segregation of the assets payable to an Alternate Payee in an Alternate Payee Account or the payment of such benefits to the Alternate Payee, any such amounts paid or segregated shall no longer constitute part of the Participant's Plan Benefit. No liability whatsoever shall be incurred by the Committee, the Trustee, the

Employer, the Administrative Service Agency, the Review Committee or any Financial Organization solely by reason of any act or omission undertaken in accordance with this section to comply with the terms of a Qualified Domestic Relations Order.

#### 10.2 Suspension of Distributions During Claim Period.

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

### **SECTION 11 ADMINISTRATION**

#### 11.1 Plan Administration.

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

#### 11.2 Committee Powers and Duties.

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

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

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

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

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

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

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

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

### 11.3 Limitation of Liability.

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

### 11.4 Trustee.

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

### 11.5 Financial Organizations.

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

#### 11.6 Delegation.

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

#### 11.7 Plan Expenses.

##### (a) Assessment Against the Trust Fund.

Subject to 11.7(b), the expenses of administering the Plan, including (i) the fees and expenses of the Financial Organizations and Administrative Service Agency for the performance of their duties under the Plan, including any fees and expenses associated with a change, termination or addition of an Investment Option, (ii) the fees, if any, of any member of the Committee and any Trustee and the expenses incurred by the Committee or any of its members or any Trustee in the performance of their duties under the Plan (including reasonable compensation for any legal counsel, certified public accountants, consultants, and agents, employees of the Committee and cost of services rendered in respect of the Plan and the Trust Agreement (as provided therein)), and (iii) all other proper charges and disbursements of the Financial Organizations, Administrative Service Agency, the Committee or its members (including settlements of claims or legal actions approved by counsel to the Plan) or any Trustee shall be allocated to and paid out of the assets of the Trust Fund in accordance with such allocation and payment procedures as the Committee shall establish from time to time. The Committee is authorized to levy a fee against the Accounts of Account Participants for the purpose of paying some or all of such expenses, except where the Employer elects to pay such expenses directly; provided, however, that any such fees shall be levied on a pro-rata basis from the Account Participant's various Accounts at any given time, including Before-Tax Deferral Accounts, Roth Accounts (to the extent applicable), Rollover

Accounts not relating to Rollover Contributions of amounts from a Qualified Roth Contribution Program, and Rollover Accounts relating to Rollover Contributions of amounts from a Qualified Roth Contribution Program.

(b) Investment Expenses.

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

11.8 Review of Claims.

(a) Initial Claim of Rights or Benefits and Review.

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

(b) Review of Decision.

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

11.9 Advisers.

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

#### 11.10 Limitation on Committee Power.

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

#### 11.11 Committee Action.

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

#### 11.12 General Requirements.

Notwithstanding any other provision hereof, the Plan shall at all times be operated in accordance with the requirements of applicable law, including, the Regulations.

## **SECTION 12 AMENDMENT OR TERMINATION**

#### 12.1 Power to Amend and Terminate.

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

#### 12.2 Termination of Plan.

Upon any action by the Employer to initiate a Plan termination, the Employer shall permit no further deferrals or contributions of Compensation under the Plan, and the Plan termination shall become effective upon the distribution of all Plan Benefits. After

taking an action to initiate a Plan termination, the Employer may distribute all Plan Benefits to Account Participants or the Employer may provide that Plan Benefits and other interests in the Trust Fund shall continue to be payable as provided in the Plan. Any distributions, transfers or other dispositions of the Plan Benefits as provided in the Plan shall constitute a complete discharge of all liabilities under the Plan. The Committee and the Trustee(s) shall remain in existence and the Trust Agreement and all of the provisions of the Plan that the Employer determines are necessary or advisable for the administration and distribution, transfer or other disposition of interests in the Trust Fund shall remain in force.

### **SECTION 13 GENERAL LIMITATIONS AND PROVISIONS**

#### **13.1 Plan Binding on Account Participants.**

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

#### **13.2 No Right to Employment.**

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

#### **13.3 Incapacitation or Incompetence.**

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

#### **13.4 No Alienation of Plan Benefits.**

Except insofar as may otherwise be required by a Qualified Domestic Relations Order or applicable law, no amount payable at any time under the Plan shall be subject in any manner to alienation by anticipation, sale, transfer, assignment, bankruptcy, pledge,

attachment, garnishment, charge or encumbrance of any kind, and any attempt to so alienate such amount, whether presently or thereafter payable, shall be void.

### 13.5 Notices to the Committee.

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

### 13.6 Notices to Participants.

All notices, statements, reports and other communications from an Employer, the Trustee or the Committee to any Account Participant, shall be deemed to have been duly given when delivered to, or when mailed by electronic delivery or other form of delivery approved by the Committee or by first class mail, postage prepaid and addressed to such Employee, Account Participant, Beneficiary, Surviving Spouse or other person at his or her address last appearing on the records of the Administrative Service Agency, the Trustee or the Employer.

### 13.7 Trust Sole Source of Plan Benefits.

The Trust Fund shall be the sole source of benefits under the Plan and, except as otherwise required by applicable law, neither the Committee, the Employer nor any officer or employee of an Employer assume any liability or responsibility for payment of such benefits, and each Account Participant, his or her spouse or Beneficiary, or other person who shall claim the right to any payment under the Plan shall be entitled to look only to the Trust Fund for such payment and shall not have any right, claim or demand therefor against the Committee or any member thereof, the Employer, or any officer or employee of an Employer. Nothing in Section 13.7 shall relieve an Employer of its obligation to defer or contribute Amounts Deferred or Contributed to the Trust Fund within two Business Days after the applicable payroll date, in the manner contemplated by Section 4.1.

### 13.8 Account Assets and Account Vesting.

(a) Account Assets Held in Trust Fund.

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

(b) Vesting.

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

13.9 Several Liability.

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

13.10 Interpretation.

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

13.11 Construction.

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

## SCHEDULE A

Effective date of last completion or amendment of this Schedule A: May 1, 2015.

### Instructions

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

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

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

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

### **Committee Elections – Optional Plan Provisions**

#### 3.1(c) ROTH PROGRAM

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

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

YES  
 NO

Effective date: \_\_\_\_\_

#### 8.4(d) IN-PLAN ROLLOVER TO A ROTH ACCOUNT

***Section 8.4(d) of the Plan permits Roth Contributions only if the Committee has checked YES above (permitting a Roth Program) and checked YES below allowing amounts that otherwise qualify as Eligible Rollover Distributions not attributable to Roth Contributions to be directly contributed to a Roth Account under the Plan. The Committee must also indicate below the effective date of this election. The Committee***

***should check NO below to indicate that Eligible Rollover Distributions may not be directly rolled over to a Roth Account under the Plan or, at a later time, to change prospectively (as of a specified effective date) a prior election under this section.***

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

YES (do not check YES unless Roth Program is in effect)

XX NO

Effective date: \_\_\_\_\_

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

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

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

XX YES

NO

Effective date: May 1, 2015

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

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

With respect to a Participant or an Alternate Payee whose Account or Alternate Payee Account does not exceed the amount set forth in Section 7.2(a) of the Plan, the Committee shall direct the automatic distribution of the Participant's Account and

Rollover Account or the Alternate Payee's Alternate Payee Account as soon as practicable following the Participant's Severance from Employment.

YES

NO

Effective date: May 1, 2015

#### 7.2(b) AUTOMATIC DISTRIBUTION OF INACTIVE SMALL ACCOUNTS

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

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

With respect to a Participant or an Alternate Payee whose Account or Alternate Payee Account does not exceed the amount set forth in Section 7.2(a) of the Plan, upon an Account Participant's Plan Benefit falling below \$1,000 to the extent that the requirements of Section 7.2(a) of the Plan are met, the Committee shall direct the automatic distribution of the Participant's Account and Rollover Account or the Alternate Payee's Alternate Payee Account in accordance with 7.2(b) of the Plan.

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

NO

Effective date: May 1, 2015

#### 7.3 PLAN LOANS FOR ACTIVE EMPLOYEES

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

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

YES (requires an election regarding the source under 7.3(e))

NO

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

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

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

YES (do not check YES unless Plan Loans are authorized for active Employees)  
XX NO

7.3(e) SOURCE OF PLAN LOANS

***Section 7.3 of the Plan allows the Committee to permit Plan loans (see elections above). If the Committee elects to permit Plan loans under Section 7.3, the Plan document states that the Committee must elect the source of Plan loans from the options set forth below. Only one option may be elected.***

Plan loans shall be made solely from the Before Tax Deferral Account or, if applicable, Rollover Accounts relating to Rollover Contributions of before tax deferrals;  
or

Plan loans shall be made pro rata (based on the balance in the Participant's Before Tax Deferral Account and Rollover Account relating to Rollover Contributions of before tax deferrals) from (i) the Before Tax Deferral Account or, if applicable, the Rollover Accounts relating to Rollover Contributions of before tax deferrals; and (ii) the Roth Account; or

Participants shall elect whether to have a Plan loan made (i) entirely from such Participant's Before Tax Deferral Account and, if applicable, Rollover Accounts relating to Rollover Contributions of before tax deferrals; or (ii) pro rata (based on the balance in the Before Tax Deferral Account and Rollover Account relating to Rollover Contributions of before tax deferrals) from (A) the Before Tax Deferral Account or, if applicable, the Rollover Accounts relating to Rollover Contributions of before tax deferrals; and (B) the Roth Account.

7.3(f) DURATION OF LOAN GRACE PERIOD

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

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

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

Effective date: \_\_\_\_\_

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

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

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

The Minimum Lump Sum Amount shall be \_\_\_\_\_.

Effective date: \_\_\_\_\_

8.1(c)(ii) MINIMUM INSTALLMENT AMOUNT

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

***Section 8.1(c)(ii) of the Plan allows the Committee to specify a different Minimum Installment Amount by indicating a dollar amount below and by indicating that such Minimum Installment Amount will apply to distributions made after the effective date specified below.***

***The Committee may also indicate there is no Minimum Installment Amount by inserting the word "none" or "0" below. The Committee may, at a later time, indicate (as of a specified effective date) on a prospective basis a different Minimum Installment Amount by making a new election under this section.***

The Minimum Installment Amount shall be \_\_\_\_\_.  
Effective date: \_\_\_\_\_

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

***Sections 8.1(c)(i) and (iii) of the Plan allow a Participant who is otherwise eligible for a distribution under the Plan to elect to receive that distribution in a total or partial lump sum.***

***The Plan document states that, unless the Committee makes an election below, the maximum number of partial lump sum distributions in a Plan Year may not exceed 12. The Plan document refers to this amount as the "Maximum Annual Number of Partial Distributions."***

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

The Maximum Annual Number of Partial Distributions for each Plan Year shall be \_\_\_\_\_.  
Effective date: \_\_\_\_\_

**8.1(e) DISTRIBUTION WAITING PERIOD**

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

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

The Distribution Waiting Period shall be thirty (30) days.  
Effective date: May 1, 2015

# Section 4

## TRUST AGREEMENT

**I. Establishment of Trust.** A trust ("Trust") is hereby established by County of Erie ("Employer"), to hold, administer, and distribute amounts pursuant to the terms of the Erie County Deferred Compensation Plan, established pursuant to Section 457 of the Internal Revenue Code of 1986, as presently or subsequently amended ("Code"), which provides for the following type(s) of contributions: deferred compensation contributions, hereinafter referred to as the "Plan."

This Agreement includes Appendix A, and if Appendix A includes as an investment option a Personal Choice Retirement Account™ ("PCRA™") established with Charles Schwab & Company, Inc. ("Schwab"), a California corporation, then this Agreement includes Appendices C and D, and Employer accepts and acknowledges on behalf of the Plan and participants the terms and conditions of the agreement entered into between Trustee and Schwab attached hereto as Appendix D.

**II. Designation of Trustee.** By signing below, the Employer designates that AIG Federal Savings Bank ("Trustee"), a federally-chartered savings bank, shall be the non-discretionary directed Trustee of this Trust beginning on September 1, 2004 ("Effective Date"), and the Trustee accepts such designation. The Employer hereby authorizes Trustee to open and maintain a Trust account.

Except as otherwise provided in this Trust Agreement, the Trustee shall be directed by the Employer, a plan administrator other than the Employer as designated in the Plan ("Plan Administrator"), or another authorized Plan representative. The Trustee shall hold Trust property in the name of the Plan. The duties of the Trustee shall apply solely with respect to the property allocated to the Trust hereunder, and Trustee shall bear neither responsibility nor liability for other amounts held under the Plan with another trustee, custodian, or other investment or service provider. The Trustee hereby acknowledges it is a fiduciary with respect to its maintenance of the Trust. The Employer hereby agrees that the Trustee shall not serve as, and shall not be deemed to be, a co-custodian or co-trustee and, except as otherwise imposed by applicable law, shall have no co-fiduciary liability for any other person, custodian, trustee or fiduciary. The Trustee shall have no responsibility for any property until it is received and accepted by the Trustee.

### III. Protection of Participants.

A. Trust property shall be held for the sole and exclusive benefit of participants and their beneficiaries, and for the reasonable expenses of Plan administration. The expenses of administering the Plan, including (i) the fees and expenses of any service provider for the performance of its duties under the Plan, (ii) the expenses incurred by the Deferred Compensation Committee of Erie County (the "Committee") or any of its members or any Trustee in the performance of their duties under the Plan (including reasonable compensation for any legal counsel, certified public accountants, consultants, and agents and cost of services rendered in respect of the Plan and Trust Agreement ( as provided therein)), and (iii) all other proper charges and disbursements of the service providers, the Committee or its members (including settlements of claims or legal actions approved by the counsel to the Plan) or any Trustee shall be paid out of the Trust and allocated to and deducted from Participant Accounts as of each valuation date under the Plan, unless paid by Committee from New York State funds allocated for such expenses or the Employer elects to pay such expenses directly. Any expenses or fees paid from the assets of the Trust shall be deducted on a pro rata basis from Participant Accounts as of each valuation date.

B. No amounts allocable under the Plan shall be returned to the Employer, except as otherwise provided in this Trust Agreement, until all obligations to participants have been satisfied, and unless consistent with the requirements of the Plan and the Code.

C. A Participant Account may not be assigned or pledged by a participant unless permitted under the Plan, the Code, and this Trust Agreement.

**IV. Protection of Trustee.** Except as required by the Rules and Regulations of the New York State Deferred Compensation Board (“Regulations”), The Trustee shall not be obligated to give any bond or other security for the performance of the Trustee’s duties hereunder. The Trustee shall not be liable for any mistake of judgment or other action taken in good faith, and for any action taken or omitted in reliance in good faith upon the books of account or other records of the Trust, upon the opinion of counsel or of the Trustee’s accountant or auditors, or upon the actions of, or the reports made to the Trustee by, any of Employer’s officers, employees, or agents, or the actions of or reports by any regulated investment company or other service provider under the Plan, including any other current or prior custodian or trustee, provided that any such action or failure to act is not the result of Trustee’s gross negligence, bad faith, willful misconduct or breach of this Trust Agreement.

The Trustee will indemnify the Employer against and hold the Employer harmless from any and all loss, damage, penalty, liability, cost, and expense, including without limitation, reasonable attorney’s fees and disbursements that may be incurred by, imposed upon or asserted against the Employer by reason of any claim, regulatory proceeding or litigation arising from the Trustee’s gross negligence, bad faith or willful misconduct.

The provisions of this Trust Agreement shall be subject to the terms of the Plan and any annuity contract entered into with The Variable Annuity Life Insurance Company (“VALIC”), except that the terms of such Plan or annuity contract shall not adversely affect the rights or duties of the Trustee under this Trust Agreement without the Trustee’s prior written consent.

Trustee shall be permitted to review the terms of the Plan, and any current or future amendments thereto. Such review shall not constitute an opinion as to the qualification of the Plan or as to any terms thereof and the Trustee shall have no responsibility for determining whether the Plan or any amendment thereof satisfies the qualification requirements of the Code. No amendment or other revision of the Plan or the Plan’s administrative rules shall be binding upon the Trustee unless advance written notice of such amendment or other revision is provided to the Trustee. Employer shall retain sole responsibility for taking all necessary steps to ensure that administrative services provided for under this Trust Agreement are not inconsistent with the terms of the Plan.

**V. Forms and Procedures.** All requests for transactions within Participant Accounts, including any account maintenance requests, and transfers or distributions into or out of such Participant Accounts, must be performed in a manner approved by the Trustee and the Employer.

**VI. Maintenance of Individual Subaccounts for Participants (“Participant Accounts”).** The interests of each participant under the Plan shall be accounted for in a separate Participant Account. Records of individual Participant Accounts shall be maintained by Service Provider pursuant to the Service Provider Agreement between the Employer and Service Provider.

**VII. Correction of Errors.** The Trustee is hereby authorized and directed to make such corrections of contributions to the Plan made under a mistake of fact or such other contributions made in error or other errors as may be corrected under the terms of the Plan and the Code, including corrections under any available Internal Revenue Service ("IRS") self-correction program. Contributions made to a Participant Account that are identified by the Trustee, the Employer or another authorized Plan representative to have resulted from a mistake of fact shall be returned to the participant or the Employer or shall be reallocated to the proper Participant Account, along with earnings thereon, in accordance with the terms of the Plan and the Code. A mistake of fact may include, but is not limited to (1) a reasonable error in determining the participant's includible compensation; and (2) a reasonable error in determining the amount to be withheld from a participant's wages or the participant to whom a contribution was to be allocated. A mistake of law shall not be considered a mistake of fact.

If an amount credited to a Participant Account by the Trustee under a mistake of fact or other reasonable mistake is transferred to a successor contract issuer, custodian, or trustee, the Trustee is hereby authorized to request the return of such excess amount from the successor contract issuer, custodian, or trustee.

**VIII. Identification of Available Trust Investments.** The investments available under Participant Accounts ("Plan Investment Options") are listed in Appendix A to this Trust Agreement. This list of available investments, which may also describe requirements or limitations applicable to one or more of the investments, was selected by the Employer or the Plan Administrator, and is hereby accepted by the Trustee. Appendix A may be revised at any time provided that sixty (60) days' advance written notice is provided by the Employer, the Plan Administrator, or another authorized Plan representative, to the Trustee, of the intent to revise the Appendix, and subject to the Trustee's agreement to administer any additional investment(s) in advance of the addition of such additional investment(s) to Appendix A. The Trustee shall have no duty or responsibility for monitoring, selecting or providing advice with respect to the Plan Investment Options. Investment directions may be communicated to the Trustee by the Employer or another authorized Plan representative, such as the Service Provider, or by participants where permitted by the Plan. In the absence of contrary instructions from the Employer, the Plan Administrator, or another authorized Plan representative, the Trustee shall direct one or more third parties in the execution of investment instructions received from participants. The Trustee shall be entitled to rely upon instructions received from the Employer, the Plan Administrator, another authorized Plan representative, or a participant, subject to the limitation described in the preceding sentence, and shall have no obligation to investigate either the prudence of such instructions or the absence of any instructions.

The Employer hereby directs the Trustee to hold in cash or cash equivalents such amounts as may be necessary for the proper administration of Trust assets and to retain for Trustee's sole benefit any income that it may receive while such amounts are so held as a portion of the reasonable compensation to be paid to the Trustee for its services to the Plan. Trustee may, in addition to or in lieu of charging Employer for the costs incurred by Trustee in providing these trust services, invest funds received from Employer through a custodial account in investment vehicles that emphasize safety and liquidity. These investment vehicles will comprise obligations of the United States or its agencies and instrumentalities, or other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by, the full faith and credit of the United States. All investment vehicles utilized must be liquid on a daily basis. Trustee may retain any income earned from such investments and, if applicable, any fees charged by Trustee as reasonable compensation for services rendered.

**IX. Limitations on Contributions.** Contributions to a Participant Account shall not exceed the applicable limits provided in the Code and the Plan. Contributions in excess of applicable limits under the Code or the Plan may be distributed to the Employer or to the participant to the extent permitted under the Code; Treasury regulations or other regulatory guidance, including any IRS self-correction programs; the Plan; the Trust; or as otherwise provided in this Trust Agreement or agreed by the Employer, Service Provider and Trustee.

**X. Trust Distributions to Participants and Beneficiaries.** Distributions to participants and beneficiaries may be made only as permitted under the Plan and the Code and subject to any limitations in the Service Provider Agreement. Distributions from Participant Accounts must also comply with applicable distribution requirements under Code Sections 457(d) and 401(a)(9), which generally require that distributions commence not later than the April 1 of the year following the year the participant either attains age 70 ½ or retires, whichever is later. It shall be the responsibility of the Employer, the Plan Administrator, or an authorized designee to make determinations of eligibility for such distributions, comply with applicable distribution requirements, and direct the Trustee accordingly. The Trustee shall have no duty to inquire or investigate as to the validity of any such directions.

**XI. Term of Agreement.** This Trust Agreement shall be coterminous with the Service Provider Agreement and shall be subject to the same renewal and termination rights, requirements and limitations described in the Service Provider Agreement. Employer shall notify Trustee in writing of its intent to terminate the services of Service Provider not less than sixty (60) days in advance of such termination. In such written notice, Employer shall identify the successor to the Service Provider and to the Trustee, and Trustee shall resign effective as of the date of termination of the Service Provider, without regard to any other provision of this Trust Agreement. If no successor trustee is designated, Employer shall be the successor to the Trustee and shall amend its Plan to so provide, and shall take all necessary steps to so qualify. When the successor trustee accepts its appointment as Trustee, title to and possession of the Trust assets shall be transferred to the successor trustee by the predecessor trustee. The predecessor trustee will execute all instruments and do all acts that reasonably may be necessary or reasonable may be requested in writing by the Employer or the successor trustee to vest title to all Trust assets in the successor trustee or to deliver all Trust assets to the successor trustee. The Trustee shall impose no penalties or surrender charges for the transfer of assets or responsibilities upon termination of the Agreement.

**XII. Taxes and Tax Reporting.** Distributions shall be reported to participants and/or beneficiaries and the IRS by the Trustee. The Trustee may pay out of the Trust any taxes properly levied upon the Trust by any governmental taxing authority.

**XIII. Reports to Employer.** Trustee shall provide periodic reports of aggregate Trust activity to Employer not less frequently than quarterly.

**XIV. Employer's Duties.** As a condition of Trustee's performance hereunder, Employer shall remit to Trustee, or to a party designated by Trustee, in a timely manner and in a medium and format that have been agreed to between the Employer and the Trustee, all information and contributions that are reasonably necessary for the Trustee to perform its duties hereunder. Trustee shall have no duty to allocate amounts to a Participant Account prior to the collection of such amounts by the Trustee from the bank or other depository institution maintaining the account of the Employer upon which any negotiable instrument for such contribution is or was drawn. If Trustee makes investments for and/or allocates one or more contributions to Participant Accounts in reliance upon one or more negotiable

instruments issued by the Employer, and if any such negotiable instrument is dishonored or otherwise fails to be paid, the Trustee shall be authorized to liquidate such investments and reverse such allocations to reflect the proper value of the Participant Accounts. Employer agrees to indemnify the Trustee for any losses incurred by Trustee from such dishonor or other failure of payment.

**XV. Broker-Dealer Services.** Enrollment services, any investment education services identified in Employer's agreement with Service Provider, purchases and sales of variable Plan investments, and other registered broker-dealer services will be provided by VALIC Financial Advisors, Inc. and not by Trustee.

**XVI. Participant Direction of Investment.** To the extent permitted under the Plan, as determined by the Employer, Trustee is directed to accept and follow investment directions received from individual participants or beneficiaries, subject to any other limitations described in this Trust Agreement.

**XVII. Assignment and Delegation.** Trustee may assign or delegate certain of the administrative or record keeping services described in this Trust Agreement to be provided by its agents or affiliates on behalf of Trustee.

**XVIII. Governing Law; Counterparts.** Except where Federal laws would otherwise control, this Trust Agreement shall be governed by the internal laws of the State of New York (without regard to the law of conflicts). This Trust Agreement shall be subject to the Rules and Regulations of the New York State Deferred Compensation Board as they now exist and they may from time to time be amended or revised. Such Rules and Regulations are made a part of this Trust Agreement. Wherever the terms or provisions of this Trust Agreement are inconsistent with the Rules and Regulations of the New York State Deferred Compensation Board, such Rules and Regulations shall supersede and take precedence over such terms or provisions.. This Trust Agreement may be executed in any number of counterparts, each of which shall be considered an original of this Trust Agreement.

**XIX. Acts or Omissions of Other Parties.** The Trustee and its agents or affiliates shall have no liability, duty or other obligation with respect to actions or omissions (including incomplete or incorrect data provided to Trustee) of the Employer, the Plan Administrator, or other authorized Plan representative, or of any concurrent or predecessor trustee, custodian, or other investment or service provider or with respect to investment instructions provided by participants and beneficiaries.

**XX. Notice.** Notice to either party shall be provided in writing as follows:

**To Employer:**

Attn: John W. Greenan  
Erie County Commissioner of Personnel  
95 Franklin Street  
Buffalo, NY 14202

**To Trustee:**

Attn: Robert K. Rossiter  
Senior Vice President  
AIG Federal Savings Bank  
ALICO Plaza  
600 King Street  
Wilmington, DE 19801

**XXI. Release of Information, Solicitation and Confidentiality.** Where necessary to the proper administration of Employer's Plan, the Trustee may release information to the Employer or a governmental agency examining the Employer's Plan. Neither the Trustee nor any of its agents or affiliates appointed pursuant to Section XVII shall use information obtained by reason of appointment as Trustee or service provider to solicit or otherwise induce any person to invest, purchase, utilize, or

act in any other manner regarding any products made available by the Trustee or its agents or affiliates. All information obtained under the Plan shall be confidential and used exclusively for purposes related to the Plan and expressly contemplated by the Trust Agreement.

**XXII. Representations and Warranties.** Employer and Trustee each represent and warrant to the other as follows:

- a. Each is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and, in the case of Trustee, the laws of the United States;
- b. Each is not a party to or subject to any charter, by-law, agreement, law, rule, regulation, judgment or decree of any kind that would prevent performance of the terms and conditions of this Trust Agreement;
- c. Each has full power and authority to execute and deliver this Trust Agreement and to consummate and perform the transactions contemplated hereby;
- d. This Trust Agreement has been duly authorized, executed and delivered by Employer and Trustee and constitutes the legal, valid and binding obligation of each, enforceable against each in accordance with its terms; and
- e. (Check applicable provision below):

(Only individual executing this agreement authorized to act with respect to the Trust). Employer has invested the fullest authority at all times in the individual executing this Trust Agreement, which individual is empowered by resolution and applicable law to execute any documents that Trustee requires relevant to the opening or maintaining of a Trust account for the Plan and to take any and all action deemed to be proper in connection with the Trust, including, but not limited to, authority to give written or oral instructions to Trustee with respect to Trust transactions; or

(Individuals other than individual executing this agreement authorized to act with respect to the Trust). Employer has invested the fullest authority at all times in the individuals named and whose signatures appear in Appendix B, which individuals are empowered by resolution and applicable law to execute any documents that Trustee requires relevant to the opening or maintaining of a Trust account for the Plan and to take any and all action deemed by any of them to be proper in connection with the Trust, including, but not limited to, authority to give written or oral instructions to Trustee with respect to Trust transactions.

Said powers and authority granted shall continue fully effective until receipt by Trustee of written notice of change or revision thereof. Employer will certify to Trustee promptly, when and as made, any change in the individuals or powers of said individual(s) hereby authorized and such modifications when received by Trustee shall be adequate both to terminate the powers of the individual(s) theretofore authorized and to empower the individual(s) thereby substituted. The Trustee shall be entitled to rely on and shall be fully protected in acting upon directions, instructions, and any information provided by the individual(s) until a notice described in this paragraph is received.

**XXIII. Entire Agreement.** Executed by the authorized representatives of the parties, this Trust Agreement together with the referenced exhibits and attachments constitutes the entire intent of the parties to this Trust Agreement and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter of this Trust Agreement.

**XXIV. Amendment.** This Trust Agreement may be amended with the written consent of Employer and Trustee.

Signature of authorized representative of Employer:

Peter H Sigurdson

Peter H Sigurdson

Print name of authorized representative of Employer

Date: 8/10/07

Appointment of AIG Federal Savings Bank as non-discretionary directed trustee accepted by authorized representative:

Kathleen Jones, Vice President and Trust Officer  
KATHLEEN JONES

Print name of authorized representative of AIG Federal Savings Bank

Date: 8/18/2007

APPROVED	
AS TO CONTRACT COMPLIANCE	
LAW SERVICES	
CONTROL NO.	<u>2948</u>
DATE	<u>8/16/09</u>
SIGNED	<u>Susan Ziegler</u>

Signature of authorized representative of Employer:

*Peter H Sigurdson*

Peter H Sigurdson

Print name of authorized representative of Employer

Date: 8/10/07

Appointment of AIG Federal Savings Bank as non-discretionary directed trustee accepted by authorized representative:

*Kathleen Jones, Vice President and Trust Officer*  
KATHLEEN JONES

Print name of authorized representative of AIG Federal Savings Bank

Date: 8/18/2007

APPROVED
AS TO CONTRACT COMPLIANCE
LAW SERVICES
CONTROL NO. <u>2948</u>
DATE <u>8/16/07</u>
SIGNED <u><i>Susan Greger</i></u>

**Appendix A**  
**To**  
**Trust Agreement**  
**Effective 9/1, 2004**

**Available Investment Options**

FUND	CUSIP	TICKER SYMBOL
FIDELITY FUND	316153105	FFIDX
FIDELITY PURITAN	316345107	FPURX
FIDELITY VALUE STRAT	316401108	FSLSX
FIDELITY GINNIE MAE	31617K105	FGMNX
FIDELITY MAGELLAN	316184100	FMAGX
FIDELITY CONTRAFUND	316071109	FCNTX
FIDELITY EQUITY INC	316138106	FEQIX
FIDELITY GROWTH CO	316200104	FDGRX
FIDELITY INVST GR BD	316146109	FBNDX
FIDELITY GROW & INC	316389204	FGRIX
FIDELITY INTER BOND	315912105	FTHRXX
FIDELITY CAP & INC	316062108	FAGIX
FIDELITY VALUE	316464106	FDVLX
FIDELITY MORTG SEC	31617K204	FMSFX
FIDELITY GOVT INCOME	316172105	FGOVX
FIDELITY CASH RESRVE	316067107	FDRXX
FID SEL DEFENSE	316390806	FSDAX
FID INDEPENDENCE FD	316145309	FDFFX
FIDELITY OTC PORT	316389105	FOCPX
FIDELITY OVERSEAS	316343102	FOSFX
FID LEVERAGED CO STK	316389873	FLVCX
FIDELITY NEW MILLEN	316200302	FMILX
FIDELITY EUROPE	316343300	FIEUX
FIDELITY PAC BASIN	316343201	FPBFX
FID REAL ESTATE INV	316138205	FRESX
FIDELITY BALANCED	316345206	FBALX
FIDELITY INTL GR&INC	315910208	FIGRX
FIDELITY CAP APPREC	316066109	FDCAXX
FIDELITY CONV SEC	316145200	FCVXX
FIDELITY CANADA	315910307	FICDX
FIDELITY UTILITIES	316128107	FIUIX
FIDELITY BLUE CHIP	316389303	FBGRX
FID ASSET MANAGER	316069103	FASMX
FIDELITY DISC EQUITY	316066208	FDEQX
FIDELITY LOW PR STK	316345305	FLPSX
FIDELITY WORLDWIDE	315910505	FWWFX
FIDELITY EQ INC II	316145101	FEQTX
FIDELITY STK SELECTR	316066307	FDSSX
FID ASSET MGR GROWTH	316069301	FASGX
FIDELITY EMERG MRKTS	315910869	FEMKX
FIDELITY AGGR GROWTH	316200203	FDEGX
FIDELITY DIVERS INTL	315910802	FDIVX
FID ASSET MGR INCOME	316069400	FASIX

FIDELITY DIVD GROWTH	316389402	FDGFX
FIDELITY NEW MKT INC	315910836	FNMIX
FIDELITY EXP & MULTI	316448877	FEXPX
FID FOCUSED STOCK	316066406	FTQGX
FIDELITY GLOBAL BAL	316345404	FGBLX
FID AGGRESSIVE INTL	315910810	FIVFX
FID SM CAP INDEPEND	315912303	FDSCX
FIDELITY MID-CAP STK	316128404	FMCSX
FIDELITY LG-CAP STK	315912402	FLCSX
FIDELITY SM CAP STK	315912501	FSLCX
FIDELITY EUR CAP APP	315910828	FECAX
FIDELITY NORDIC	315910752	FNORX
FID ASSET MGR AGGRES	316069707	FAMRX
FIDELITY LATIN AMER	315910844	FLATX
FIDELITY JAPAN	315910885	FJPNX
FIDELITY SE ASIA	315910851	FSEAX
FIDELITY CHINA RGN	315910778	FHKCX
FID FOUR IN ONE IDX	31634R109	FFNOX
FIDELITY JAPAN SM CO	315910760	FJSCX
FIDELITY STRAT INC	31638R303	FSICX
FID FREEDOM INCOME	31617R308	FFFAX
FID FREEDOM 2000	31617R407	FFFBX
FID FREEDOM 2010	31617R506	FFFCX
FID FREEDOM 2020	31617R605	FFFDX
FID FREEDOM 2030	31617R704	FFFEX
FID SMALL CAP RETIRE	315912600	FSCRX
SPTN TOTAL MKT INDEX	315911404	FSTMX
SPTN EXTND MKT INDEX	315911503	FSEMX
SPARTAN INTL INDEX	315911602	FSIIX
SPTN US TREASURY MM	31617H300	FDLXX
FIDELITY SH TERM BD	316146208	FSHBX
FIDELITY HIGH INCOME	316146406	SPHIX
FIDELITY FIFTY	31617F106	FFTYX
FIDELITY RETIRE MMKT	316191600	FRTXX
FIDELITY RET GOVT MM	316191709	FGMXX
SPARTAN US EQ INDEX	315911206	FUSEX
FIDELITY US BD INDEX	315911107	FBIDX
FID INST SH-INT GOVT	315809400	FFXSX
FID FREEDOM 2040	315792101	FFFFX
FID STR MDCAP VALUE	316128701	FSMVX
FID STR MDCAP GROWTH	316128883	FSMGX
FID INFLATION PRO BD	316146604	FINPX
FID ULTRASHORT BOND	31617K808	FUSFX
FID FLOT RATE HI INC	315916783	FFRHX
FID INTL SMALL CAP	315910737	FISMX
FID VALUE DISCOVERY	316345503	FVDFX
FID REAL ESTATE INC	316389865	FRIFX
FID BLUE CHIP VALUE	316389857	FBCVX
FID NASDAQ COMP INDX	315912709	FNCMX
FID FREEDOM 2005	315792689	FFFVX
FID FREEDOM 2015	315792671	FFVFX
FID FREEDOM 2025	315792663	FFTWX
FID FREEDOM 2035	315792655	FFTHX
FID STR DIV INC FUND	316145887	FSDIX

JANUS WORLDWIDE	471023309	JAWWX
DOMINI SOCIAL EQUITY	257132100	DSEFX
AMR BALANCED PA	02368A828	AABPX
AMR LARGE CAP VAL PA	02368A810	AAGPX
AMR INTL EQUITY PA	02368A794	AAIPX
AMR SH TERM BOND PA	02368A786	AALPX
PIMCO TOT RETURN ADM	693390726	PTRAX
TMPL FOREIGN SM CO A	35361F303	FINEX
MSI EQUITY GROWTH B	61744J564	MSEGX
MUTUAL DISCOVERY A	628380859	TEDIX
BARON GROWTH	68278209	BGRFX
BARON ASSET FUND	68278100	BARAX
CALVERT NEWVIS SM CP	131582850	CNVAX
CALVERT SIF BALNCD A	131618100	CSIFX
CALVERT INTL EQTY A	131649105	CWVGX
FMA SMALL COMPANY IS	00758M246	FMACX
FPA CRESCENT	30254T759	FPACX
RHJ MICRO CAP	00758M212	RHJSX
PBHG EMERGING GROWTH	69316H205	PBEGX
ARIEL FUND	40337107	ARGFX
ARIEL APPRECIATION	40337206	CAAPX
ARIEL PREM BOND INV	40337503	APBRX
ALGER CAP APPREC I	15570401	ALARX
ALGER MIDCAP GRTH I	15570203	ALMRX
ALGER SMALL CAP I	15570104	ALSRX
DREY FNDRS BALNCD F	262001431	FRINX
DREY FNDRS GROWTH F	262001464	FRGRX
DREY FNDRS MC GRTH F	262001498	FRSPX
DREY FNDRS WW GRTH F	262001530	FWWGX
DREY FNDRS PASSPRT F	262001522	FPSSX
FKLN SMMIDCAP GRTH A	354713109	FRSGX
PBHG GROWTH FUND	69316H106	PBHGX
INVESCO DYNAMICS	00142K203	FIDYX
INVESCO SM CO GROWTH	00142K732	FIEGX
JANUS FLEX INCOME	471023606	JAFIX
TEMPLETON FOREIGN A	880196209	TEMFX
MSI GLOBAL VAL EQ B	61744J549	MIGEX
MSIFT CP FX INC ADV	617440581	MTXAX
MSIFT HIGH YIELD ADV	617440573	MAHYX
MSIFT MIDCAP GTH ADV	617440599	MACGX
MSI SM CO GROWTH B	61744J614	MSSMX
MSI EMERGING MKTS B	61744J580	MMKBX
MUTUAL SHARES CL A	628380602	TESIX
NB FOCUS TRUST	640917506	NBFCX
NB MANHATTAN TRUST	640917308	NBMTX
NB SOCIALLY RESP TR	640917860	NBSTX
PIMCO CCM CAP AP ADM	69338T856	PICAX
PIMCO CCM MID CP ADM	69338T831	PMCGX
PIM GLBBND AD UNHDGD	693390684	PADMX
PIMCO HIGH YIELD ADM	693390650	PHYAX
PIMCO LOW DUR ADM	693390767	PLDAX
PIMCO LT US GOVT ADM	693390775	PLGBX
STRONG DISCOVERY	86334H108	STDIX
STRONG GROWTH FUND	862916103	SGROX

STRONG ADV COM STK Z	86334C109	STCSX
STRONG OPPORTUNITY	86335K100	SOPFX
STRONG LG CAP GROWTH	863350104	STRFX
STRONG GOVT SECURITY	863344107	STVSX
TEMPLETON GROWTH A	880199104	TEPLX
TMPL GLOBAL BOND A	880208103	TPINX
TEMPLETON WORLD A	880196100	TEMWX
USAA GNMA TRUST	903287506	USGNX
USAA INCOME FUND	903288207	USAIX
USAA GROWTH FUND	903288108	USAAX
USAA EMERGING MKTS	903287803	USEMX
CS CAP APPREC COM	22542P103	CUCAX
CS MID CAP GRTH COM	22543C191	CUEGX
CS GLOBAL FX INC COM	22543Y103	CGFIX
CS LARGE CAP VALUE A	22540Y825	WFGIX
CS INTL FOCUS COM	22544L506	WPMFX
AMER FUND EUROPAC R4	298706847	REREX
OPPENHEIMER DEVELOP MKT A	683974109	ODMAX
AMER FUNDS CAPWRLDGI R4	140543844	RWIEX
JPMORGAN SM CAP EQ SEL	628263592	VSEIX
DREYFUS SMALL CAP STOCK INDEX	26200Q204	DISSX
AMCENT SMALL COMPANY INV	02507M840	ASQIX
AMERICAN AADV SMCPVL PLN	02368A620	AVPAX
DREYFUS MIDCAP INDEX	712223106	PESPX
JP MORGAN MID CAP VAL SE	339183105	JMVSX
AMER FUNDS GROWTH FUND R4	399874841	RGAEX
DAVIS NY VENTURE A	239080104	NYVTX
AMER FUNDS AMER MUT R4	027681840	RMFEX
AMER FUNDS AMER BAL R4	024071847	RLBEX
COLUMBIA INCOME Z	19764T409	SRINX
AMCENT GOVT BD INV	025081308	CPTNX
PIONEER STRATEGIC INC A	723884102	PSRAX
<b>ANNUITY CONTRACT:</b>	NULL	NULL
VALIC FIXED INTEREST OPTION*		
<b>SELF-DIRECTED BROKERAGE ACCOUNT:</b>	NULL	NULL
SCHWAB PERSONAL CHOICE RETIREMENT ACCOUNT™		

\* A VALIC group fixed unallocated annuity (policy form GFUA-398). Transfers from this annuity contract shall be subject to a contractually imposed 90-day "equity wash" limitation, meaning that transfers out of this Fixed-Interest Option may not occur to a "competing option," as defined in the annuity contract, for 90 days after such transfer from the Fixed-Interest Option.

Appendix B  
To  
Trust Agreement  
Effective 9/1, 2004

Authorized Individuals

Name: Peter H Sigurdson  
Title: Chairman, DEF Comp Comm  
Signature: Peter H Sigurdson

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Signature: \_\_\_\_\_

Appendix C  
To  
Trust Agreement  
Effective 9/1, 2004

**Personal Choice Retirement Account™ (PCRA) Provisions**

Notwithstanding any provision in this Trust Agreement to the contrary, the following provisions shall apply to the Personal Choice Retirement Account™ (PCRA) investment option:

1. **Agreements.** Employer hereby acknowledges receipt and review by the Employer and/or the Employer's legal counsel, as appropriate, of any and all relevant agreements governing the PCRA accounts established with Charles Schwab & Company, Inc. ("Schwab"), a California corporation, and accepts the terms thereof as consistent with the terms of the Plan. Employer specifically accepts:

- A. the terms of any Limited Power of Attorney that a participant may be required to complete to establish a PCRA account;
- B. any binding arbitration that may apply to any claims with respect to such a PCRA account; and
- C. for itself and for Plan participants, the monitoring by Schwab of any telephone conversations with its customer service personnel.

2. **Investments; Investment Selections/Direction.**

A. After contributions are allocated to a PCRA account, they will be invested exclusively in shares of mutual funds offered through a PCRA, and shall be subject to the terms of the account agreement and any other agreement governing the PCRA. The Employer hereby authorizes and directs Trustee to instruct Schwab to hold funds in non-interest bearing accounts pending allocation to individual PCRA accounts, where necessary under the PCRA. All contributions allocated to a PCRA account are first invested in a money market fund. Subject to any limitation in the Plan, participants may transfer amounts from the money market fund into other mutual funds available under their PCRA accounts. Except for the authority reserved to the Trustee under the Trust Agreement, or given to the Employer under the Plan, if any, the participant will have all rights to direct the investment of the PCRA account, according to the provisions and limitations imposed under the PCRA, which will be provided to the participant in a separate document or set of documents, and subject to any limitations in the Plan. Pursuant to an agreement between Schwab and Trustee, certain mutual funds, listed in Appendix A, will not be available for new investments under the PCRA. Any changes to that list, including additions of mutual funds that will be unavailable for future investments, will be communicated to the Employer and to participants in writing prior to the date the change is to be effective. If a fund is excluded by the Employer, the Employer shall provide written notice to participants of its exclusion prior to requesting its exclusion by the Service Provider.

B. Investments in any mutual fund within the PCRA will be subject to any investment minimums and/or charges imposed by that mutual fund or within the PCRA.

C. The Service Provider will reallocate amounts from other funds in a PCRA account to the money market fund, as necessary to effectuate any of the following to the extent not being satisfied from other Plan Investment Options:

- i. the payment of the participant account annual maintenance and administrative service charges;

- ii. the payment of benefits to an alternate payee under a Domestic Relations Order;
- iii. the payment of taxes pursuant to a levy by the Internal Revenue Service;
- iv. the return of contributions as described in Sections VII and IX of this Trust Agreement;  
or
- v. any other distribution from the Trust account directed by the Employer in conformity with the Plan and the Code.

The Service Provider will reallocate any amounts pursuant to this paragraph in the following order: first, from mutual funds that are not subject to transaction fee expenses at the time of the transaction, or sales loads (Group 1); second, from mutual funds that are not subject to transaction fee expenses at the time of the transactions, but are subject to sales loads (Group 2); and third, from any remaining mutual funds in which the PCRA account is invested (Group 3). When reallocating from the mutual funds within Group 1, Group 2, or Group 3, the Service Provider will request such reallocations first from the mutual fund in the group that represented the greatest percentage of the PCRA account value at the close of business on the previous day, and then from the mutual fund that represented the next greatest percentage of the PCRA account value at the close of the previous day, continuing until an amount that is not less than the amount required is transferred to the money market fund. Participants who do not want transfers to be processed in this manner must ensure that the value of the money market fund in their PCRA accounts is sufficient to process any of the withdrawals described above.

3. **PCRA Account Statements; Proxies; Other Rights.** PCRA account statements will be regularly provided to each participant directly by Schwab quarterly; and, except where inconsistent with the Plan or the Code, Schwab will forward proxies and other rights accruing from the securities purchased through a PCRA account to the participant at the address that the participant has provided to Schwab.
4. **Charges.** The quarterly charge described in Section X of the Service Provider Agreement shall not apply to the PCRA option. In lieu of that charge, the Service Provider will deduct on a basis not more frequently than quarterly an annual charge in the amount of \$0.00 from the money market fund in each participant's PCRA account under the Plan. If a redemption of some or all of the mutual fund shares held under a PCRA account is requested, either for a distribution or for a transfer to another investment provider, so that the remaining PCRA account value for that participant would be less than the quarterly charge, Service Provider may deduct the full quarterly charge at the time of such redemption. In lieu of deducting any amount payable under this paragraph 4. from a participant's PCRA account, Service Provider may, at its sole option, withdraw such amount from non-PCRA mutual fund investments under a Participant Account, in the same manner as described in Section X of the Service Provider Agreement.
5. **Timing of Allocations to PCRA.** Employer acknowledges and agrees that posting of contributions to a PCRA account may occur subsequent to the posting of similar allocations to other Plan Investment Options.
6. **Notice of Errors in Reporting.** The Employer, or other authorized representative of the Plan, agrees on behalf of participants to the review of confirmations and/or statements within a reasonable time after receipt thereof, and that participants shall notify the Trustee or Service Provider of any errors discovered by the Employer or the participant within forty-five (45) days after such receipt, and the Employer, or other authorized representative of the Plan, authorizes the Trustee and Service Provider to rely on the correctness of any transaction not identified to be in error within such 45 days.

Appendix D  
To  
Trust Agreement  
Effective 9/1, 2004

**Schwab Personal Choice Retirement Account Application - Omnibus**

# Section 5

## SERVICE PROVIDER AGREEMENT

This is an agreement ("Agreement") between VALIC Retirement Services Company ("Service Provider") and County of Erie ("Employer") for plan administrative services, effective September 1, 2004, for a period of five (5) years from such date ("Term"), unless and until terminated according to the terms of this Agreement.

This Agreement includes Appendix A, and if Appendix A includes as an investment option a Personal Choice Retirement Account™ ("PCRA™") established with Charles Schwab & Company, Inc. ("Schwab"), a California corporation, then this Agreement includes Appendices B and C, and Employer accepts and acknowledges on behalf of the Plan and participants the terms and conditions of the agreement entered into between Trustee and Schwab attached hereto as Appendix C.

**WHEREAS**, Employer wishes to obtain non-discretionary plan administrative services with respect to a retirement plan established for the benefit of employees of the Employer;

**WHEREAS**, Service Provider is offering to provide such non-discretionary plan administrative services; and,

**WHEREAS**, Employer acknowledges and agrees that Employer or a third party designated as Plan Administrator shall be responsible for all discretionary decisions with respect to such plan;

**THEREFORE**, in consideration of the mutual promises herein contained, Employer and Service Provider agree as follows:

**I. Plan.** Employer designates Service Provider as exclusive plan administrative service provider, to provide plan administrative services described in this Agreement for the plan described below:

Erie County Deferred Compensation Plan, an eligible deferred compensation plan established pursuant to Section 457 of the Internal Revenue Code of 1986, as amended ("Code"), consisting of deferred compensation contributions.

This plan shall be referred to as the "Plan."

The provisions of this Agreement shall be subject to the terms of the Plan, any related trust agreement ("Trust Agreement") entered into with AIG Federal Savings Bank ("Trustee"), and any annuity contract entered into with The Variable Annuity Life Insurance Company ("VALIC"), except that the terms of such Plan, Trust Agreement or annuity contract shall not adversely affect the rights or duties of Service Provider under this Agreement without Service Provider's prior written consent. Service Provider shall be permitted to review the terms of the Plan, and any current or future amendments thereto.

**II. Plan Investment Options.** The investment options available under the Plan ("Plan Investment Options") shall be those listed in Appendix A. The Plan Investment Options under Appendix A may be limited where required under the Plan or the Code. Appendix A, which may also describe requirements or limitations applicable to one or more of the investments, may be revised at any time by the Employer, subject to prior written consent from the Service Provider upon not less than sixty (60) days' prior written

notice from Employer. A change to Appendix A may result in an adjustment by Service Provider to the Administrative Service Fee described in Section X. To avoid market timing and frequent trading or other disruptive trading activities, Service Provider may impose limitations on the number, frequency, or dollar amount of transfers a participant can make. Service Provider may restrict the method and manner of providing or communicating transfers or reallocation instructions if it is determined that a participant's trading activity is potentially harmful to other investors. Service Provider agrees to notify Employer of any such restrictions in writing at the same time the participant is notified.

**III. Maintenance of Plan Records.** Service Provider shall maintain participant-level and aggregate Plan records as follows:

A. Service Provider shall establish a separate account for each participant ("Participant Account") in which Participant Account Service Provider shall record pertinent participant information, including, but not limited to, the participant's name, Social Security number, address, date of birth, beneficiary(ies), and selection of Plan Investment Options. Separate records may be maintained under the Plan for the same participant, where appropriate for the recording of separate contribution types. A Participant Account shall reflect contributions, distributions, allocated forfeitures (if any), gains, losses, and other debits or credits attributable to the investments within the Participant Account, and shall reflect reductions for any forfeitures upon separation from service prior to full vesting and/or administrative service fees described in Section X of this Agreement that are not paid directly by the Employer.

B. Contributions and distributions shall be processed following receipt in good order of all funds and documentation necessary to effect the requested transaction, subject to market limitations or valuation limitations outside of Service Provider's immediate control. Service Provider shall provide reconciliation between Plan and Participant Account records on a regular basis, not less frequently than monthly.

C. Service Provider shall perform and make available the results of daily valuations of Participant Accounts, as of 4PM Eastern Time of any day on which the appropriate trading market or exchanges are open, subject to intra-day closings, trading suspensions, or other similar or unforeseeable circumstances outside of the control of the Service Provider. Plan Investment Options that are guaranteed as to principal or interest shall be valued according to the terms of such investment options. Plan Investment Options that are not guaranteed as to principal, or principal and interest, shall be valued according to the laws and rules applicable to such investment options. Notwithstanding any provision of this Agreement to the contrary, access to Participant Accounts for transactions or other account maintenance may be subject to interruption, or a "blackout," for a pre-defined period commencing with the transfer of records to the Service Provider at the beginning of the Initial Term of this Agreement.

**IV. Supported Technologies.** Participant enrollment shall be effected by Service Provider through any of the following means, as agreed from time to time by Employer and Service Provider: paper enrollment form, telephone enrollment, VALIC Financial Advisor computer software. Participant transactions other than enrollment shall be effected through a combination of the following means, as agreed from time to time by Employer and Service Provider: paper transaction request forms, telephone response, interactive Internet, VALIC Financial Advisor computer software. Voice response shall be available approximately 24 hours per day (subject to periodic maintenance). Customer service representatives will be available from

8:00AM to 9:00PM Eastern Time. Availability of voice response and interactive Internet shall be subject to periodic maintenance.

**V. Application of Contribution Limitations.** Service Provider shall perform contribution limit testing applying the limits of Code Section 457 for each participant enrolling in the Plan or increasing his or her rate of contribution under the Plan upon receipt by the Service Provider of the information necessary to perform such calculations. Annual contribution limit testing will be provided for all participants within two (2) months after the close of the year for which the calculations are to be performed, or within eight (8) weeks after receipt of necessary data from Employer, whichever is later. Identified excess contributions shall be distributed to the extent permitted by the Code; Treasury regulations or other regulatory guidance, including any Internal Revenue Service ("IRS") self-correction programs; the Plan; the annuity contract; trust account; or as otherwise provided in this Agreement or agreed by the Employer, Service Provider and Trustee.

**VI. Distributions to Plan Participants.** Service provider shall process all participant withdrawal requests received in good order by 4PM Eastern Time, according to Plan provisions, the same business day. Distributions to participants shall be authorized by the Employer or subject to non-discretionary determinations by the Service Provider pursuant to written guidelines established by Employer. Employer will review and have final decision-making authority with respect to all appeals from Service Provider determinations. Distributions may be in any form permitted by the Service Provider, the Plan, and the Code.

**VII. Technical Services.** Service Provider shall make reasonable efforts to inform Employer of legislative and/or regulatory changes that may affect the Plan. Service Provider shall offer to provide to Employer a plan document for review by Employer's legal counsel. Employer understands and agrees that it retains full responsibility for the compliance of Employer's Plan with the requirements of the Code and that, if it adopts a Plan pursuant to Code Section 457, Employer may not rely upon any private rulings issued by the IRS to another party with respect to such Plan and may wish to apply to the IRS for such a ruling. Service Provider will provide administrative assistance with respect to any such application for such additional compensation as is agreed upon at such time.

**VIII. Additional Plan Services.** Service Provider will render all of the following additional plan administrative services:

Provide quarterly Plan statements to participants reflecting all activity for the period and disclosing all expenses and administrative fees charged against Participant Accounts within 15 business days after end of quarter;

Prepare standard annual reports for Employer on the financial status of the Plan within 30 days after the end of the Plan year;

Provide investment education seminars and materials, subject to the limitations of Section XIII of this Agreement, at such times as agreed upon by Employer and Service Provider. On an annual basis, Service Provider will offer a minimum of two and a maximum of four educational seminars to Employer's employees. The seminars will focus on retirement planning and investment education as it relates to participation in 457 deferred compensation plans. Seminars will be conducted at the following locations: Rath Building, Erie County Medical Center, Correctional Facility and Holding Center, Library, and the Erie County Home;

Provide technical assistance to Employer with respect to Domestic Relations Orders;

Monitor, calculate, and process minimum required distributions in accordance with the terms of the Plan and the Code, including providing notification to affected participants;

Provide technical assistance to Employer, subject to review by Employer's legal counsel, in drafting plan amendments to comply with changes in the law;

Reimburse Employer for placement and annual operation expenses of a kiosk incurred as documented or otherwise confirmed in writing by the Employer, such reimbursement not to exceed \$10,000.00; and

Provide four initial on-site representatives for the duration of the implementation and conversion process and on an on-going basis, maintain a minimum of four full-time dedicated representatives that will be assigned as follows: one representative permanently assigned to the Rath Building; one representative permanently assigned to the Erie County Medical Center (ECMC) and Erie County Home and Infirmary; and two representatives to be assigned to service all other County employees and facilities, including, when necessary, the aforementioned locations. On a quarterly basis, Service Provider will report to the County of Erie and the Deferred Compensation Committee the number and location of meetings held at both County facilities and residences of County employees.

In addition, a county-wide telephone number will be established so that employees can call and request individual appointments and that the requests for personal appointments will be satisfied within five (5) business days.

On an annual basis, Service Provider will provide a minimum of two and a maximum of four mailings to Plan participants, in addition to any mailings that are a part of the routine communication to Plan participants, e.g., Essential Advisor, newsletters, etc.

**IX. Employer Duties.** Employer shall have all other duties under the Plan, including, but not limited to, the following: Employer shall remit to the Trustee such contributions as are required or permitted under the Plan, by wire transfer or other format acceptable to the Trustee and Employer, in a timely manner complying with any laws applicable to such contributions, and shall timely provide to Service Provider all necessary data that is required by Service Provider to perform its obligations under this Agreement, in electronic format except as otherwise agreed between Employer and Service Provider. Contributions and supporting data shall be provided in an electronic media format acceptable to Service Provider. Employer shall notify Service Provider within 31 days following the close of a Plan year if it intends to make additional contributions with respect to such Plan year. Employer shall retain responsibility for establishing and maintaining the tax-qualified status of the Plan, including the execution of any necessary documents and/or amendments. Employer shall complete all necessary forms to establish an annuity contract or to open an account with a life insurance company or a registered broker-dealer, if required by the Plan Investment Options selected by the Employer.

**X. Administrative Service Fees.** In exchange for the services provided for under this Agreement, Service Provider shall receive the following compensation, which the Employer has determined to be reasonable in light of the services to be provided:

An amount equal to an effective annual rate of 0.00% (zero one-hundredths of one percent) of the dollar amount of the mutual fund assets in the Plan for which such administrative services are provided, determined with respect to each full or partial calendar quarter by multiplying the corresponding quarterly rate by the dollar amount of assets in the Plan as determined on a date on or before the last day of each calendar quarter, and payable on a date that is not more than ten (10) business days following the end of each calendar quarter. Such amount shall be paid out of Participant Accounts on a pro rata basis, according to the value and allocations of their respective accounts at that time.

Service Provider and/or one or more of its affiliated companies may receive income from one or more of the regulated investment companies, the shares of which are offered under the Plan, and will retain such income. The expected amount of such income was taken into account in determining the administrative charges described in this section.

**XI. Amendment and Termination.** This Agreement may be amended from time to time with the written consent of Employer and Service Provider. Service Provider may unilaterally amend this Agreement if it is deemed advisable to do so in order to conform the Agreement to applicable laws and regulations, provided Service Provider notifies, in writing, at least sixty (60) days prior to the effective date of any such amendment. This Agreement may be terminated by either party upon a material default that has not been cured by the defaulting party within ninety (90) days after written notice of such default or upon termination of the Plan. Participant Accounts and Plan records shall be released by Trustee or Service Provider upon termination of this Agreement in accordance with the provisions of this section at a time and in a manner as mutually agreed by Employer, Service Provider and Trustee. Termination of the Plan shall only constitute termination of this Agreement upon distribution of all of the accounts under the Plan, and only if such Plan is not replaced with the same type or a similar type of plan prior to the end of the term of this Agreement. Termination of the Plan shall not alter the application of Administrative Service Fees under Section X.

**XII. Trust or Custodial Services.** If a trustee or custodian other than AIG Federal Savings Bank, or an issuer of annuity contracts other than The Variable Annuity Life Insurance Company, is providing trust or custodial services or annuity contracts to the Plan, Employer shall by written agreement with such other trustee, custodian, or issuer require that such trustee, custodian, or issuer shall cooperate with Service Provider and provide any and all data, instructions, and other support required of such trustee, custodian or issuer for the performance of Service Provider's obligations under this Agreement. Nonperformance by Service Provider resulting from a failure by such other trustee, custodian or issuer to provide such data, instructions, or other support shall not constitute default by Service Provider under this Agreement.

**XIII. Broker-Dealer Services.** Enrollment services, investment education, purchases and sales of variable Plan investments, and other registered broker-dealer services will be provided by VALIC Financial Advisors, Inc. ("VFA"). No investment product shall be offered by any VALIC representative working with the Plan involving life insurance contracts, disability policies, IRAs, 529 Plans or any other product except those specified in Appendices A and B.

**XIV. Investment Direction.** To the extent permitted under the Plan, as determined by the Employer, Service Provider is directed to accept and follow investment directions received from individual participants or beneficiaries, subject to any other limitations described in this Agreement. Service Provider and VALIC Financial Advisors, Inc. shall be entitled to rely upon instructions received from the Employer, the Plan Administrator, another authorized Plan representative, or a participant, subject to the limitations of the preceding sentence, and shall have no obligation to investigate either the prudence of such instructions or the absence of any instructions.

**XV. Assignment and Delegation.** Service Provider may assign or delegate certain of the administrative services described in this Agreement to be provided by agents or affiliates of the Service Provider, provided the assignment or delegation complies with Section 9003.5(c) of the Regulations.

**XVI. Governing Law; Counterparts.** This Agreement shall be interpreted under the laws of the State of New York. This Agreement shall be subject to any applicable State, county or local deferred compensation rules and regulations. This Agreement may be executed in any number of counterparts, each of which shall be considered an original of this Agreement.

**XVII. Acts or Omissions of Other Parties.** Neither Service Provider nor its affiliates, successors and assigns shall have any liability, duty or other obligation with respect to actions or omissions (including incomplete or incorrect data provided to Service Provider) of the Employer, the Plan Administrator, or other authorized Plan representative, or of any concurrent or predecessor trustee, custodian, or other investment or service provider.

**XVIII. Notice.** Notice to either party shall be provided in writing as follows:

**To Employer:**

Attn: John W. Greenan  
Erie County Commissioner of Personnel  
95 Franklin Street  
Buffalo, NY 14202

**To Service Provider:**

Attn: Vice President, Institutional Marketing  
VALIC Retirement Services Company  
2919 Allen Parkway, L13-10  
Houston, TX 77019-2155

**XIX. Release of Information, Solicitation and Confidentiality.** Where necessary to the proper administration of the Employer's Plan, Service Provider may release information to the Employer or a governmental agency examining the Employer's Plan. Neither the Service Provider nor any of its agents or affiliates shall use information obtained by reason of appointment as a service provider to solicit or otherwise induce any person to invest in, purchase, utilize or act in any other manner regarding any products made available by the Service Provider or its agents or affiliates. All information obtained under the Plan shall be confidential and used exclusively for purposes related to the Plan and expressly contemplated by this Agreement.

**XX. Entire Agreement.** Executed by the authorized representatives of the parties, this Agreement together with the referenced exhibits and attachments constitutes the entire intent of the parties hereto, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter of this Agreement.

**EMPLOYER:**

Peter H. Sigvelson  
Print Name: Peter H. Sigvelson  
Title: Chairman, NEA Council  
Date: 8/16/04

**SERVICE PROVIDER:**

Thomas C. Goodwin  
Print Name: Thomas C. Goodwin  
Title: Director  
Date: 8/16/2004

**Appendix A**  
**To**  
**Service Provider Agreement**  
**Effective 9/1, 2004**

**Available Investment Options**

<b>Fund</b>	<b>CUSIP</b>	<b>Ticker Symbol</b>
FIDELITY FUND	316153105	FFIDX
FIDELITY PURITAN	316345107	FPURX
FIDELITY VALUE STRAT	316401108	FSLSX
FIDELITY GINNIE MAE	31617K105	FGMNX
FIDELITY MAGELLAN	316184100	FMAGX
FIDELITY CONTRAFUND	316071109	FCNTX
FIDELITY EQUITY INC	316138106	FEQIX
FIDELITY GROWTH CO	316200104	FDGRX
FIDELITY INVST GR BD	316146109	FBNDX
FIDELITY GROW & INC	316389204	FGRIX
FIDELITY INTER BOND	315912105	FTHRX
FIDELITY CAP & INC	316062108	FAGIX
FIDELITY VALUE	316464106	FDVLX
FIDELITY MORTG SEC	31617K204	FMSFX
FIDELITY GOVT INCOME	316172105	FGOVX
FIDELITY CASH RESRVE	316067107	FDRXX
FID SEL DEFENSE	316390806	FSDAX
FID INDEPENDENCE FD	316145309	FDFFX
FIDELITY OTC PORT	316389105	FOCPX
FIDELITY OVERSEAS	316343102	FOSFX
FID LEVERAGED CO STK	316389873	FLVCX
FIDELITY NEW MILLEN	316200302	FMILX
FIDELITY EUROPE	316343300	FIEUX
FIDELITY PAC BASIN	316343201	FPBFX
FID REAL ESTATE INVST	316138205	FRESX
FIDELITY BALANCED	316345206	FBALX
FIDELITY INTL GR&INC	315910208	FIGRX
FIDELITY CAP APPREC	316066109	FDCAx
FIDELITY CONV SEC	316145200	FCVsx
FIDELITY CANADA	315910307	FICDX
FIDELITY UTILITIES	316128107	FIUIX
FIDELITY BLUE CHIP	316389303	FBGRX
FID ASSET MANAGER	316069103	FASMX
FIDELITY DISC EQUITY	316066208	FDEQX
FIDELITY LOW PR STK	316345305	FLPSX
FIDELITY WORLDWIDE	315910505	FWWFX
FIDELITY EQ INC II	316145101	FEQTX
FIDELITY STK SELECTR	316066307	FDSSX
FID ASSET MGR GROWTH	316069301	FASGX
FIDELITY EMERG MRKTS	315910869	FEMKX
FIDELITY AGGR GROWTH	316200203	FDEGX
FIDELITY DIVERS INTL	315910802	FDIVX
FID ASSET MGR INCOME	316069400	FASIX
FIDELITY DIVD GROWTH	316389402	FDGFX
FIDELITY NEW MKT INC	315910836	FNMIx

FIDELITY EXP & MULTI	316448877	FEXPX
FID FOCUSED STOCK	316066406	FTQGX
FIDELITY GLOBAL BAL	316345404	FGBLX
FID AGGRESSIVE INT'L	315910810	FIVFX
FID SM CAP INDEPEND	315912303	FDSCX
FIDELITY MID-CAP STK	316128404	FMCSX
FIDELITY LG-CAP STK	315912402	FLCSX
FIDELITY SM CAP STK	315912501	FSLCX
FIDELITY EUR CAP APP	315910828	FECAX
FIDELITY NORDIC	315910752	FNORX
FID ASSET MGR AGGRES	316069707	FAMRX
FIDELITY LATIN AMER	315910844	FLATX
FIDELITY JAPAN	315910885	FJPNX
FIDELITY SE ASIA	315910851	FSEAX
FIDELITY CHINA RGN	315910778	FHKCX
FID FOUR IN ONE IDX	31634R109	FFNOX
FIDELITY JAPAN SM CO	315910760	FJSCX
FIDELITY STRAT INC	31638R303	FSICX
FID FREEDOM INCOME	31617R308	FFFAX
FID FREEDOM 2000	31617R407	FFFBX
FID FREEDOM 2010	31617R506	FFFCX
FID FREEDOM 2020	31617R605	FFFDX
FID FREEDOM 2030	31617R704	FFFEX
FID SMALL CAP RETIRE	315912600	FSCRX
SPTN TOTAL MKT INDEX	315911404	FSTMX
SPTN EXTND MKT INDEX	315911503	FSEMXX
SPARTAN INTL INDEX	315911602	FSIIX
SPTN US TREASURY MM	31617H300	FDLXX
FIDELITY SH TERM BD	316146208	FSHBX
FIDELITY HIGH INCOME	316146406	SPHIX
FIDELITY FIFTY	31617F106	FFTYX
FIDELITY RETIRE MMKT	316191600	FRTXX
FIDELITY RET GOVT MM	316191709	FGMXX
SPARTAN US EQ INDEX	315911206	FUSEX
FIDELITY US BD INDEX	315911107	FBIDX
FID INST SH-INT GOVT	315809400	FFXSX
FID FREEDOM 2040	315792101	FFFFX
FID STR MDCAP VALUE	316128701	FSMVX
FID STR MDCAP GROWTH	316128883	FSMGX
FID INFLATION PRO BD	316146604	FINPX
FID ULTRASHORT BOND	31617K808	FUSFX
FID FLOT RATE HI INC	315916783	FFRHX
FID INTL SMALL CAP	315910737	FISMXX
FID VALUE DISCOVERY	316345503	FVDFX
FID REAL ESTATE INC	316389865	FRIFX
FID BLUE CHIP VALUE	316389857	FBCVX
FID NASDAQ COMP INDX	315912709	FNCMX
FID FREEDOM 2005	315792689	FFFVX
FID FREEDOM 2015	315792671	FFVFX
FID FREEDOM 2025	315792663	FFTWX
FID FREEDOM 2035	315792655	FFTHX
FID STR DIV INC FUND	316145887	FSDIX
JANUS WORLDWIDE	471023309	JAWWX
DOMINI SOCIAL EQUITY	257132100	DSEFX

AMR BALANCED PA	02368A828	AABPX
AMR LARGE CAP VAL PA	02368A810	AAGPX
AMR INTL EQUITY PA	02368A794	AAIPX
AMR SH TERM BOND PA	02368A786	AALPX
PIMCO TOT RETURN ADM	693390726	PTRAX
TMPL FOREIGN SM CO A	35361F303	FINEX
MSI EQUITY GROWTH B	61744J564	MSEGX
MUTUAL DISCOVERY A	628380859	TEDIX
BARON GROWTH	68278209	BGRFX
BARON ASSET FUND	68278100	BARAX
CALVERT NEWVIS SM CP	131582850	CNVAX
CALVERT SIF BALNCD A	131618100	CSIFX
CALVERT INTL EQTY A	131649105	CWVGX
FMA SMALL COMPANY IS	00758M246	FMACX
FPA CRESCENT	30254T759	FPACX
RHJ MICRO CAP	00758M212	RHJSX
PBHG EMERGING GROWTH	69316H205	PBEGX
ARIEL FUND	40337107	ARGFX
ARIEL APPRECIATION	40337206	CAAPX
ARIEL PREM BOND INV	40337503	APBRX
ALGER CAP APPREC I	15570401	ALARX
ALGER MIDCAP GRTH I	15570203	ALMRX
ALGER SMALL CAP I	15570104	ALSRX
DREY FNDRS BALNCED F	262001431	FRINX
DREY FNDRS GROWTH F	262001464	FRGRX
DREY FNDRS MC GRTH F	262001498	FRSPX
DREY FNDRS WW GRTH F	262001530	FWWGX
DREY FNDRS PASSPRT F	262001522	FPSSX
FKLN SMMIDCAP GRTH A	354713109	FRSGX
PBHG GROWTH FUND	69316H106	PBHGX
INVESCO DYNAMICS	00142K203	FIDYX
INVESCO SM CO GROWTH	00142K732	FIEGX
JANUS FLEX INCOME	471023606	JAFIX
TEMPLETON FOREIGN A	880196209	TEMFX
MSI GLOBAL VAL EQ B	61744J549	MIGEX
MSIFT CP FX INC ADV	617440581	MFXAX
MSIFT HIGH YIELD ADV	617440573	MAHYX
MSIFT MIDCAP GTH ADV	617440599	MACGX
MSI SM CO GROWTH B	61744J614	MSSMX
MSI EMERGING MKTS B	61744J580	MMKBX
MUTUAL SHARES CL A	628380602	TESIX
NB FOCUS TRUST	640917506	NBFCX
NB MANHATTAN TRUST	640917308	NBMTX
NB SOCIALLY RESP TR	640917860	NBSTX
PIMCO CCM CAP AP ADM	69338T856	PICAX
PIMCO CCM MID CP ADM	69338T831	PMCGX
PIM GLBBND AD UNHDGD	693390684	PADMX
PIMCO HIGH YIELD ADM	693390650	PHYAX
PIMCO LOW DUR ADM	693390767	PLDAX
PIMCO LT US GOVT ADM	693390775	PLGBX
STRONG DISCOVERY	86334H108	STDIX
STRONG GROWTH FUND	862916103	SGROX
STRONG ADV COM STK Z	86334C109	STCSX
STRONG OPPORTUNITY	86335K100	SOPFX

STRONG LG CAP GROWTH	863350104	STRFX
STRONG GOVT SECURITY	863344107	STVSX
TEMPLETON GROWTH A	880199104	TEPLX
TMPL GLOBAL BOND A	880208103	TPINX
TEMPLETON WORLD A	880196100	TEMWX
USAA GNMA TRUST	903287506	USGNX
USAA INCOME FUND	903288207	USAIX
USAA GROWTH FUND	903288108	USAAX
USAA EMERGING MKTS	903287803	USEMX
CS CAP APPREC COM	22542P103	CUCAX
CS MID CAP GRTH COM	22543C191	CUEGX
CS GLOBAL FX INC COM	22543Y103	CGFIX
CS LARGE CAP VALUE A	22540Y825	WFGIX
CS INTL FOCUS COM	22544L506	WPMFX
AMER FUND EUROPAC R4	298706847	REREX
OPPENHEIMER DEVELOP MKT A	683974109	ODMAX
AMER FUNDS CAPWRLDGI R4	140543844	RWIEX
JPMORGAN SM CAP EQ SEL	628263592	VSEIX
DREYFUS SMALL CAP STOCK INDEX	26200Q204	DISSX
AMCENT SMALL COMPANY INV	02507M840	ASQIX
AMERICAN AADV SMCPVL PLN	02368A620	AVPAX
DREYFUS MIDCAP INDEX	712223106	PESPX
JP MORGAN MID CAP VAL SE	339183105	JMVSX
AMER FUNDS GROWTH FUND R4	399874841	RGAEX
DAVIS NY VENTURE A	239080104	NYVTX
AMER FUNDS AMER MUT R4	027681840	RMFEX
AMER FUNDS AMER BAL R4	024071847	RLBEX
COLUMBIA INCOME Z	19764T409	SRINX
AMCENT GOVT BD INV	025081308	CPTNX
PIONEER STRATEGIC INC A	723884102	PSRAX
VALIC FIXED INTEREST OPTION*	NULL	NULL
SCHWAB PERSONAL CHOICE RETIREMENT ACCOUNT™	NULL	NULL

\* A VALIC group fixed unallocated annuity (policy form GFUA-398). Transfers from this annuity contract shall be subject to a contractually imposed 90-day "equity wash" limitation, meaning that transfers out of this Fixed-Interest Option may not occur to a "competing option," as defined in the annuity contract, for 90 days after such transfer from the Fixed-Interest Option.

**Appendix B**  
**To**  
**Service Provider Agreement**  
**Effective 9/1, 2004**

**Personal Choice Retirement Account™ (PCRA) Provisions**

Notwithstanding any provision in this Agreement to the contrary, the following provisions shall apply to the Personal Choice Retirement Account™ (PCRA) investment option:

1. **Agreements.** Employer hereby acknowledges receipt and review by the Employer and/or the Employer's legal counsel, as appropriate, of any and all relevant agreements governing the PCRA accounts established with Charles Schwab & Company, Inc. ("Schwab"), a California corporation, and accepts the terms thereof as consistent with the terms of the Plan. Employer specifically accepts:

- A. the terms of any Limited Power of Attorney that a participant may be required to complete to establish a PCRA account;
- B. any binding arbitration that may apply to any claims with respect to such a PCRA account; and
- C. for itself and for Plan participants, the monitoring by Schwab of any telephone conversations with its customer service personnel.

2. **Investments; Investment Selections/Direction.**

A. After contributions are allocated to a PCRA account, they will be invested exclusively in shares of mutual funds offered through a PCRA, and shall be subject to the terms of the account agreement and any other agreement governing the PCRA. The Employer hereby authorizes and directs Trustee to instruct Schwab to hold funds in non-interest bearing accounts pending allocation to individual PCRA accounts, where necessary under the PCRA. All contributions allocated to a PCRA account are first invested in a money market fund. Subject to any limitation in the Plan, participants may transfer amounts from the money market fund into other mutual funds available under their PCRA accounts. Except for the authority reserved to the Trustee under the Trust Agreement, or given to the Employer under the Plan, if any, the participant will have all rights to direct the investment of the PCRA account, according to the provisions and limitations imposed under the PCRA, which will be provided to the participant in a separate document or set of documents, and subject to any limitations in the Plan. Pursuant to an agreement between Schwab and Trustee, certain mutual funds, listed in Appendix A, will not be available for new investments under the PCRA. Any changes to that list, including additions of mutual funds that will be unavailable for future investments, will be communicated to the Employer and to participants in writing prior to the date the change is to be effective. If a fund is excluded by the Employer, the Employer shall provide written notice to participants of its exclusion prior to requesting its exclusion by the Service Provider.

B. Investments in any mutual fund within the PCRA will be subject to any investment minimums and/or charges imposed by that mutual fund or within the PCRA.

C. The Service Provider will reallocate amounts from other funds in a PCRA account to the money market fund, as necessary to effectuate any of the following to the extent not being satisfied from other Plan Investment Options:

- i. the payment of the participant account's annual maintenance and administrative service charges;

- ii. the payment of benefits to an alternate payee under a Domestic Relations Order;
- iii. the payment of taxes pursuant to a levy by the Internal Revenue Service;
- iv. the return of contributions as described in Section V of this Agreement; or
- v. any other distribution from the trust account directed by the Employer in conformity with the Plan and the Code.

The Service Provider will reallocate any amounts pursuant to this paragraph in the following order: first, from mutual funds that are not subject to transaction fee expenses at the time of the transaction, or sales loads (Group 1); second, from mutual funds that are not subject to transaction fee expenses at the time of the transactions, but are subject to sales loads (Group 2); and third, from any remaining mutual funds in which the PCRA account is invested (Group 3). When reallocating from the mutual funds within Group 1, Group 2, or Group 3, the Service Provider will request such reallocations first from the mutual fund in the group that represented the greatest percentage of the PCRA account value at the close of business on the previous day, and then from the mutual fund that represented the next greatest percentage of the PCRA account value at the close of the previous day, continuing until an amount that is not less than the amount required is transferred to the money market fund. Participants who do not want transfers to be processed in this manner must ensure that the value of the money market fund in their PCRA accounts is sufficient to process any of the withdrawals described above.

3. **PCRA Account Statements; Proxies; Other Rights.** PCRA account statements will be regularly provided to each participant directly by Schwab quarterly; and, except where inconsistent with the Plan or the Code, Schwab will forward proxies and other rights accruing from the securities purchased through a PCRA account to the participant at the address that the participant has provided to Schwab.
4. **Charges.** The quarterly charge described in Section X of this Agreement shall not apply to the PCRA option. In lieu of that charge, the Service Provider will deduct on a basis not more frequently than quarterly an annual charge in the amount of \$0.00 from the money market fund in each participant's PCRA account under the Plan. If a redemption of some or all of the mutual fund shares held under a PCRA account is requested, either for a distribution or for a transfer to another investment provider, so that the remaining PCRA account value for that participant would be less than the quarterly charge, Service Provider may deduct the full quarterly charge at the time of such redemption. In lieu of deducting any amount payable under this paragraph 4. from a participant's PCRA account, Service Provider may, at its sole option, withdraw such amount from non-PCRA mutual fund investments under a Participant Account, in the same manner as described in Section X of this Agreement.
5. **Timing of Allocations to PCRA.** Employer acknowledges and agrees that posting of contributions to a PCRA account may occur subsequent to the posting of similar allocations to other Plan Investment Options.
6. **Notice of Errors in Reporting.** The Employer, or other authorized representative of the Plan, agrees on behalf of participants to the review of confirmations and/or statements within a reasonable time after receipt thereof, and that participants shall notify the Trustee or Service Provider of any errors discovered by the Employer or the participant within forty-five (45) days after such receipt, and the Employer, or other authorized representative of the Plan, authorizes the Trustee and Service Provider to rely on the correctness of any transaction not identified to be in error within such 45 days.

**Appendix C**  
**To**  
**Service Provider Agreement**  
**Effective 9/1, 2004**

**Schwab Personal Choice Retirement Account Application - Omnibus**

# Section 6

**ADDENDUM TO SERVICE PROVIDER AGREEMENT**

This is an Addendum ("Addendum") to the Service Provider Agreement ("Agreement") between VALIC Retirement Services Company ("Service Provider") and County of Erie ("Employer") for plan administrative services, and shall be effective January 1, 2005.

**WHEREAS**, under the Agreement, distributions to participants shall be authorized by the Employer or shall be subject to nondiscretionary determinations by the Service Provider pursuant to written guidelines established by Employer, and Employer will review and have final decision-making authority with respect to all appeals from Service Provider determinations;

**WHEREAS**, Employer wishes to obtain nondiscretionary determinations by the Service provider pursuant to written guidelines established by Employer; and,

**WHEREAS**, Employer has adopted written guidelines pursuant to which Service Provider shall make nondiscretionary determinations in processing certain participant distributions;

**IT IS THEREFORE AGREED**, in consideration of the mutual promises herein contained:

1. Employer has reviewed VALIC Retirement Services Company's Severance of Employment and Unforeseeable Emergency Withdrawals procedures, and, having determined such procedures to be consistent with the terms of the Plan, hereby adopts such procedures and delegates the determination function to VALIC Retirement Service Company.
2. By signature on this Agreement, Employer approves all Severance of Employment and Unforeseeable Emergency Withdrawals requests made and processed in accordance with VALIC Retirement Services Company's procedures and guidelines adopted by Employer for the Plan.
3. Service Provider shall deny any and all transaction requests not within such procedures and guidelines.
4. Any and all participant appeals of Service Provider determinations shall be forwarded to Employer for review and Employer have final decision-making authority.

*Addendum to Service Provider Agreement*

5. This Addendum will terminate: (1) upon the effective termination of the Agreement, or (2) by either party, subject to 30 days' written notice provided to the other party pursuant to the Notice provision in the Agreement.

**EMPLOYER:**

*Paul H. Sargent*

Title: *Chairman ACC*

Date: *12/17/04*

**SERVICE PROVIDER:**

*Jannet R. Hill*

Title: *Sr. Vice President*

Date: *12/21/04*

## **VRSCO Transaction Processing Guidelines**

### **Severance of Employment**

For a participant requesting a distribution based on termination of employment, VALIC Retirement Services Company will process such distributions based on the participant's representation as to termination by selecting such reason on VALIC Retirement Services Company's Distribution Request Form, the participant's affirmation that the information provided on the Form is true and correct, and termination date information contained in our records.

### **Unforeseeable Emergency**

For a participant requesting an unforeseeable emergency withdrawal, VALIC Retirement Services Company will process such distributions based on the participant's representation as to the nature of the severe financial hardship by selecting such reason from the list of reasons included on VALIC Retirement Services Company's Unforeseeable Emergency Withdrawal Form. Any withdrawal requests indicating the selection of the distribution reason as "The Plan Administrator of my employer's plan has reviewed and approved my hardship request, and has signed this form accordingly," will be processed only where the Plan Administrator signature has been obtained. In addition, VALIC Retirement Services Company will require the participant to respond to "yes or no" questions regarding the availability of other resources to satisfy the need and identify any such amounts. Finally, VALIC Retirement Services Company's procedures require that the participant affirm in writing that the information provided on the Unforeseeable Emergency Withdrawal Form is true and correct by his or her signature on the Form.

## UNFORESEEABLE EMERGENCY REASONS

### Unforeseeable Emergency Withdrawal Reasons :

- Medical expenses for the participant, the participant's spouse, or the participant's dependent due to sudden and unexpected illness or accident.
- Uninsured or underinsured casualty to or emergency major repair of the participant's home or property due to theft, fire, flood or other natural disaster, where subject of loss is necessary for home habitability.
- Emergency major repair or replacement of the participant's or the participant's spouse's automobile needed for transportation to and from work due to accident, theft, fire, flood or other natural disaster.
- Replacement of wages for the participant or the participant's spouse where loss of wages is due to involuntary absence from work without pay due to sudden and unexpected illness or accident of extraordinary and unforeseeable circumstances arising as a result of events beyond the control of participant or participant's spouse who lost wages (e.g., termination without cause) and where the absence is for at least 4 weeks.
- Funeral expenses of a family member, or travel expense to attend funeral of a family member.
- Child support for the participant's child(ren) where owed by a third party (e.g., ex-spouse) but not received and where the child support payment is at least 1 month overdue.
- Back taxes, including any tax-related interest or penalties, where owed as the result of the negligence of a professional tax preparer.
- Attorneys fees, court costs, or travel expenses to attend court proceedings for a legal matter for the participant, the participant's spouse or the participant's dependent, as the result of extraordinary and unforeseeable circumstances arising from events outside of the participant's control.
- Other; Plan Administrator has approved the distribution.

# Section 7

**Amendment  
to  
Service Provider Agreement**

This Amendment is made to the Service Provider Agreement (“Agreement”) by and between County of Erie, New York State (“Employer”) and VALIC Retirement Services Company (“Service Provider”) for services with respect to the Erie County Deferred Compensation Plan, a plan established pursuant to Section 457(b) of the Internal Revenue Code of 1986 (“Code”).

**WHEREAS**, Employer and Service Provider entered into the Agreement for nondiscretionary plan administrative services effective September 1, 2004;

**WHEREAS**, the Agreement provided for a five-year Initial Term;

**WHEREAS**, effective August 31, 2009, the Initial Term of the Agreement was extended for a one-year period through August 31, 2010;

**WHEREAS**, effective September 1, 2010, the Agreement was renewed for a new five-year Initial Term through August 31, 2015; and

**WHEREAS**, Employer and Service Provider desire to extend the Initial Term of the Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the parties hereto agree to amend the Agreement, effective August 31, 2014, as follows:

1. The Initial Term of the Agreement is hereby extended through August 31, 2016.

This Amendment shall remain in full force and effect until termination of the Agreement in accordance with the terms and conditions therein.

**SAVE AND EXCEPT** as specifically amended herein, the terms and conditions of the Agreement shall remain in full force and effect.

[The remainder of this page is intentionally left blank.]

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be executed by their duly authorized representatives.

**EMPLOYER:**

  
Signature

Print Name: David A. Palmer

Title: Chair

Date: 8/5/14

**SERVICE PROVIDER:**

  
Signature

Print Name: Brenda J. Bradley

Title: Administrative Officer

Date: 10/9/14

# Section 8

**Amendment  
to  
Service Provider and Trust Agreements**

This Amendment is made to the <sup>County of Erie, New York</sup> Service Provider and Trust Agreements (collectively, the "Agreements") by and between ~~Erie County~~ ("Employer") and VALIC Retirement Services Company ("Service Provider") and AIG Federal Savings Bank ("Trustee") for services with respect to the ~~Deferred Compensation Plan for Employees of Erie County~~, a plan established pursuant to Section 457(b) of the Internal Revenue Code of 1986 ("Code").

**WHEREAS**, Employer, Service Provider and Trustee entered into the Agreements for nondiscretionary plan administrative and trust services effective September 1, 2004;

**WHEREAS**, the Agreements provided for a five-year Initial Term;

**WHEREAS**, effective August 31, 2009, the Initial Term of the Agreements was extended for a one-year period through August 31, 2010; and

**WHEREAS**, the Erie County Deferred Compensation Committee ("Committee"), Employer, Service Provider and Trustee desire to correct the Employer name as referenced in the Agreements, renew the Agreements for a new five-year period and change certain other provisions of the Agreements;

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the parties hereto agree to amend the Agreements, effective September 1, 2010, unless otherwise stated:

1. Effective as of the effective date of the Agreements, wherever referenced in the Agreements, "County of Erie," should read "~~Erie County~~ County of Erie, New York".
2. The Agreements are hereby renewed for a new five-year Initial Term through August 31, 2015.
3. Service Provider agrees to provide to Employer a custom web site within three months following their joint planning meeting after execution of this Amendment and mutual written agreement with respect to web site design and enhancement. Service Provider also agrees to add a new asset allocation tool at no charge within the planned web site enhancements.
4. Service Provider agrees to waive the \$50 annual fee associated with the PCRA.
5. The following is added to the end of Section X, Administrative Service Fees, of the Service Provider Agreement:

"In the event that the total assets invested in the PCRA exceed 3% of the total assets invested in the Plan Investment Options available under the Plan as listed on Appendix A, then Service Provider reserves the right to review and adjust the Administrative Service Fees referenced in this section."

6. Item 1 of Appendix D to the Service Provider Agreement is deleted in its entirety and replaced with the following:

“With respect to the VALIC Fixed-Interest Option, VALIC agrees that an enhanced standard interest rate of 4.00% will remain in effect until June 30, 2011. Thereafter, VALIC agrees to enhance the standard interest rate declared monthly for interest crediting on a daily basis by an annual effective rate of 0.40% (forty basis points).”

7. Item 2 of Appendix D to the Service Provider Agreement is deleted in its entirety and replaced with the following:

“Service Provider agrees to pay Employer an annual amount each August 31<sup>st</sup> beginning August 31, 2010, equal to the greater of \$25,000 or 0.02% (two one-hundredths of one percent) of the mutual fund assets invested in the Plan Investment Options as of August 31, 2010 and each August 31<sup>st</sup> thereafter, for plan administration expenses that Employer has determined to be reasonable and properly payable from Plan assets.”

8. Item 3 of Appendix D to the Service Provider Agreement is deleted in its entirety and replaced with the following:

“Service Provider agrees to continue to waive the fee for participants electing the Guided Portfolio Services<sup>®</sup> (GPS) Portfolio Advisor service for independent investment advice. The GPS Portfolio Manager service will continue to be provided on a fee basis to those participants electing the managed accounts option.”

9. Service Provider agrees to provide a detailed annual, quarterly, and monthly education and outreach schedule, accompanied with monthly metrics being reported to all members of the Committee via e-mail and included in the quarterly Plan review. Monthly metrics would minimally include reporting of all one-on-one meetings with financial advisors and group meetings and presentations, including locations of such meetings, number of participants attending the meetings and contact name of county employee associated with meeting.

10. Service Provider agrees to report on a monthly basis all printed materials, mass e-mails, letters or other communication materials mailed to participants and provide copies of such communications to each Committee member.

This Amendment shall remain in full force and effect until termination of the Agreements in accordance with the terms and conditions therein.

SAVE AND EXCEPT as specifically amended herein, the terms and conditions of the Agreements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives.

**EMPLOYER:**

*Peter H Sigurdson*  
Print Name: Peter H Sigurdson  
Title: Chairman  
Date: 8/16/2010

**TRUSTEE:**

*Jacqueline H Williams*  
Print Name: Jacqueline H. Williams  
Title: Vice President and Trust Officer  
Date: 10-20-10

**SERVICE PROVIDER:**

*Carolyn Gutierrez*  
Print Name: Carolyn Gutierrez  
Title: Administrative Officer  
Date: 09-10-10

**THE VARIABLE ANNUITY LIFE  
INSURANCE COMPANY (VALIC):  
(Only as to Paragraph 6, above)**

*Carolyn Gutierrez*  
Print Name: Carolyn Gutierrez  
Title: Administrative Officer  
Date: 09-10-10

APPROVED	
AS TO CONTRACT COMPLIANCE LAW SERVICES	
CONTROL NO.	<u>4774</u>
DATE	<u>9/2/2010</u>
SIGNED	<u><i>[Signature]</i></u>

**Appendix A**  
**to**  
**Service Provider and Trust Agreements**  
**Effective September 1, 2010**  
**Available Investment Options**

VALIC receives 12b-1 fees and recordkeeping fees from mutual funds or their affiliates as shown below for administrative and shareholder services. VALIC offsets the plan sponsor's administrative fee by the 12b-1 fees and recordkeeping fees received from the fund families as described in the Service Provider Agreement.

				<b>Amounts Paid to AIG Retirement from Fund Family</b>	
	<b>Fund Name</b>	<b>Asset Category</b>	<b>Ticker Symbol or CUSIP Number</b>	<b>12b-1 Service Fee (%)</b>	<b>Record keeping / Admin Fees (%)</b>
1	Aberdeen Global Fixed Income Instl Svc	World Bond	CGFIX	0.25	0.15
2	Aberdeen Intl Equity I/S	Foreign Large Blend	GIGSX	0.00	0.00
3	AIM Dynamics Inv	Mid-Cap Growth	FIDYX	0.25	0.15
4	AIM Small Cap Growth Inv	Small Growth	GTSIX	0.25	0.15
5	Alger Capital Appreciation Instl I	Large Growth	ALARX	0.25	0.25
6	Alger Mid Cap Growth Institutional I	Mid-Cap Growth	ALMRX	0.25	0.25
7	Alger Small Cap Growth Institutional I	Small Growth	ALSRX	0.25	0.25
8	Allianz CCM Capital Appreciation Admin	Large Growth	PICAX	0.00	0.25
9	Allianz CCM Mid Cap Admin	Mid-Cap Growth	PMCGX	0.00	0.25
10	American Beacon Balanced Inv	Moderate Allocation	AABPX	0.00	0.35
11	American Beacon Intl Equity Inv	Foreign Large Value	AAIPX	0.00	0.35
12	American Beacon Lg Cap Value Inv	Large Value	AAGPX	0.00	0.35
13	American Beacon Shrt-Trm Bd Inv	Short-Term Bond	AALPX	0.00	0.35
14	American Beacon Small Cp Val Inv	Small Value	AVPAX	0.00	0.35
15	American Century Government Bond Inv	Intermediate Government	CPTNX	0.00	0.25
16	American Century Small Company Inv	Small Blend	ASQIX	0.00	0.35
17	American Funds American Balanced R4	Moderate Allocation	RLBEX	0.25	0.10
18	American Funds American Mutual R4	Large Value	RMFEX	0.25	0.10
19	American Funds Capital World G/I R4	World Stock	RWIEX	0.25	0.10
20	American Funds EuroPacific Gr R4	Foreign Large Blend	REREX	0.25	0.10
21	American Funds Growth Fund of Amer R4	Large Growth	RGAEX	0.25	0.10
22	Ariel	Mid-Cap Blend	ARGFX	0.20	0.15
23	Ariel Appreciation	Mid-Cap Blend	CAAPX	0.20	0.15
24	Baron Asset	Mid-Cap Growth	BARAX	0.25	0.10
25	Baron Growth	Small Growth	BGRFX	0.25	0.10
26	Calvert New Vision Small Cap A	Small Growth	CNVAX	0.25	0.25
27	Calvert Social Investment Balanced A	Moderate Allocation	CSIFX	0.25	0.25
28	Calvert World Values International Eq A	Foreign Large Value	CWVGX	0.25	0.25
29	Columbia Income Z	Intermediate-Term Bond	SRINX	0.00	0.25

				Amounts Paid to AIG Retirement from Fund Family	
	Fund Name	Asset Category	Ticker Symbol or CUSIP Number	12b-1 Service Fee (%)	Record keeping / Admin Fees (%)
30	Credit Suisse Large Cap Growth Comm	Large Growth	CUCAX	0.25	0.15
31	Credit Suisse Large Cap Value A	Large Value	WFGIX	0.25	0.25
32	Credit Suisse Mid-Cap Core Common	Mid-Cap Blend	CUEGX	0.25	0.15
33	Davis NY Venture A	Large Blend	NYVTX	0.25	0.25
34	Domini Social Equity Inv	Large Blend	DSEFX	0.25	0.00
35	Dreyfus Equity Growth A	Large Growth	FRMAX	0.25	0.25
36	Dreyfus LifeTime Growth & Income Inv	Conservative Allocation	DGIIX	0.25	0.25
37	Dreyfus Mid-Cap Growth F	Mid-Cap Growth	FRSPX	0.25	0.15
38	Dreyfus MidCap Index	Mid-Cap Blend	PESPX	0.25	0.15
39	Dreyfus Small Cap Stock Index	Small Blend	DISSX	0.25	0.15
40	Fidelity	Large Blend	FFIDX	0.00	0.25
41	Fidelity Asset Manager 20%	Conservative Allocation	FASIX	0.00	0.25
42	Fidelity Asset Manager 50%	Moderate Allocation	FASMX	0.00	0.25
43	Fidelity Asset Manager 70%	Moderate Allocation	FASGX	0.00	0.25
44	Fidelity Asset Manager 85%	Large Growth	FAMRX	0.00	0.25
45	Fidelity Balanced	Moderate Allocation	FBALX	0.00	0.25
46	Fidelity Blue Chip Growth	Large Growth	FBGRX	0.00	0.25
47	Fidelity Blue Chip Value	Large Value	FBCVX	0.00	0.25
48	Fidelity Canada	Foreign Large Blend	FICDX	0.00	0.25
49	Fidelity Capital & Income	High Yield Bond	FAGIX	0.00	0.10
50	Fidelity Capital Appreciation	Large Growth	FDCAX	0.00	0.25
51	Fidelity Cash Reserves	Money Market	FDRXX	0.00	0.00
52	Fidelity China Region	Pacific/Asia ex-Japan Stk	FHKCX	0.00	0.25
53	Fidelity Contrafund	Large Growth	FCNTX	0.00	0.25
54	Fidelity Convertible Securities	Convertibles	FCV SX	0.00	0.10
55	Fidelity Disciplined Equity	Large Blend	FDEQX	0.00	0.25
56	Fidelity Diversified International	Foreign Large Growth	FDIVX	0.00	0.25
57	Fidelity Dividend Growth	Large Blend	FDGFX	0.00	0.25
58	Fidelity Emerging Markets	Diversified Emerging Mkts	FEMKX	0.00	0.25
59	Fidelity Equity-Income	Large Value	FEQIX	0.00	0.25
60	Fidelity Equity-Income II	Large Value	FEQTX	0.00	0.25
61	Fidelity Europe	Europe Stock	FIEUX	0.00	0.25
62	Fidelity Europe Capital Appreciation	Europe Stock	FECAX	0.00	0.25
63	Fidelity Export & Multinational	Large Growth	FEXPX	0.00	0.25
64	Fidelity Fifty	Large Growth	FFTYX	0.00	0.25
65	Fidelity Floating Rate High Income	Bank Loan	FFRHX	0.00	0.10
66	Fidelity Focused Stock	Large Growth	FTQGX	0.00	0.25
67	Fidelity Four-in-One Index	Large Blend	FFNOX	0.00	0.00
68	Fidelity Freedom 2000	Target Date 2000-2010	FFFBX	0.00	0.25

				<b>Amounts Paid to AIG Retirement from Fund Family</b>	
	<b>Fund Name</b>	<b>Asset Category</b>	<b>Ticker Symbol or CUSIP Number</b>	<b>12b-1 Service Fee (%)</b>	<b>Record keeping / Admin Fees (%)</b>
69	Fidelity Freedom 2005	Target Date 2000-2010	FFFVX	0.00	0.25
70	Fidelity Freedom 2010	Target Date 2000-2010	FFFCX	0.00	0.25
71	Fidelity Freedom 2015	Target Date 2011-2015	FFVFX	0.00	0.25
72	Fidelity Freedom 2020	Target Date 2016-2020	FFFDX	0.00	0.25
73	Fidelity Freedom 2025	Target Date 2021-2025	FFTWX	0.00	0.25
74	Fidelity Freedom 2030	Target Date 2026-2030	FFEX	0.00	0.25
75	Fidelity Freedom 2035	Target Date 2031-2035	FFTHX	0.00	0.25
76	Fidelity Freedom 2040	Target Date 2036-2040	FFFFX	0.00	0.25
77	Fidelity Freedom Income	Retirement Income	FFFAX	0.00	0.25
78	Fidelity Global Balanced	World Allocation	FGBLX	0.00	0.25
79	Fidelity GNMA Fund	Intermediate Government	FGMNX	0.00	0.10
80	Fidelity Government Income	Intermediate Government	FGOVX	0.00	0.10
81	Fidelity Growth & Income	Large Blend	FGRIX	0.00	0.25
82	Fidelity Growth Company	Large Growth	FDGRX	0.00	0.25
83	Fidelity Growth Strategies	Mid-Cap Growth	FDEGX	0.00	0.25
84	Fidelity High Income	High Yield Bond	SPHIX	0.00	0.10
85	Fidelity Independence	Large Growth	FDFFX	0.00	0.25
86	Fidelity Inflation-Protected Bond	Inflation-Protected Bond	FINPX	0.00	0.10
87	Fidelity Instl Shrt-Interm Govt	Short Government	FFXSX	0.00	0.10
88	Fidelity Intermediate Bond	Intermediate-Term Bond	FTHR	0.00	0.10
89	Fidelity International Capital Apprec	Foreign Large Growth	FIVFX	0.00	0.25
90	Fidelity International Discovery	Foreign Large Blend	FIGRX	0.00	0.25
91	Fidelity International Small Cap	Foreign Small/Mid Growth	FISM	0.00	0.25
92	Fidelity Investment Grade Bond	Intermediate-Term Bond	FBNDX	0.00	0.10
93	Fidelity Japan	Japan Stock	FJPNX	0.00	0.25
94	Fidelity Japan Smaller Companies	Japan Stock	FJSCX	0.00	0.25
95	Fidelity Large Cap Stock	Large Growth	FLCSX	0.00	0.25
96	Fidelity Latin America	Latin America Stock	FLATX	0.00	0.25
97	Fidelity Leveraged Company Stock	Mid-Cap Blend	FLVCX	0.00	0.25
98	Fidelity Low-Priced Stock	Mid-Cap Blend	FLPSX	0.00	0.25
99	Fidelity Magellan	Large Growth	FMAGX	0.00	0.25
100	Fidelity Mid Cap Growth	Mid-Cap Growth	FMSGX	0.00	0.25
101	Fidelity Mid Cap Value	Mid-Cap Value	FMSVX	0.00	0.25
102	Fidelity Mid-Cap Stock	Mid-Cap Growth	FMCSX	0.00	0.25
103	Fidelity Money Market	Money Market	SPRXX	0.00	0.00
104	Fidelity Money: Rtmt Govt MM	Money Market	FGMXX	0.00	0.00
105	Fidelity Mortgage Secs	Intermediate-Term Bond	FMSFX	0.00	0.10
106	Fidelity Nasdaq Composite Index	Large Growth	FNCMX	0.00	0.00
107	Fidelity New Markets Income	Emerging Markets Bond	FNMI	0.00	0.10

				Amounts Paid to AIG Retirement from Fund Family	
	Fund Name	Asset Category	Ticker Symbol or CUSIP Number	12b-1 Service Fee (%)	Record keeping / Admin Fees (%)
108	Fidelity New Millennium	Mid-Cap Growth	FMLX	0.00	0.25
109	Fidelity Nordic	Europe Stock	FNORX	0.00	0.25
110	Fidelity OTC	Large Growth	FOCPX	0.00	0.25
111	Fidelity Overseas	Foreign Large Blend	FOSFX	0.00	0.25
112	Fidelity Pacific Basin	Diversified Pacific/Asia	FPBFX	0.00	0.25
113	Fidelity Puritan	Moderate Allocation	FPURX	0.00	0.25
114	Fidelity Real Estate Income	Real Estate	FRIFX	0.00	0.25
115	Fidelity Real Estate Investment	Real Estate	FRESX	0.00	0.25
116	Fidelity Rtmt Money Mkt	Money Market	FRTXX	0.00	0.15
117	Fidelity Select Defense & Aerospace	Industrials	FSDAX	0.00	0.25
118	Fidelity Short-Term Bond	Short-Term Bond	FSHBX	0.00	0.10
119	Fidelity Small Cap Discovery	Small Blend	FSCRX	0.00	0.25
120	Fidelity Small Cap Independence	Small Growth	FDSCX	0.00	0.25
121	Fidelity Small Cap Stock	Small Blend	FSLCX	0.00	0.25
122	Fidelity Southeast Asia	Pacific/Asia ex-Japan Stk	FSEAX	0.00	0.25
123	Fidelity Spartan 500 Index Inv	Large Blend	FUSEX	0.00	0.00
124	Fidelity Spartan Extended Mkt Index Inv	Mid-Cap Blend	FSEMEX	0.00	0.00
125	Fidelity Spartan International Index Inv	Foreign Large Blend	FSIIX	0.00	0.00
126	Fidelity Spartan Total Market Index Inv	Large Blend	FSTMX	0.00	0.00
127	Fidelity Stock Selector	Large Growth	FDSSX	0.00	0.25
128	Fidelity Strategic Dividend & Income	Large Blend	FSDIX	0.00	0.25
129	Fidelity Strategic Income	Multisector Bond	FSICX	0.00	0.10
130	Fidelity Telecom and Utilities	Utilities	FIUIX	0.00	0.25
131	Fidelity Ultra-Short Bond	Ultrashort Bond	FUSFX	0.00	0.10
132	Fidelity US Bond Index	Intermediate-Term Bond	FBIDX	0.00	0.00
133	Fidelity US Treasury MM	Money Market	FDLXX	0.00	0.00
134	Fidelity Value	Mid-Cap Value	FDVLX	0.00	0.25
135	Fidelity Value Discovery	Large Blend	FVDFX	0.00	0.25
136	Fidelity Value Strategies	Mid-Cap Blend	FSLSX	0.00	0.25
137	Fidelity Worldwide	World Stock	FWWFX	0.00	0.25
138	FPA Crescent	Moderate Allocation	FPACX	0.00	0.00
139	Franklin Small-Mid Cap Growth A	Mid-Cap Growth	FRSGX	0.25	0.15
140	Janus Flexible Bond T	Intermediate-Term Bond	JAFIX	0.00	0.25
141	Janus Worldwide T	World Stock	JAWWX	0.00	0.25
142	JHancock3 Small Company A	Small Blend	JCSAX	0.30	0.20
143	JPMorgan Mid Cap Value Sel	Mid-Cap Value	JMVSX	0.00	0.20
144	JPMorgan Small Cap Equity Sel	Small Growth	VSEIX	0.00	0.20
145	Morgan Stanley Inst Capital Growth P	Large Growth	MSEGX	0.25	0.00
146	Morgan Stanley Inst Core Plus FI P	Intermediate-Term Bond	MFAX	0.25	0.00

				Amounts Paid to AIG Retirement from Fund Family	
	Fund Name	Asset Category	Ticker Symbol or CUSIP Number	12b-1 Service Fee (%)	Record keeping / Admin Fees (%)
147	Morgan Stanley Inst Emerging Mkts P	Diversified Emerging Mkts	MMKBX	0.25	0.00
148	Morgan Stanley Inst Gbl Franchise P	World Stock	MSFBX	0.25	0.00
149	Morgan Stanley Inst Mid Cap Growth P	Mid-Cap Growth	MACGX	0.25	0.00
150	Morgan Stanley Inst Small Co Gr P	Small Growth	MSSMX	0.25	0.00
151	Mutual Global Discovery A	World Stock	TEDIX	0.25	0.15
152	Mutual Shares A	Large Value	TESIX	0.25	0.15
153	Neuberger Berman Core Bond Inv	Intermediate-Term Bond	NCRIX	0.25	0.00
154	Neuberger Berman Focus Tr	Large Blend	NBFCX	0.10	0.25
155	Neuberger Berman Mid Cap Growth Tr	Mid-Cap Growth	NBMTX	0.00	0.25
156	Neuberger Berman Socially Resp Tr	Large Blend	NBSTX	0.10	0.25
157	Old Mutual Focused Z	Large Blend	OBFVX	0.00	0.25
158	Old Mutual Strategic Small Company Z	Small Growth	OSSCX	0.00	0.25
159	Oppenheimer Developing Markets A	Diversified Emerging Mkts	ODMAX	0.25	0.25
160	PIMCO Global Bond (Unhedged) Admin	World Bond	PADMX	0.25	0.00
161	PIMCO High Yield Admin	High Yield Bond	PHYAX	0.25	0.00
162	PIMCO Long-Term US Government Admin	Long Government	PLGBX	0.25	0.00
163	PIMCO Low Duration Admin	Short-Term Bond	PLDAX	0.25	0.00
164	PIMCO Total Return Admin	Intermediate-Term Bond	PTRAX	0.25	0.00
165	Pioneer Strategic Income A	Multisector Bond	PSRAX	0.25	0.30
166	Rice Hall James Micro Cap Instl	Small Growth	RHJSX	0.00	0.00
167	Templeton Foreign A	Foreign Large Value	TEMFX	0.25	0.15
168	Templeton Foreign Smaller Companies A	Foreign Small/Mid Value	FINEX	0.25	0.15
169	Templeton Global Bond A	World Bond	TPINX	0.25	0.15
170	Templeton Growth A	World Stock	TEPLX	0.25	0.15
171	Templeton World A	World Stock	TEMWX	0.25	0.15
172	USAA Emerging Markets	Diversified Emerging Mkts	USEMX	0.00	0.00
173	USAA GNMA	Intermediate Government	USGNX	0.00	0.00
174	USAA Growth	Large Growth	USAAX	0.00	0.00
175	USAA Income	Intermediate-Term Bond	USAIX	0.00	0.00
176	Wells Fargo Advantage Common Stock Inv	Mid-Cap Growth	STCSX	0.00	0.35
177	Wells Fargo Advantage Discovery Inv	Mid-Cap Growth	STDIX	0.00	0.35
178	Wells Fargo Advantage Government Sec Inv	Intermediate Government	STVSX	0.00	0.35
179	Wells Fargo Advantage Growth Inv	Large Growth	SGROX	0.00	0.35
180	Wells Fargo Advantage Large Cap Gr Inv	Large Growth	STRFX	0.00	0.35
181	Wells Fargo Advantage Opportunity Inv	Mid-Cap Blend	SOPFX	0.00	0.35
182	SunAmerica Money Market <sup>1</sup>	Money Market	866919400	0.00	0.25
183	Charles Schwab PCRA	N/A	N/A	N/A	N/A
184	VALIC Fixed-Interest Option <sup>2</sup>				

<sup>1</sup> Investment of Plan forfeitures only.

<sup>2</sup> A VALIC group fixed unallocated annuity (policy form GFUA-398). Transfers from this annuity contract shall be subject to a contractually imposed 90-day “equity wash” limitation, meaning that transfers out of this Fixed-Interest Option may not occur to a “competing option,” as defined in the annuity contract, for 90 days after such transfer from the Fixed-Interest Option. This fund will be the default investment option for the Plan.

The default investment option(s) will be used:

- a. for any contributions received on behalf of a participant who does not have investment elections on file with Service Provider; or
- b. in the event a fund selected by the Employer has closed due to fund-company action and the Employer or its authorized Plan representative has not selected a new fund, for any contributions received on behalf of a participant who is participating in such fund; and, where required for the current account balances in the unavailable fund, Employer hereby directs Service Provider and Trustee to transfer such amounts to this investment option.

In the event a fund selected by the Employer has been merged with another fund due to fund-company action and the Employer or its authorized Plan representative has not selected a new fund, for any contributions received on behalf of a participant who is participating in such fund, and, where required for the current account balances in the merged fund, Employer hereby directs Service Provider and Trustee to transfer such amounts to the surviving fund of the fund merger.

VALIC represents The Variable Annuity Life Insurance Company and its subsidiaries VALIC Financial Advisors, Inc. and VALIC Retirement Services Company.

# Section 9

**Amendment**  
**to**  
**Service Provider and Trust Agreements**

This Amendment is made to the Service Provider and Trust Agreements (collectively the "Agreements") by and between County of Erie ("Employer") and AIG Retirement Services Company (formerly known as VALIC Retirement Services Company) ("Service Provider") and AIG Federal Savings Bank ("Trustee") for services with respect to the Erie County Deferred Compensation Plan (the "Plan"), a plan established pursuant to Section 457(b) of the Internal Revenue Code of 1986 ("Code").

**WHEREAS**, Employer, Service Provider and Trustee entered into the Agreements for nondiscretionary plan administrative and trust services effective September 1, 2004;

**WHEREAS**, the Agreements provided for a five-year Initial Term; and

**WHEREAS**, the Erie County Deferred Compensation Committee ("Committee") is authorized by Section 9005.5(b) of the Rules and Regulations of the New York State Deferred Compensation Board to act on behalf of the Employer to extend the Agreements for a period not to exceed two consecutive one-year terms if it deems it to be in the best interest of the Plan; and

**WHEREAS**, Section XXIV of the Trust Agreement provides that the Trust Agreement may be amended with the written consent of Employer and Trustee, and Section XI of the Service Provider Agreement provides that the Service Provider Agreement may be amended with the written consent of Employer and Service Provider; and

**WHEREAS**, Committee, Employer, Service Provider and Trustee desire to extend the Initial Term of the Agreements for a one-year period; and

**WHEREAS**, the parties wish to memorialize and incorporate certain enhancements to the Service Provider Agreement and incorporate certain modifications made to Appendix A.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree to amend the Agreements, effective August 31, 2009 as follows:

1. The Initial Term of the Agreements is extended through August 31, 2010.
2. Appendix A, a copy of which is attached to and incorporated into this Amendment, is hereby revised, effective April 2, 2009, to reflect updated information regarding investment options, including but not limited to changes to the name, investment objective, fees or reimbursements relating to one or more of the investment options.

3. A new Appendix D, which describes certain enhancements to the Service Provider Agreement and a copy of which is attached to this Amendment, is hereby added to and incorporated into the Service Provider Agreement.

This Amendment shall remain in full force and effect until termination of the Agreements in accordance with the terms and conditions therein.

SAVE AND EXCEPT as specifically amended herein, the terms and conditions, to include the Administrative Service Fees and all services, of the Agreements shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives.

**EMPLOYER:**

*Pat H. Sargent*  
Chairman, Deferred Compensation  
Title Committee, County of Erie, NY

7/28/09  
Date

**SERVICE PROVIDER:**

*[Signature]*  
ADMINISTRATIVE OFFICER  
Title

090309  
Date

**TRUSTEE:**

*[Signature]*  
Vice President & Trust Officer

090409  
Date

**Appendix A**  
to  
**Service Provider and Trust Agreements**  
**Effective April 2, 2009**  
**Available Investment Options**

AIG Retirement receives 12b-1 fees and recordkeeping fees from mutual funds or their affiliates as shown below for administrative and shareholder services. AIG Retirement offsets the plan sponsor's administrative fee by the 12b-1 fees and recordkeeping fees received from the fund families.

	Fund Name	Asset Category	Ticker Symbol or CUSIP Number	Amounts Paid to AIG Retirement from Fund Family	
				12b-1 Service Fee (%)	Record keeping / Admin Fees (%)
1	AIM Dynamics Inv	Mid-Cap Growth	FIDYX	0.25	0.15
2	AIM Small Cap Growth Inv	Small Growth	GTSIX	0.25	0.15
3	Alger Capital App Instl I	Large Growth	ALARX	0.25	0.25
4	Alger MidCap Gr Instl I	Mid-Cap Growth	ALMRX	0.25	0.25
5	Alger SmallCap Gr Instl I	Small Growth	ALSRX	0.25	0.25
6	Allianz CCM Cap App Adm	Large Growth	PICAX	0.00	0.25
7	Allianz CCM Mid Cap Admin	Mid-Cap Growth	PMCGX	0.00	0.25
8	AmCent Govt Bd Inv	Intermediate Government	CPTNX	0.00	0.25
9	AmCent Small Co Inv	Small Blend	ASQIX	0.00	0.35
10	Amer Funds Amer Bal R4	Moderate Allocation	RLBEX	0.25	0.10
11	Amer Funds Amer Mut R4	Large Value	RMFEX	0.25	0.10
12	Amer Funds CapWrldGI R4	World Stock	RWIEX	0.25	0.10
13	Amer Funds EuroPac R4	Foreign Large Blend	REREX	0.25	0.10
14	Amer Funds Gr Fund R4	Large Growth	RGAEX	0.25	0.10
15	American Beacon Bal Plan	Moderate Allocation	AABPX	0.00	0.35
16	American Beacon IntEq Pln	Foreign Large Value	AAIPX	0.00	0.35
17	American Beacon LgCVI Pln	Large Value	AAGPX	0.00	0.35
18	American Beacon Sht Bd Pl	Short-Term Bond	AALPX	0.00	0.35
19	American Beacon SmCVI Pln	Small Value	AVPAX	0.00	0.35
20	Ariel	Mid-Cap Blend	ARGFX	0.20	0.15
21	Ariel Appreciation	Mid-Cap Blend	CAAPX	0.20	0.15
22	Baron Asset	Mid-Cap Growth	BARAX	0.25	0.10
23	Baron Growth	Small Growth	BGRFX	0.25	0.10
24	Calvert Intl Eq A	Foreign Large Blend	CWVGX	0.25	0.25
25	Calvert New Vis Sm Cap A	Small Growth	CNVAX	0.25	0.25
26	Calvert Soc Inv Bal A	Moderate Allocation	CSIFX	0.25	0.25
27	Columbia Income Z	Intermediate-Term Bond	SRINX	0.00	0.25
28	Credit Suisse IntFoc Comm	Foreign Large Blend	WPMFX	0.25	0.15
29	Credit Suisse L/C Gr Comm	Large Growth	CUCAX	0.25	0.15
30	Credit Suisse Lg Val A	Large Value	WFGIX	0.25	0.25

				Amounts Paid to AIG Retirement from Fund Family	
	Fund Name	Asset Category	Ticker Symbol or CUSIP Number	12b-1 Service Fee (%)	Record keeping / Admin Fees (%)
31	CreditSuisse M/C Core Com	Mid-Cap Blend	CUEGX	0.25	0.15
32	CS Glb Fixed Inc Common	World Bond	CGFIX	0.25	0.15
33	Davis NY Venture A	Large Blend	NYVTX	0.25	0.25
34	Domini Social Equity Inv	Large Blend	DSEFX	0.25	0.00
35	Dreyfus Eq Gr A	Large Growth	FRMAX	0.25	0.25
36	Dreyfus Global Growth F	World Stock	FWWGX	0.10	0.25
37	Dreyfus LifeTm Gr&Inc Iv	Conservative Allocation	DGIIX	0.25	0.25
38	Dreyfus Mid-Cap Growth F	Mid-Cap Growth	FRSPX	0.25	0.10
39	Dreyfus MidCap Index	Mid-Cap Blend	PESPX	0.25	0.15
40	Dreyfus Pass F	Foreign Small/Mid Value	FPSSX	0.25	0.10
41	Dreyfus Sm Cap Stk Indx	Small Blend	DISSX	0.25	0.15
42	Fidelity	Large Blend	FFIDX	0.00	0.25
43	Fidelity Aggressive Grth	Mid-Cap Growth	FDEGX	0.00	0.25
44	Fidelity Asset Mgr 20%	Conservative Allocation	FASIX	0.00	0.25
45	Fidelity Asset Mgr 50%	Moderate Allocation	FASMX	0.00	0.25
46	Fidelity Asset Mgr 70%	Moderate Allocation	FASGX	0.00	0.25
47	Fidelity Asset Mgr 85%	Large Growth	FAMRX	0.00	0.25
48	Fidelity Balanced	Moderate Allocation	FBALX	0.00	0.25
49	Fidelity Blue Chip Grth	Large Growth	FBGRX	0.00	0.25
50	Fidelity Blue Chip Value	Large Value	FBCVX	0.00	0.25
51	Fidelity Canada	Foreign Large Blend	FICDX	0.00	0.25
52	Fidelity Capital & Inc	High Yield Bond	FAGIX	0.00	0.25
53	Fidelity Capital Apprec	Large Growth	FDCAX	0.00	0.25
54	Fidelity Cash Reserves	Money Market	FDRXX	0.00	0.00
55	Fidelity China Region	Pacific/Asia ex-Japan Stk	FHKCX	0.00	0.25
56	Fidelity Contrafund	Large Growth	FCNTX	0.00	0.25
57	Fidelity Convertible Sec	Convertibles	FCVSX	0.00	0.25
58	Fidelity Disciplined Eq	Large Blend	FDEQX	0.00	0.25
59	Fidelity Diversified Int	Foreign Large Growth	FDIVX	0.00	0.25
60	Fidelity Dividend Growth	Large Blend	FDGFX	0.00	0.25
61	Fidelity Emerging Market	Diversified Emerging Mkts	FEMKX	0.00	0.25
62	Fidelity Equity-Inc	Large Value	FEQIX	0.00	0.25
63	Fidelity Equity-Inc II	Large Value	FEQTX	0.00	0.25
64	Fidelity Europe	Europe Stock	FIEUX	0.00	0.25
65	Fidelity Europe Capital	Europe Stock	FECAX	0.00	0.25
66	Fidelity Exp & Multinatl	Large Growth	FEXPX	0.00	0.25
67	Fidelity Fifty	Large Growth	FFTYX	0.00	0.25
68	Fidelity Float Rt Hi Inc	Bank Loan	FFRHX	0.00	0.25
69	Fidelity Focused Stock	Large Blend	FTQGX	0.00	0.25

				Amounts Paid to AIG Retirement from Fund Family	
	Fund Name	Asset Category	Ticker Symbol or CUSIP Number	12b-1 Service Fee (%)	Record keeping / Admin Fees (%)
70	Fidelity Four-in-One Idx	Large Blend	FFNOX	0.00	0.00
71	Fidelity Freedom 2000	Target-Date 2000-2014	FFFBX	0.00	0.25
72	Fidelity Freedom 2005	Target-Date 2000-2014	FFVX	0.00	0.25
73	Fidelity Freedom 2010	Target-Date 2000-2014	FFFCX	0.00	0.25
74	Fidelity Freedom 2015	Target-Date 2015-2029	FFVFX	0.00	0.25
75	Fidelity Freedom 2020	Target-Date 2015-2029	FFFDX	0.00	0.25
76	Fidelity Freedom 2025	Target-Date 2015-2029	FFTWX	0.00	0.25
77	Fidelity Freedom 2030	Target-Date 2030+	FFEX	0.00	0.25
78	Fidelity Freedom 2035	Target-Date 2030+	FFTHX	0.00	0.25
79	Fidelity Freedom 2040	Target-Date 2030+	FFFX	0.00	0.25
80	Fidelity Freedom Income	Target-Date 2000-2014	FFAX	0.00	0.25
81	Fidelity Ginnie Mae	Intermediate Government	FGMNX	0.00	0.25
82	Fidelity Global Balanced	World Allocation	FGBLX	0.00	0.25
83	Fidelity Government Inc	Intermediate Government	FGOVX	0.00	0.25
84	Fidelity Growth & Income	Large Blend	FGRIX	0.00	0.25
85	Fidelity Growth Company	Large Growth	FDGRX	0.00	0.25
86	Fidelity High Income	High Yield Bond	SPHIX	0.00	0.25
87	Fidelity Independence	Large Growth	FDFFX	0.00	0.25
88	Fidelity Inflation-Protec	Inflation-Protected Bond	FINPX	0.00	0.25
89	Fidelity Inst S/I Gov	Short Government	FFXSX	0.00	0.25
90	Fidelity Interm Bond	Intermediate-Term Bond	FTHRXX	0.00	0.25
91	Fidelity Intl Cptl Apprc	Foreign Large Growth	FIVFX	0.00	0.25
92	Fidelity Intl Disc	Foreign Large Blend	FIGRX	0.00	0.25
93	Fidelity Intl Sm Cp	Foreign Small/Mid Growth	FISMXX	0.00	0.25
94	Fidelity Invst Grade Bond	Intermediate-Term Bond	FBNDXX	0.00	0.25
95	Fidelity Japan	Japan Stock	FJPNXX	0.00	0.25
96	Fidelity Japan Small Co	Japan Stock	FJSCXX	0.00	0.25
97	Fidelity Large Cap Stock	Large Growth	FLCSXX	0.00	0.25
98	Fidelity Latin America	Latin America Stock	FLATXX	0.00	0.25
99	Fidelity Leverage Co Stk	Mid-Cap Blend	FLVCXX	0.00	0.25
100	Fidelity Low-Priced Stk	Mid-Cap Blend	FLPSXX	0.00	0.25
101	Fidelity Magellan	Large Growth	FMAGXX	0.00	0.25
102	Fidelity Mid Cap Growth	Mid-Cap Growth	FMSGXX	0.00	0.25
103	Fidelity Mid Cap Value	Mid-Cap Value	FSMVXX	0.00	0.25
104	Fidelity Mid-Cap Stock	Mid-Cap Growth	FMCSXX	0.00	0.25
105	Fidelity Money Market	Money Market	SPRXXX	0.00	0.00
106	Fidelity Money: Rtmt Govt MM	Money Market	FGMXX	0.00	0.00
107	Fidelity Mtg Sec	Intermediate-Term Bond	FMSFX	0.00	0.25
108	Fidelity Nasdaq Comp Idx	Large Growth	FNCMXX	0.00	0.00

				Amounts Paid to AIG Retirement from Fund Family	
	Fund Name	Asset Category	Ticker Symbol or CUSIP Number	12b-1 Service Fee (%)	Record keeping / Admin Fees (%)
109	Fidelity New Markets Inc	Emerging Markets Bond	FN MIX	0.00	0.25
110	Fidelity New Millennium	Mid-Cap Growth	FMILX	0.00	0.25
111	Fidelity Nordic	Europe Stock	FNORX	0.00	0.25
112	Fidelity OTC	Large Growth	FOCPX	0.00	0.25
113	Fidelity Overseas	Foreign Large Blend	FOSFX	0.00	0.25
114	Fidelity Pacific Basin	Diversified Pacific/Asia	FPBFX	0.00	0.25
115	Fidelity Puritan	Moderate Allocation	FPURX	0.00	0.25
116	Fidelity Real Estate Inc	Specialty-Real Estate	FRIFX	0.00	0.25
117	Fidelity Real Estate Inv	Specialty-Real Estate	FRESX	0.00	0.25
118	Fidelity Rmt Money Mkt	Money Market	FRTXX	0.00	0.15
119	Fidelity Sel Defense&Aer	Mid-Cap Blend	FSDAX	0.00	0.25
120	Fidelity Sh-Term Bond	Short-Term Bond	FSHBX	0.00	0.25
121	Fidelity Small Cap Indep	Small Growth	FDSCX	0.00	0.25
122	Fidelity Small Cap Retire	Small Blend	FSCRX	0.00	0.25
123	Fidelity Small Cap Stock	Small Blend	FSLCX	0.00	0.25
124	Fidelity Southeast Asia	Pacific/Asia ex-Japan Stk	FSEAX	0.00	0.25
125	Fidelity Spar Ext Mkt Inv	Mid-Cap Blend	FSEM X	0.00	0.00
126	Fidelity Spar Intl Inv	Foreign Large Blend	FSIIX	0.00	0.00
127	Fidelity Spar Tot Mkt Inv	Large Blend	FSTM X	0.00	0.00
128	Fidelity Spar US Eq Inv	Large Blend	FUSEX	0.00	0.00
129	Fidelity Stock Selector	Large Growth	FDSSX	0.00	0.25
130	Fidelity Strat Div&Inc	Large Blend	FSDIX	0.00	0.25
131	Fidelity Strategic Inc	Multisector Bond	FSICX	0.00	0.25
132	Fidelity U.S. Bond Index	Intermediate-Term Bond	FBIDX	0.00	0.00
133	Fidelity Ultra-Short Bd	Ultrashort Bond	FUSEX	0.00	0.25
134	Fidelity US Treasury MM	Money Market	FDLXX	0.00	0.00
135	Fidelity Utilities	Specialty-Utilities	FIUIX	0.00	0.25
136	Fidelity Value	Mid-Cap Value	FDVLX	0.00	0.25
137	Fidelity Value Discovery	Large Blend	FVDFX	0.00	0.25
138	Fidelity Value Strategies	Mid-Cap Blend	FSLSX	0.00	0.25
139	Fidelity Worldwide	World Stock	FWWFX	0.00	0.25
140	FMA Sm Company Inv	Small Blend	FMAXX	0.00	0.15
141	FPA Crescent	Moderate Allocation	FPACX	0.00	0.00
142	Franklin SmMid Cap Gr A	Mid-Cap Growth	FRSGX	0.25	0.15
143	Janus Flexible Bond	Intermediate-Term Bond	JAFIX	0.00	0.25
144	Janus Worldwide	World Stock	JAWWX	0.00	0.25
145	JPMorgan Mid Cap Val Se	Mid-Cap Value	JMVSX	0.00	0.20
146	JPMorgan Sm Cap Eq Sel	Small Blend	VSEIX	0.00	0.20
147	Morgan Stan Ins Em Mkt P	Diversified Emerging Mkts	MMKBX	0.25	0.00

				Amounts Paid to AIG Retirement from Fund Family	
	Fund Name	Asset Category	Ticker Symbol or CUSIP Number	12b-1 Service Fee (%)	Record keeping / Admin Fees (%)
148	Morgan Stan Ins GIVIEq P	World Stock	MIGEX	0.25	0.00
149	Morgan Stan Ins MdGr P	Mid-Cap Growth	MACGX	0.25	0.00
150	Morgan Stan Ins SmCoGr P	Small Growth	MSSMX	0.25	0.00
151	Morgan Stan Inst CapGr P	Large Growth	MSEGX	0.25	0.00
152	MrgnStly InsPls CorFI P	Intermediate-Term Bond	MFXAX	0.25	0.00
153	Mutual Discovery A	World Stock	TEDIX	0.25	0.15
154	Mutual Shares A	Large Value	TESIX	0.25	0.15
155	NB Mid Cp Grw Tr	Mid-Cap Growth	NBMTX	0.10	0.25
156	Neuberger Ber Focus Tr	Large Blend	NBFCX	0.10	0.25
157	Neuberger Ber Soc Res Tr	Large Blend	NBSTX	0.10	0.25
158	Nubrgr Brmn Core Bond Inv	Intermediate-Term Bond	LBCNX	0.00	0.25
159	Old Mutual Growth Z	Mid-Cap Growth	OBHGX	0.00	0.00
160	Old Mutual Strategic Small Co Z	Small Growth	OSSCX	0.00	0.25
161	Oppenheimer Develop MktA	Diversified Emerging Mkts	ODMAX	0.25	0.25
162	PIMCO GI Bd (Unhedged) Ad	World Bond	PADMX	0.25	0.00
163	PIMCO High-Yield Admin	High Yield Bond	PHYAX	0.25	0.00
164	PIMCO Lg-Trm US Govt Adm	Long Government	PLGBX	0.25	0.00
165	PIMCO Low Duration Admin	Short-Term Bond	PLDAX	0.25	0.00
166	PIMCO Total Ret Admin	Intermediate-Term Bond	PTRAX	0.25	0.00
167	Pioneer Strategic Inc A	Multisector Bond	PSRAX	0.25	0.25
168	Rice Hall James MicroCap	Small Growth	RHJSX	0.00	0.00
169	Templeton Foreign A	Foreign Large Value	TEMFX	0.25	0.15
170	Templeton Foreign SmCo A	Foreign Small/Mid Value	FINEX	0.25	0.15
171	Templeton Glob Bond A	World Bond	TPINX	0.25	0.15
172	Templeton Growth A	World Stock	TEPLX	0.25	0.15
173	Templeton World A	World Stock	TEMWX	0.25	0.15
174	USAA Emerging Markets	Diversified Emerging Mkts	USEMX	0.00	0.00
175	USAA GNMA	Intermediate Government	USGNX	0.00	0.00
176	USAA Growth	Large Growth	USAAX	0.00	0.00
177	USAA Income	Intermediate-Term Bond	USAIX	0.00	0.00
178	WF Adv Common Stk Inv	Mid-Cap Blend	STCSX	0.25	0.10
179	WF Adv Discovery Inv	Mid-Cap Growth	STDIX	0.25	0.10
180	WF Adv Govt Secs Inv	Intermediate Government	STVSX	0.00	0.35
181	WF Adv Growth Inv	Large Growth	SGROX	0.00	0.35
182	WF Adv Large Cap Growth	Large Growth	STRFX	0.00	0.35
183	WF Adv Opportunity Inv	Mid-Cap Blend	SOPFX	0.00	0.35
184	SunAmerica Money Market <sup>1</sup>	Money Market	866919400	0.00	0.25
185	Charles Schwab PCRA	N/A	N/A	N/A	N/A
187	VALIC Fixed-Interest Option <sup>2</sup>				

<sup>1</sup> Investment of Plan forfeitures only.

<sup>2</sup> A VALIC group fixed unallocated annuity (policy form GFUA-398). Transfers from this annuity contract shall be subject to a contractually imposed 90-day "equity wash" limitation, meaning that transfers out of this Fixed-Interest Option may not occur to a "competing option," as defined in the annuity contract, for 90 days after such transfer from the Fixed-Interest Option. This fund will be the default investment option for the Plan for any contributions received on behalf of a participant who does not have investment elections on file with Service Provider.

AIG Retirement is the marketing name for the group of companies comprising AIG Retirement Advisors, Inc.; AIG Retirement Services Company; and The Variable Annuity Life Insurance Company; each of which is a subsidiary of American International Group, Inc.

**Appendix D**  
**to**  
**Service Provider Agreement**  
**Effective April 2, 2009**

**Variable Annuity Life Insurance Company (VALIC)**  
**Enhancements to Service Provider Agreement**  
**for**  
**Erie County Deferred Compensation Plan**

1. The declared interest rate for the VALIC Fixed Interest Option included in Employer's investment line-up will continue to be 0.25% above VALIC's standard interest crediting rate.
2. Revenue sharing of up to \$10,000 per calendar year will be provided by VALIC to cover plan expenses deemed reasonable by Employer.
3. The Guided Portfolio Services (GPS) Portfolio Advisor service will be provided by VALIC at no charge to those participants electing independent investment advice. The optional GPS Portfolio Manager service will be provided by VALIC on a fee-basis to those participants electing the managed accounts option.