

**THE POWER AUTHORITY  
OF THE STATE OF NEW YORK  
EMPLOYEES' SAVINGS PLAN**

**As Amended and Restated as of**

**January 1, 2015**

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**THE POWER AUTHORITY OF THE STATE OF NEW YORK  
EMPLOYEES' SAVINGS PLAN**

**WHEREAS**, the Employer heretofore established a plan and trust effective July 24, 1985 (hereinafter the "Effective Date") known as "The Power Authority of the State of New York Savings Plan" (herein referred to as the "Plan") in recognition of the contributions made to its successful operation by its employees and for the exclusive benefit of its Eligible Employees; and

**WHEREAS**, effective November 30, 1993, the Employer, in accordance with the provisions of the Plan pertaining to amendments, amended and restated the Plan in its entirety and further amended the Plan as of November 29, 1994, with the effective dates noted herein: and

**WHEREAS**, effective January 1, 2001, the Employer, in accordance with the provisions of the Plan pertaining to amendments, amended and restated the Plan in its entirety; and

**WHEREAS**, effective January 1, 2009, the Employer, in accordance with the provisions of the Plan pertaining to amendments, amended and restated the Plan in its entirety; and

**WHEREAS**, under the terms of the Plan, the Employer has the ability to amend the Plan at any time;

**NOW THEREFORE**, effective as of January 1, 2015 or as of the effective dates stated in the applicable amendments, except as otherwise provided, the Employer, in accordance with the provisions of the Plan pertaining to amendments, further amends and restates the Plan, as follows:

**Article 1**

**Definitions**

- 1.01** "Accounts" means the Employer Account, the Member Account, the Deferred Account, the Qualified Non-Elective Contribution Account, Discretionary Employer Contribution Account, the Rollover Account and the Roth Elective Deferral Account.
- 1.02** "Beneficiary" means any person, persons or entity named by a Member by written designation filed with the Committee to receive benefits payable in the event of the Member's death. If no such designation is in effect at the time of death of the Member, or if no person, persons or entity so designated shall survive the Member, the Beneficiary shall be deemed to be the person(s) provided in Section 2.06 of this Plan.
- 1.03** "Board" means the Board of Trustees of the Power Authority of the State of New York.
- 1.04** "Break in Service" means the failure of a Member to complete more than 500 Hours of Service during any vesting computation period.
- 1.05** "Code" means the Internal Revenue Code of 1986, as amended.

**1.06** “Committee” or “Plan Committee” means the persons named by the Board to administer and supervise the Plan as provided in Article 10.

**1.07** “Compensation”

- (a) Compensation with respect to any Member for purposes of contributions under Sections 3.01, 3.02(a) and (b) and 3.03 means such Member’s wages, including differential wage payments as described in Code §3401(h), if any, paid to the Member while performing military service, and, for purposes of contributions under Section 3.02(c) and (d), means such Member’s wages exclusive of overtime, bonuses, commissions and premiums.
- (b) For purposes of this section, the determination of Compensation shall be made by
  - (i) excluding (even if includable in gross income) reimbursements or other expense allowances, fringe benefits (cash or noncash), moving expenses, deferred compensation and welfare benefits; and
  - (ii) including all elective contributions that are made by the Employer on behalf of its employees that are not includable in gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h) and 403(b), compensation deferred under Code §457 and employee contributions under Code §414(h) that are treated as employer contributions.
- (c) With respect to all Members other than those who would qualify as “eligible participants” (within the meaning of Section 13212(d)(3) of the Revenue Reconciliation Bill of 1993), effective for Plan Years beginning after December 31, 1993, the Compensation taken into account by the Plan for any such Member shall not exceed the dollar limit specified in Code §401(a)(17) plus any cost-of-living adjustments authorized by, and calculated in accordance with the requirements specified in, the Code and applicable Regulations. For all Members who qualify as “eligible participants”, the transition rule specified in Section 13212(d)(3) of the Revenue Reconciliation Bill of 1993 shall be applicable.
- (d) For limitation years beginning in 2008, payments made within 2½ months after severance from employment (within the meaning of §401(k)(2)(B)(i)(1)) will be Compensation within the meaning of Code §415(c)(3) if they are payments that, absent a severance from employment, would have been paid to the employee while the employee continued in employment with the employer and are regular compensation for services during the employee’s regular working hours, compensation for services outside the employee’s regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation, and/or payments for accrued bona fide sick, vacation or other leave, but only if the employee would have been able to use the leave if employment had continued. Any payments not described above are not considered Compensation if paid after severance from employment, even if they

are paid within 2½ months following severance from employment, except for payments to an individual who does not currently perform services for the employer, by reason of qualified military service (within the meaning of Code §414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

- 1.08 “Deferred Account”** means the account into which shall be credited the Deferred Cash Contributions made on a Member’s behalf and earnings on those contributions.
- 1.09 “Deferred Cash Contributions”** means all amounts contributed pursuant to Section 3.01 of the Plan, excluding any such amounts distributed as Excess Annual Additions under 3.07.
- 1.10 “Designated Beneficiary”** means the individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-1, Q&A-4.
- 1.11 “Discretionary Employer Contributions”** means discretionary contributions (other than Employer Matching Contributions) made by the Employer pursuant to paragraph (d) of Section 3.02 and allocated (as applicable) to a Member’s Discretionary Employer Contribution Account.
- 1.12 “Discretionary Employer Contribution Account”** means the account into which shall be credited the Discretionary Employer Contributions made on a Member’s behalf pursuant to Section 3.02 and designated as Discretionary Employer Contributions and earnings on those contributions.
- 1.13 “Distribution Calendar Year”** means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant’s required beginning date. For distributions beginning after the Participant’s death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 9.03(a)(ii). The required minimum distribution for the Participant’s first distribution calendar year will be made on or before the Participant’s required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant’s required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- 1.14 “Eligible Employee”** means all Employees except Employees who are Leased Employees within the meaning of Code §414(n)(2) and §414(o)(2) shall not be eligible to participate in this Plan. In addition, any independent contractors or persons who are treated by the Employer as independent contractors or who are otherwise classified as not being employees of the Employer, regardless of their actual status, shall not be considered as Eligible Employees.

Effective January 1, 2016, "Eligible Employee" means all Employees except Employees who are Leased Employees within the meaning of Code §414(n)(2) and §414(o)(2) shall not be eligible to participate in this Plan. In addition, individuals who are classified as temporary employees who are scheduled to work fewer than 1,000 Hours of Service in a Plan Year are excluded from participation in the Plan. In the event a temporary employee completes 1,000 Hours of Service in a Plan Year, such employee shall become an Eligible Employee at the end of such Plan Year.

- 1.15 **"Employee"** means a person employed by the Employer who receives stated compensation from the Employer other than a pension, severance pay, retainer, or fee under contract but excluding any person (1) in a collective bargaining unit or (2) otherwise employed under a student, casual or summer classification. Employee shall include Leased Employees within the meaning of Code §414(n)(2) and §414(o)(2) unless such Leased Employees are covered by a plan described in Code §414(n)(5) and such Leased Employees do not constitute more than 20% of the non-highly compensated workforce.

Effective January 1, 2016, "Employee" means a person employed by the Employer who receives stated compensation from the Employer other than a pension, severance pay, retainer, or fee under contract but excluding any person who is (1) in a collective bargaining unit; (2) a temporary employee paid through a staffing agency, unless such employee constitutes a "Leased Employee" within the meaning of Code §414(n)(2) and §414(o)(2); (3) otherwise employed under a student, casual or summer classification; or (4) treated by the Employer as an independent contractor or who is otherwise classified as not being an employee of the Employer, regardless of his or her actual status. Employee shall include Leased Employees within the meaning of Code §414(n)(2) and §414(o)(2) unless such Leased Employees are covered by a plan described in Code §414(n)(5) and such Leased Employees do not constitute more than 20% of the non-highly compensated workforce.

- 1.16 **"Employer"** means the Power Authority of the State of New York.
- 1.17 **"Employer Account"** means the account into which shall be credited the Employer Matching Contributions made on a Member's behalf pursuant to Section 3.02 and earnings on those contributions.
- 1.18 **"Enrollment Date"** means the first day of any calendar month.
- 1.19 **"Fund"** or **"Investment Fund"** means the separate funds in which contributions to the Plan are invested in accordance with Article 4.
- 1.20 **"Hour of Service"** means (a) each hour an Employee is paid, or entitled to payment, by the Employer for the performance of duties during the applicable computation period; (b) each hour an Employee is paid, or entitled to payment, by the Employer for a period of time in which no duties are performed (regardless of whether the employment relationship has terminated) for reasons other than performance of duties, such as vacation, holidays, illness, incapacity (including disability), layoff, jury duty, military

duty, or leave of absence during the applicable computation period; and (c) each hour for back pay awarded or agreed to by the Employer without regard to mitigation of damages. An Employee on maternity or paternity leave will be credited with each Hour of Service which would normally have been credited to such Employee but for such absence, or if the Plan Administrator is unable to determine such hours, 8 Hours of Service per day of such absence, but only in the year in which maternity or paternity leave begins if necessary to prevent a 1 year break in service, or, in any other case in the immediately following year.

However, (1) no more than 501 Hours of Service during a Plan Year will be credited to an Employee for any single continuous period in which such Employee does not perform any duties (whether or not such period occurs in a single computation period) or is on maternity or paternity leave; (2) an hour for which an Employee is paid, or entitled to payment, because of a period in which no duties are performed is not required to be credited to such Employee if such payment is made or due under a plan maintained solely to comply with applicable worker's compensation, or unemployment compensation or disability insurance laws; and (3) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for his medical or medically related expenses.

A payment will be deemed to be made by, or due from, the Employer, regardless of whether such payment is made by, or due from, the Employer directly, or indirectly through, among others, a trust fund or insurer to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate. Also, Hours of Service will be calculated and credited pursuant to Labor Regulations §2530.200b 2(b) and 2530.200b 2(c), which are incorporated herein by reference.

For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence by reason of the pregnancy of the individual, by reason of a birth of a child of the individual, by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or for purposes of caring for such child for a period beginning immediately following such birth or placement. The hours of Service credited under this paragraph shall be credited in the computation period in which the absence begins if the crediting is necessary to prevent a break in service in that period, or in all other cases in the following computation period. Nor more than 501 Hours of Service will be credited under this paragraph.

**1.21** **"Income"** means the income or loss allocable to Excess Deferrals (as defined in Section 3.08) which shall equal the sum of the allocable gain or loss for the Plan Year in which such excess amount is contributed and the allocable gain or loss for the period between the end of the applicable Plan Year and the date of distribution (the "gap period"). The Income allocable to such excess amounts for the applicable Plan Year and the gap period shall be calculated separately by multiplying the Income allocable to such excess amounts for the Plan Year and the gap period by a fraction, the numerator of which is the excess amount for the Plan Year and the denominator of which is the total



account balance of the Employee attributable to the applicable contributions as of the beginning of the Plan Year plus all applicable contributions for the Plan Year and for the gap period.

- 1.22 “Leased Employee”** means any person who, pursuant to an agreement between the Employer as the recipient of services (“recipient”) and any other person (“leasing organization”), has performed services for the recipient on a substantially full time basis for a period of at least one year and (i) such services are performed under the primary direction or control of the recipient. Contributions or benefits provided to a Leased Employee by the leasing organization which are attributable to services performed for the recipient shall be treated as provided by the recipient. A Leased Employee shall not be considered an Employee of the recipient if s/he is covered by a qualified plan maintained by the leasing organization which meets the requirements of Code §414(n) and all Leased Employees do not constitute more than 20% of the recipient’s non-highly compensated work force.
- 1.23 “Life expectancy”** means the Life expectancy as computed by use of the Single Life Table in §1.401(a)(9)-9 of the Treasury regulations.
- 1.24 “Member”** means any person included in the membership of the Plan as provided in Article 2.
- 1.25 “Member Account”** means the account into which shall be credited the contributions made by a Member pursuant to Section 3.03 and earnings on those contributions.
- 1.26 “Net Revenues”** means accumulated net revenues and current net revenues of the Employer as determined at the end of the Employer’s fiscal year in accordance with generally accepted accounting principles.
- 1.27 “Normal Retirement Age”** means the later of the date a Member attains age 62 or the fifth anniversary of the Member’s date of hire.
- 1.28 “Participant’s Account Balance”** means the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- 1.29 “Plan Year”** means the 12 month period beginning on January 1 and ending on December 31.
- 1.30 “Qualified Non-Elective Contribution Account”** means the account maintained to record Qualified Non-Elective Contributions made on a Member’s behalf.

- 1.31 **“Qualified Non-Elective Contributions”** means the discretionary contributions, if any, (other than Employer Matching Contributions) made by the Employer and allocated (as applicable) to a Member’s Qualified Non-Elective Contribution Account or Discretionary Employer Contribution Account.
- 1.32 **“Regulations”** means the applicable income tax regulations, as promulgated by the Secretary of the Treasury or his delegate, and as amended from time to time.
- 1.33 **“Required Beginning Date”** means the date specified in the Plan when distributions under Code §401(a)(9) are required to begin.
- 1.34 **“Rollover Account”** means the account into which shall be credited the contributions made by a Member pursuant to Section 3.04 which consists of any cash previously received by that Member from a qualified plan which constitutes a rollover amount under Code §402(a)(5) or from a conduit individual retirement account, and earnings on those contributions.
- 1.35 **“Roth Elective Deferrals”** means all amounts contributed pursuant to Section 3.10 of the Plan, excluding any such amounts distributed as Excess Annual Additions under 3.07.
- 1.36 **“Roth Elective Deferral Account”** means the account into which shall be credited the Roth Elective Deferrals made on a Member’s behalf, and earnings on those contributions.
- 1.37 **“Spouse”** means a person to whom a Participant is married under applicable law. Effective June 26, 2013, the term “Spouse” includes an individual married to a person of the same sex if the individuals are lawfully married under state law. A marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex will be recognized even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. The term “Spouse” does not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term “marriage” does not include such formal relationships. For purposes of this Section, the term “state” means any domestic or foreign jurisdiction having the legal authority to sanction marriages. A former Spouse will be treated as a Spouse to the extent provided under a qualified domestic relations order as described in Section 414(p) of the Code.
- 1.38 **“Trustee”** means the trustee by whom the funds of the Plan are held as provided in Article 11.
- 1.39 **“Valuation Date”** means each day during which the Trustee is opened for business or any other date the Committee or the Trustee deems necessary to facilitate the administration of the Plan.
- 1.40 **“Year of Service”** means, for eligibility purposes, the twelve (12) month period commencing on the date an Employee first completes an Hour of Service and each

anniversary thereof during which an Employee is credited with at least one thousand (1,000) Hours of Service. Years' of Service shall also include service of Employees with respect to employment by the State of New York (Executive, Legislative or Judicial Branches), a civil division thereof, another New York State public benefit corporation, or such other authority or division as may be approved by the Employer from time to time pursuant to its Employee Policy for Transfer or Re-employment in public service as the same shall be adopted or amended from time to time, provided that the Employee is employed by the Employer within one year of termination of service with such qualifying entity, or the Employee is vested with the New York State Retirement System and accruing service in such Retirement System at the time of employment by the Employer. There shall be no duplication of credit for Years of Service with respect to service credit provided to eligible Employees under the provisions hereof.

## **Article 2**

### **Eligibility and Membership**

#### **2.01 Eligibility**

Each Eligible Employee may become a Member on any Enrollment Date on or immediately after his/her 21<sup>st</sup> birthday.

#### **2.02 Membership**

Each Eligible Employee may become a Member by filing with the Employer a form or forms as prescribed by the Committee on which the Employee:

- (a) makes the election described in Section 3.01;
- (b) authorizes the Employer to reduce his/her Compensation;
- (c) designates the percentage of Compensation s/he wishes to contribute under the Plan, if any;
- (d) authorizes the Employer to make regular payroll deductions for the amount s/he wishes to contribute;
- (e) makes an investment election; and
- (f) names a Beneficiary.

To become a Member effective as of a given Enrollment Date, an Employee must file all required forms by the 15<sup>th</sup> day of the month preceding the desired Enrollment Date.

A Member who becomes eligible to receive an Employer Matching Contribution shall be enrolled for this purpose on the Enrollment Date following the completion of the requirements for such Employer Matching Contribution.

### **2.03 Reemployment of Former Employees/Members**

Any person reemployed by the Employer as an Employee, who was previously a Member or who was previously an Eligible Employee, shall be immediately eligible to become a Member of the Plan upon the filing of a form in accordance with Section 2.02.

### **2.04 Change in Employment Status**

A Member who ceases to be an Eligible Employee shall continue to be a Member of the Plan until such time as all amounts in his/her Accounts are forfeited or distributed pursuant to the terms of this Plan. Any such Member shall continue to have the authority to direct the investment of his/her Accounts in accordance with Article 4 of this Plan, but shall not be eligible to make contributions or receive allocations of Deferred Cash Contributions, Employer Matching Contributions or any other Employer Contributions.

### **2.05 Military Service and Reemployment**

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

### **2.06 Designation of Beneficiaries**

Each Member may designate any person or persons (who may be named contingently or successively) to receive any benefits payable under this Plan upon or after his/her death. Any such designation may be revoked or changed at any time by the Member by filing a new designation, in the form prescribed by the Committee. Each designation shall revoke all prior designations and shall be effective only if the Member files it, and the Employer or its designee acknowledges receipt of such designation, during the Member's lifetime. In the event of a Member's death, if no valid Beneficiary designation has been made, or the Beneficiaries named have not survived the Member, then the Committee shall direct the Trustee to distribute such benefit to the Member's Spouse, if then living. If there is no surviving Spouse, then the benefit shall be paid to the Member's then living descendants, if any, per stirpes, otherwise to the Member's then living parent or parents, equally, otherwise to the Member's estate. If distribution is to be made to a minor, the Committee may direct that such distribution be paid to the legal guardian, or if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his/her residence. Any payments made in accordance with this paragraph shall fully discharge the Trustee, the Employer and the Plan from further liability on account thereof.

## Article 3

### Contributions

#### **3.01 Deferred Cash Contributions**

- (a) Prior to the date an Employee becomes a Member, subject to the limitations of Section 3.07, an Employee may, by written election filed with the Committee, elect to have his/her subsequent Compensation reduced by an amount not to exceed the amounts permitted under Sections 3.01(d) and 3.07 below, and have that amount contributed to the Plan by the Employer out of its Net Revenues as Deferred Cash Contributions in a manner to be determined by the Committee. The Deferred Cash Contributions shall be promptly paid to the Trustee and allocated to the Member's Deferred Account.
- (b) In the event that Deferred Cash Contributions made under this section are returned in accordance with Section 3.07, the elections to reduce Compensation which were made by Members shall be void to the extent such contributions are returned, retroactively to the beginning of the period for which those contributions were made.
- (c) The Committee shall fix the minimum and maximum percentage of Compensation that may be elected under paragraph (a) of this section. Effective for Plan Years beginning after December 31, 2001, the minimum shall be 1% and the maximum shall be 30%, with all elections in multiples of 1%.
- (d) No participant shall be permitted to have Deferred Cash Contributions made under this plan, or any other qualified plan maintained by the employer during any taxable year, in excess of the dollar limitation contained in Code §402(g) in effect for such taxable year, except to the extent permitted under Section 3.09 of this Plan, if applicable.

#### **3.02 Employer Contributions**

- (a) Subject to Section 3.07, the Employer may contribute on account of any Plan Year, on behalf of each Member who was employed on or before December 31, 1995 and who makes the Deferred Cash Contribution election described in Section 3.01, an Employer Matching Contribution of 50 percent of each one percent (or fraction thereof) of Compensation contributed annually pursuant to Section 3.01 up to a maximum of six percent (or a greater percentage as may be fixed by the Employer from time to time). The maximum Employer Matching Contribution allowed per Member shall be three percent of annual Compensation or a greater percentage as may be fixed by the Employer from time to time. All such Employer Matching Contributions shall be credited to the Member's Employer Account. Each Member who is employed on or after January 1, 2008 and who makes the Deferred Cash Contribution election described in Section 3.01, may receive the Employer Matching Contribution described above.

- (b) Subject to the limitation on Annual Additions described in Section 3.07, for any Plan Year beginning on or after January 1, 1987, the Employer may make a discretionary contribution to the Plan in such amount and to such Member(s) as the Employer may determine within twelve months after the end of any Plan Year. Any such discretionary contribution shall be (1) deposited in the Member's Qualified Non-Elective Contribution Account and (2) treated as a Qualified Non-Elective Contribution. A Member shall have a non-forfeitable interest in his Qualified Non-Elective Contribution Account at all times. Qualified Non-Elective Contributions shall be subject to the distribution restrictions specified in Code §401(k)(2)(B) but shall not be distributable in the event of hardship.
- (c) Effective January 1, 1994, the Employer may, in its sole discretion, elect to make a discretionary contribution to the Plan on behalf of all Eligible Employees who are still Employees on the last day of the Plan Year. A uniform and fixed sum set by the Employer shall be allocated to the Discretionary Employer Contribution Account of each Eligible Employee during any Plan Year in which the Employer, at its sole discretion, determines that it has achieved or exceeded its revenue goals for Plan contribution purposes, or achieved or exceeded such other performance measures as it may determine. All such discretionary contributions shall be treated as Qualified Non-Elective Contributions, shall be subject to the distribution restrictions specified in Code §401(k)(2)(B), and shall not be distributable in the event of hardship.
- (d) Effective January 1, 1996, the Employer may, in its sole discretion, elect to make a discretionary contribution to the Plan on behalf of all Eligible Employees who are still Employees on the last day of the Plan Year. The Employer shall determine the amount of the contribution and this determination shall be binding. The discretionary contribution established by the Employer shall be allocated in the ratio that the Compensation of each Member (as defined in Section 1.07(a)) bears to the total Compensation of all Members, and will be allocated to the Discretionary Employer Contribution Account of each Eligible Employee who has met the requirements described in this Section 3.02(d). All such discretionary contributions may be treated as either Discretionary Employer Contributions or as Qualified Non-Elective Contributions and, if treated as Qualified Non-Elective Contributions shall be subject to the distribution restrictions specified in Code §401(k)(2)(B) and shall not be distributable in the event of hardship.

### **3.03 Member Contributions**

Subject to the limitations specified in Section 3.07, a Member may elect to make contributions of not less than 1% and not more than 10% of his/her Compensation while a Member, in multiples of 1% as elected by the Member, provided that the aggregate amount of Member Contributions and Deferred Cash Contributions elected in a Plan Year may not exceed 30% of the Member's Compensation, with the maximum Member Contributions remaining at 10%. The Committee may fix lower maximums for certain Employees if necessary to satisfy the requirements of Sections 3.07.

Member Contributions shall be made through payroll deduction in a manner to be determined by the Committee and shall be promptly paid to the Trustees for deposit in the Member Account. No Employer Matching Contributions shall be made with respect to any Member Contributions to the Plan.

### **3.04 Rollover Contributions**

With the permission of the Committee and without regard to any limitations on contributions set forth in Section 3.07 or limitations on Member Contributions set forth in Section 3.03, the Plan may receive from a Member any cash previously received by that Member from (1) a qualified plan which constitutes a rollover amount under Code §402(c), either directly or within 60 days after such receipt, (2) a conduit individual retirement account which contains no assets other than those attributable to a “qualifying rollover amount” as defined in Code §402(c), (3) an annuity contract described in Code §403(b), and (4) an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The rollover contributions shall be paid to the Trustee as soon as practicable and shall be deposited in a Rollover Account which shall be invested in the Investment Funds in accordance with a Member’s investment election for the Rollover Account. If the Member fails to make a specific election designating the Investment Funds into which such monies shall be deposited, the rollover amount shall be deposited in the Investment Funds in accordance with the Member’s current investment election. A rollover contribution shall be fully vested at all times, shall not be subject to forfeiture for any reason, and may not be withdrawn until at least two years after it was made to the Plan; thereafter a withdrawal of rollover contributions shall be treated as a withdrawal pursuant to Sections 7.03 and 7.04. Regardless of anything in the Plan to the contrary, the Plan will accept a rollover contribution to a Roth Elective Deferral Account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Code §402A(e)(1) and only to the extent the rollover is permitted under the rules of Code §402(c). A Roth rollover account shall be maintained separately from a non-Roth rollover account but shall be deemed, for purposes of the Plan, to be a Rollover Account.

### **3.05 Change in Contributions**

The percentages of Compensation designated by a Member under Sections 3.01 and 3.03 shall automatically apply to increases and decreases in the Member’s Compensation. Subject to the provisions of Sections 3.01 and 3.03, a Member may change the percentage of his/her authorized payroll deduction or reduction by either (1) giving at least 30 days’ prior written notice to the Committee or its designee, (2) providing telephone notice to the Committee or its designee during any day on which the Committee or its designee, as applicable, are opened for business or (3) providing notice to the Committee or its designee by whatever electronic and/or digital means become available to facilitate the implementation of the Plan. The changed percentage shall become effective as of the first pay period beginning after the expiration of the notice period.

### **3.06 Suspension of Contributions**

- (a) A Member may suspend his/her contributions under Section 3.03 and/or revoke his/her election under Section 3.01 by giving at least 30 days' prior written notice to the Committee or its designee. The suspension or revocation shall become effective as of the first pay period after the expiration of the notice period.
- (b) A Member who has suspended his/her contributions may apply to have them resumed as soon as practicable on or after the first pay period following the expiration of the notice period. A Member who has revoked his/her election may apply to the Committee to have his/her Compensation reduction resumed as soon as practicable on or after the first pay period following the expiration of the notice period.

### **3.07 Maximum Annual Additions**

Notwithstanding anything contained in this section to the contrary, the limitations, adjustments and other requirements prescribed in this section shall at all times comply with the provisions of Code §415 and the Regulations thereunder, the terms of which are specifically incorporated herein by reference.

- (a) The Annual Additions to a Member's Account for any Plan Year, which shall be considered the "limitation year" for purposes of Code §415, when added to the Member's Annual Addition for that Plan Year under any other qualified defined contribution plan of the Employer, shall not exceed an amount which is equal to the lesser of (1) 100% of the Member's Compensation (as defined in Code §415(c)(3) and Reg. §1.415-2(d) or successor provisions) for that Plan Year, determined after any reduction of Compensation for Deferred Cash Contributions pursuant to Section 3.01, or (2) \$40,000, as adjusted pursuant to Code §415(d) and its applicable Regulations.
- (b) For purposes of this section, the "Annual Additions" to a Member's Accounts under this Plan, or any other qualified defined contribution plan maintained by the Employer, shall be the sum of
  - (i) the total of "Employer Contributions" (as defined in Reg. §1.415-6(b)(2), including Deferred Cash Contributions, by the Employer;
  - (ii) Member contributions; and
  - (iii) forfeitures, if applicable, that have been allocated to the Member's Accounts under this Plan or his/ her accounts under any other such qualified defined contribution plan.

For purposes of this section, the transfer of funds from one qualified plan to another is not an Annual Addition. Also, the following shall not be considered as Member contributions: rollover contributions (as defined in



Code §§402(c), 403(a)(4), 403(b)(8) and 408(d)(3)) and repayments of loans made to Members from the Plan.

- (c) If the Annual Additions computed solely with respect to this Plan exceed the limitations of this Section, the excess Annual Additions shall be corrected by use of the Employee Plans Compliance Resolution System or any other correction method permitted by law. If the Annual Additions exceed the limitations of this Section as a result of aggregating the additions to this Plan and other defined contribution plans of the Employer and any affiliated company, the Committee shall reduce the contributions to this Plan to comply with the limitations of this Section.
- (d) If contributions that would otherwise be contributed or allocated to a Member's Accounts would cause the Annual Additions for the limitation year to exceed the maximum permissible amount specified in this section, the amounts contributed or allocated will be reduced so that the Annual Additions for the limitation year will equal the maximum permissible amount.

For purposes of this section, "Member's Compensation" shall mean the Member's wages, including differential wage payments as described in Code §3401(h), salaries, fees for professional service and other amounts for personal services actually rendered in the course of employment with the Employer to the extent that the amounts are includible in gross income (including, but not limited to, fringe benefits, reimbursements and expense allowances).

- (e) This definition of Member's Compensation does not include amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Member), or contributions made by an Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Code §403(b) (whether or not the contributions are excludible from the gross income of the Member). Compensation includes Elective Contributions.
- (f) Elective Contributions are amounts excludible from the Member's gross income under Code §§125, 132(0)(4), 402(e)(3), 402(h)(2), 403(b), 408(p) or 457, and contributed by the Employer, at the Member's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a Code §401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code §457 plan. Notwithstanding the preceding sentence, amounts described in Code §132(f)(4) are not Elective Contributions until Plan Years beginning after January 1, 2001.

### **3.08 Excess Deferrals**

- (a) A Member's Deferred Cash Contribution under this Plan, together with all other elective deferrals (as defined in Reg. §1.402(g)-1(b)) under another qualified cash or deferred arrangement (as defined in Code §401(k)), a simplified employee pension (as defined in Code §408(k)), an annuity contract under Code §403(b) on

a salary reduction basis (within the meaning of Code §3121(a)(5)(D)), a deferred compensation plan under Code §457, or a trust described in Code §501(c)(18), shall not exceed, during any taxable year of the Member, the amount specified in Section 3.01(d) or such other applicable amount as may be specified in the Code or Regulations (any such excess of such amount hereinafter referred to an "Excess Deferral"). If a Member's total Deferred Cash Contribution to this Plan, together with all other elective deferrals under all other plans maintained by the Employer, results in an Excess Deferral, a Member will be deemed to have notified the Committee of such Excess Deferral which shall then be distributed in a manner consistent with Section 3.08(b).

- (b) In the event of an Excess Deferral, the Member may, not later than March 1 following the close of the Member's taxable year; notify the Committee of such Excess Deferral and request that his Deferred Cash Contributions under this Plan be reduced by an amount specified by the Member. In such event, the Committee may direct the Trustee to distribute such Excess Deferral, together with any Income (or minus any loss) allocable thereto through the end of the Plan Year, to the Member not later than April 15 following the calendar year to which the Excess Deferral is attributable. Excess Deferrals that are distributed after April 15 are includable in the Member's gross income in both the taxable year in which the Excess Deferral is deferred and the taxable year in which it is distributed. Any distribution of less than the entire amount of Excess Deferral and Income shall be treated as a pro rata distribution of Excess Deferral and Income.
- (c) All distributions made on or before the last day of the Member's taxable year must satisfy each of the following requirements: (1) the distribution must be made after the date on which the Plan received the Excess Deferral, (2) the Member must designate the distribution as an Excess Deferral, provided that a Member shall be deemed to have made such a designation if such excess arises from Deferred Cash Contributions made to plans of the Employer, and (3) the Plan must designate the distribution as a distribution of Excess Deferrals.
- (d) Any distribution made pursuant to this section shall be made first from unmatched Deferred Cash Contributions and thereafter, from Deferred Cash Contributions which are matched. Employer Matching Contributions which relate to such Excess Deferrals shall be forfeited.
- (e) Notwithstanding Section 3.08(a) above, an Eligible Employee's Excess Deferrals shall be reduced, but not below zero, by any distribution or re-characterization of Excess Contributions for the Plan Year beginning with or within the taxable year of the Eligible Employee.
- (f) Excess Deferrals distributed in accordance with Reg. §1.402(g)-1(e)(2) or (3) shall not be treated as Annual Additions under the Plan.

### **3.09 Catch-Up Contributions**

All Members who will have attained age 50 before the close of a Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Code §414(v). Such catch-up contributions shall not be taken into account for purposes of the required limitations of Code §§402(g) and 415. The Plan shall not be treated as failing to satisfy the requirements of Code §§401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416, as applicable, by reason of the making of such catch-up contributions. No Employer Matching Contributions shall be made with respect to any such catch-up contributions to the Plan. Catch-up contributions shall be made in the same manner as Deferred Cash Contributions by a written election filed with the Committee and in accordance with such procedures established by the Committee.

### **3.10 Roth Elective Deferrals.**

- (a) A Roth Elective Deferral is a Deferred Cash Contribution that is designated irrevocably by the Member at the time of the deferral election as a Roth Elective Deferral. Any Roth Elective Deferral shall be made instead of all or a portion of the before-tax savings deposits the Member is otherwise eligible to make under the Plan and shall be treated by the Employer as includible in the Member's income at the time the Member would have received the amount in cash if the Member had not made a deferral election. Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Deferred Cash Contributions.
- (b) As of January 1, 2008, the Plan will accept Roth Elective Deferrals made by Members.
- (c) A Member's Roth Elective Deferral Account shall be allocated to a separate account maintained specifically for such deferrals, and contributions and withdrawals of Roth Elective Deferrals shall be credited and debited to the Roth Elective Deferrals Account maintained for each Member making such deferrals.
- (d) Regardless of anything in Section 9.04 to the contrary, a direct rollover of a distribution from a Roth Elective Deferral Account under the Plan will only be made to another Roth elective deferral account under an applicable retirement plan described in Code §402A(e)(1) or to a Roth IRA described in Code §408A and only to the extent permitted under the rules of Code §402(a).
- (e) In the case of excess contributions, a Member may designate the extent to which the excess amount is composed of pre-tax savings deposits and Roth Elective Deferrals but only to the extent such types of deferrals were made for the year. If the Member does not designate which type of elective deferrals are to be distributed, the Plan will distribute pre-tax elective deferrals first.

## Article 4

### Investment of Contributions

#### 4.01 Investment Fund Alternatives

- (a) Contributions to the Plan shall be invested, as directed by the Member, in one or more of the Investment Funds offered under any of the following options:
  - (i) Investment Contract Option – A Fund to be invested in one or more investment contracts issued by one or more insurance companies or financial institutions which will provide certain contractual guarantees against loss of principal and as to minimum interest.
  - (ii) Fixed Income Investment Option – A Fund or Funds to be invested generally in fixed obligations such as obligations of the United States government and federal agencies, state government and agencies, corporations, certificates of deposit of commercial banks, prime banker's acceptances, commercial paper and/or repurchase agreements.
  - (iii) Equity Investment Option – A Fund or Funds consisting generally of equity type securities, without regard to whether such investments pay dividends or other forms of return, including but not limited to, common stock or other securities or obligations convertible or exercisable into equity securities.

The Funds within each of the above investment options shall be selected by the Plan Committee. Each Fund may be a separate trust fund or may be part of any pooled investment fund, regulated investment company, common trust fund or index fund otherwise maintained by the Trustee or its affiliates.

- (b) Contributions to the Plan may also be invested in one or more Investment Funds offered in accordance with such additional investment option or options as the Plan Committee may, in its sole discretion, deem reasonable or advisable, such as, but not limited to, an Equity and Fixed Income Option which shall be a Fund or Funds consisting of equity and fixed obligations such as those contained in subparagraphs 2 and 3 of Subsection 4.01(a). The Fund or Funds within each such additional investment option shall be selected by the Plan Committee. Each Fund may be a separate trust fund or may be part of any pooled investment fund, regulated investment company, common trust fund or index fund otherwise maintained by the Trustee or its affiliates. The Committee may also designate other investment options which may be made available to Members, including, without limitation, making investment account options available for Members in which a wide or unlimited array of investment funds or vehicles are available to the Member based upon such Member's selection and as to which the Plan Committee does not make any selection other than as to the parameters of the investment account options being offered, if any.

- (c) Dividends, interest, and other distributions received on the assets held by the Trustee in respect to any Fund shall be reinvested in such Fund.

#### **4.02 Investment of Members' Accounts**

A Member shall make one investment election covering his/her Accounts in accordance with one of the following options:

- (a) 100% in one of the available Investment Funds;
- (b) in any combination of one or more of the Investment Funds allocated in multiples of 1%.

The investment selection of a Member shall apply uniformly to all of his/her Accounts. Contributions made by or on behalf of a Member shall be invested in the Fund(s) selected by the Member until the effective date of a new designation properly effected within the provisions of this Article 4.

#### **4.03 Responsibility for Investments**

Each Member is solely responsible for the selection of his/her investment option. The Trustee, the Committee, the Employer, and the officers, supervisors and other employees of the Employer are not empowered to advise a Member as to the manner in which his/her Accounts shall be invested. The fact that an Investment Fund is available to Members for investment under the Plan shall not be construed as a recommendation for investment in that Investment Fund.

#### **4.04 Change of Election**

A Member may change his/her investment election under Section 4.02 by either: (1) giving to the Committee or its designee such prior written notice as it shall require, (2) providing telephone notice to the Committee or its designee during any day on which the Committee or its designee, as applicable, are opened for business or (3) providing notice to the Committee or its designee by whatever electronic and/or digital means become available to facilitate the implementation of the Plan. The changed investment election shall become effective as soon as practicable after the receipt of such notice and shall be effective only with respect to subsequent contributions.

#### **4.05 Transfers Between Funds**

A Member may elect to transfer all or any portion of his or her Accounts between all Investment Funds (except that transfer of amounts from the Investment Contract Option shall be limited) by either: (1) giving to the Committee or its designee such prior written notice as it shall require, (2) by telephone notice to the Committee or its designee on any day during which the Committee or designee is opened for business or (3) providing notice to the Committee or its designee by whatever electronic and/or digital means become available to facilitate the implementation of the Plan. While transfer from the Fund(s) within the Investment Contract Option to other Fund(s) within the fixed

Investment Option cannot be made, transfers from any other Funds into the Fund(s) within the Investment Contract Option is permitted. The transfer or transfers shall be effective as soon as practicable after receipt of the written notice or within one business day after telephone notice, as applicable.

## **Article 5**

### **Valuation of Accounts**

#### **5.01 Valuation of Accounts**

On such Valuation Dates as the Committee deems advisable for the proper administration of the Plan, the Accounts of each Member will be adjusted by the Trustee to reflect any realized and unrealized gains or losses and income or expense of the Investment Fund(s) according to nondiscriminatory procedures uniformly applied based on the value of the Member's Accounts as of the preceding Valuation Date, adjusted in accordance with Section 5.02. The fair market value of each Investment Fund shall be determined by the Trustee and communicated to the Committee in writing. The Trustee's determination shall be final and conclusive for all purposes of this Plan.

#### **5.02 Adjustments to Accounts**

When determining the value of a Member's Accounts in an Investment Fund on a Valuation Date, the contributions made by the Member or the Employer to that Fund on behalf of the Member since the previous Valuation Date shall be credited to his/her Accounts; likewise, any withdrawals or distributions made by or on behalf of the Member shall be debited from his/her Accounts. The Accounts of a Member in each Investment Fund shall reflect the actual earnings of each Fund, including interest, dividends and changes in market value, on each Valuation Date.

#### **5.03 Member Statements**

At least once a year, each Member shall be furnished with a statement setting forth the value of his/her Accounts.

## Article 6

### Vested Portion of Accounts

#### **6.01 Vesting**

A Member shall at all times be 100 percent vested in, and have a non-forfeitable right to, his Member Account, Qualified Non-Elective Contribution Account, Discretionary Employer Contribution Account, Deferred Account and Rollover Account. Subject to the provision of this Plan, a Member shall become vested in and acquire a non-forfeitable right to his/her Employer Account at the rate of 20 percent for each Year of Vesting Service with the Employer, and will become 100 percent vested in and have a non-forfeitable right to his/her entire Employer Account at the end of five Years of Vesting Service or, if earlier, upon either his/her Normal Retirement Age or at the time of his/her death while employed by the Employer. Employer Matching Contributions forfeited in accordance with this section and Section 3.07 shall be applied to reduce Employer Matching Contributions that would otherwise be contributed in the Plan Year following the year in which the forfeitures occur. Notwithstanding the foregoing, prior to the transfer of a Member's account to the Savings Plan of Entergy Corporation and Subsidiaries, the unvested portion of the Member's account which is transferred to the Savings Plan of Entergy Corporation and Subsidiaries pursuant to Section 13.02 hereof, shall be fully vested as of the date of such transfer.

#### **6.02 Year(s) of Vesting Service**

An Employee's entire Period of Service as hereinafter defined shall be credited to the Employee as Years of Vesting Service. In computing total Years of Vesting Service, credit shall be granted for years and completed months of service, any fraction of a month being considered as one-twelfth of a year.

A "Period of Service" shall mean the period of time beginning on the day an Employee first performs an Hour of Service for the Employer and ending on his/her Employment Severance Date.

A Period of Service under this Plan shall also include:

- (a) any period during which the Employee is absent from work with the Employer after his/her Employment Severance Date if s/he returns to work with the Employer within the twelve-month period following the earlier of his/her Employment Severance Date and his/her most recent date of absence from employment for any reason, and
- (b) in the case of an Employee who terminates his/her employment with the Employer and who is later reemployed, the period beginning on the date on which s/he completes an Hour of Service for the Employer after his/her date of reemployment (exclusive of any period referred to in the preceding Clause (a)) and ending on a subsequent Employment Severance Date.

A Period of Service under this Plan shall not include any period between the first and second anniversaries of the date on which an Employee begins a period of absence from work with the Employer due to maternity or paternity reasons if such Employee's leave of absence for such reasons extends beyond such first anniversary.

Years of Service shall also include service of Employees with respect to employment by the State of New York (Executive, Legislative or Judicial Branches), a civil division thereof, another New York State public benefit corporation, or such other authority or division as may be approved by the Employer from time to time pursuant to its Employee Policy for Transfer or Re-employment in public service as the same shall be adopted or amended from time to time, provided that the Employee is employed by the Employer within one year of termination of service with such qualifying entity, or the Employee is vested with the New York State Retirement System and accruing service in such Retirement System at the time of employment by the Employer. There shall be no duplication of credit for Years of Service with respect to service credit provided to Eligible Employees under the provisions hereof.

### **6.03 Employment Severance Date**

An Employee's Employment Severance Date shall mean the earlier of (a) the date on which the Employee quits, is discharged, retires, or dies, and (b) the date that marks the first anniversary of the date on which the Employee is first absent from work with the Employer due to disability, vacation, leave, layoff or similar reason.

### **6.04 Cash-Out Distributions to Partially Vested Members/ Restoration of Forfeited Accrued Benefit**

- (a) Cash-Out Distribution. If, pursuant to Article 9, a partially-vested Member receives a cash-out distribution before he incurs 5 consecutive Breaks in Service ("Forfeiture Break in Service"), the cash-out distribution will result in an immediate forfeiture of the nonvested portion of the Member's accounts under the Plan derived from Employer contributions ("Forfeiture"). A partially-vested Member is a Member whose nonforfeitable percentage determined under Section 6.01 is less than 100%. A cash-out distribution is a distribution of the entire present value of the nonforfeitable percentage of the Member's accounts under the Plan.
- (b) Restoration and Conditions upon Restoration. A partially-vested Member who is re-employed by the Employer after receiving a cash-out distribution of the nonforfeitable percentage of the Member's accounts under the Plan may repay the Trustee the amount of the cash-out distribution attributable to Employer contributions, unless the Member no longer has a right to restoration by reason of the conditions of this Section 6.04(a). If a partially-vested Member makes the cash-out distribution repayment, the Plan Administrator, subject to the conditions of this Section 6.04(a), must restore the Member's account attributable to the Employer contributions to the same dollar amount as the dollar amount of the Member's accounts on the valuation date immediately preceding the date of the



cash-out distribution, unadjusted for any gains or losses occurring subsequent to that valuation date. Restoration of the Member's accounts includes restoration of all Code §411(d)(6) protected benefits with respect to that restored Member accounts, in accordance with applicable Treasury regulations. The Plan Administrator will not restore a re-employed Member's accounts under this paragraph if:

- (i) 5 years have elapsed since the Member's first re-employment date with the Employer following the cash-out distribution; or
  - (ii) The Member incurred a Forfeiture Break in Service (as defined above). This condition also applies if the Member makes repayment within the Plan Year in which he incurs the Forfeiture Break in Service and that Forfeiture Break in Service would result in a complete forfeiture of the amount the Plan Administrator otherwise would restore.
- (c) Time and Method of Restoration. If neither of the two conditions preventing restoration of the Member's accounts applies, the Plan Administrator will restore the Member's accounts as of the Valuation Date coincident with or immediately following the repayment. To restore the Member's accounts, the Plan Administrator, to the extent necessary, will allocate to the Member's accounts:
- (i) First, the amount, if any, of Member forfeitures the Plan Administrator would otherwise allocate under Section 6.01;
  - (ii) Second, the amount, if any, of the Fund net income or gain for the Plan Year; and
  - (iii) Third, the Employer contribution for the Plan Year to the extent made under a discretionary formula.

To the extent the amounts described in clauses (i), (ii) and (iii) are insufficient to enable the Plan Administrator to make the required restoration, the Employer must contribute, without regard to any requirement or condition of Section 3.02, the additional amount necessary to enable the Plan Administrator to make the required restoration. If, for a particular Plan Year, the Plan Administrator must restore the Member accounts of more than one re-employed Member, then the Plan Administrator will make the restoration allocations to each such Member's accounts in the same proportion that a Member's restored amount for the Plan Year bears to the restored amount for the Plan Year of all re-employed Members. The Plan Administrator will not take into account any allocation under this Section 6.04 in applying the limitation on allocations under Article 3.

- (d) 0% Vested Member. The deemed cash-out rule applies to a 0% vested Member. A 0% vested Member is a Member whose accounts derived from Employer contributions is entirely forfeitable and whose Deferred Cash Contribution Account is zero at the time of his separation from service. Under the deemed

cash-out rule, the Plan Administrator will treat the 0% vested Member as having received a cash-out distribution on the date of the Member's separation from service or, if the Member is entitled to an allocation of Employer contributions for the Plan Year in which he separates from service, on the last day of that Plan Year. For purposes of applying the restoration provisions of this Section 6.04, the Plan Administrator will treat the 0% vested Member as repaying his cash-out "distribution" on the first date of his re-employment with the Employer.

## **Article 7**

### **Withdrawals While Still Employed**

#### **7.01 Withdrawal of Member Contributions**

A Member may, no more than once in any Plan Year, elect to withdraw all or part of his/her Member Account. The minimum withdrawal shall be \$100, or the total value of the Member Account, if less. All such Member withdrawals shall be distributed in the following order as amounts therein are exhausted: first, all or part of the pre-1987 Member Contributions (excluding earnings); second, all or part of the post-1986 Member Contributions plus earnings on all Member Contributions. All distributions from a Member Account shall be calculated on a pro-rata basis for all post-1986 Member Contributions and earnings on all Member Contributions. No withdrawals may be made from a Member's Accounts, except as otherwise provided in this Article.

#### **7.02 Withdrawal of Employer Contributions**

A Member who has withdrawn the total amount available for withdrawal under Section 7.01 may, no more than once in any Plan Year, elect to withdraw all or part of that portion of his/her Employer Account in which s/he is vested and which is attributable to contributions made in Plan Years which commenced at least two years prior to the Plan Year of withdrawal, except that a Member who has attained age 59½ can withdraw the entire Employer Account in which s/he is vested without regard to the two year requirement. The minimum withdrawal shall be \$100, or the amount available under this section, if less.

#### **7.03 Withdrawal After Age 59½**

A Member who has withdrawn the total amount available for withdrawal under Sections 7.01 and 7.02 and who shall have attained age 59½ as of the effective date of any withdrawal pursuant to this section may, without penalty and no more than once in any Plan Year, elect to withdraw all or part of his/her Deferred Account, Qualified Non-Elective Account, Discretionary Employer Contribution Account and Rollover Account. The minimum withdrawal shall be \$100, or the value of these Accounts.

#### 7.04 Hardship Withdrawal

- (a) The Committee, at the election of the Member, shall direct the Trustee to distribute to any Participant in any one Plan Year up to the lesser of (i) 100% of the amounts in his/her Deferred Cash Account (excluding earnings accrued after December 31, 1988), Rollover Account and the vested portion of his/her Employer Account, or (ii) the amount necessary to satisfy the immediate and heavy financial need of the Member. Amounts contributed to a Member's Qualified Non-Elective and Discretionary Employer Contribution Accounts in accordance with Article 3 of this Plan may not be distributed on account of hardship. For purposes of this section, hardship is defined as an immediate and heavy financial need of the Member where such Member lacks other available resources. Withdrawals under this section shall be authorized only if the distribution is on account of: (1) expenses for medical care described in Code §213(d) previously incurred by the Member, his/her Spouse, or any of his/her dependents (as defined in Code §152) or necessary for these persons to obtain medical care; (2) the costs directly related to the purchase of a principal residence for the Member (excluding mortgage payments); (3) payment of tuition and related educational fees and room and board expenses for the next twelve months of post-secondary education for the Member, his/her Spouse, children or dependents; (4) payments necessary to prevent the eviction of the Member from his/her principal residence or foreclosure on the mortgage of the Member's principal residence; (5) funeral expenses of the Member's parent, Spouse, child or dependent; or (6) the costs directly related to the repair of the Member's principal residence.
- (b) No distribution shall be made pursuant to this section unless the Committee, based upon the Member's representation and such other facts as are known to the Committee, determines that all of the following conditions are satisfied: (1) the distribution is not in excess of the amount of the immediate and heavy financial need of the Member (the amount of the immediate and heavy financial need may include any amounts necessary to pay Federal, state or local income taxes or penalties reasonably anticipated to result from the distribution), and (2) the Member has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the Employer.
- (c) A Member who receives a hardship distribution under this Plan shall: (1) not be eligible to contribute to the Plan, the Employer's 457 Plan or any other Plan(s) maintained by the Employer for a period of six (6) months after the hardship distribution is made; and (2) in the taxable year immediately following the taxable year of the hardship distribution, be precluded from making Deferred Cash Contributions to this and all other Plans maintained by the Employer in excess of the applicable limit under Code §402(g) for that year minus the Member's Deferred Cash Contributions during the year of the hardship distribution.

## **7.05 Disability**

In the event that a Member, at any time prior to his/her retirement or other termination of employment with the Employer, shall become totally and permanently disabled, and if proof of such disability satisfactory to the Employer is furnished (which proof shall include a written statement from a licensed physician appointed or approved by the Employer) then such Member shall be entitled to receive the full vested value of his/her Accounts. For purposes of this section, total and permanent disability shall mean the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of at least twelve (12) months.

## **7.06 Domestic Relations Orders**

All rights and benefits provided to a Member in this Plan shall be subject to the rights afforded to any alternate payee under a domestic relations order. Notwithstanding any provision contained herein to the contrary, to the extent provided under the terms of a Qualified Domestic Relations Order (as defined in Code §414(p)(1)), any amount which becomes payable to an Alternate Payee (as defined in Code §414(p)(8)) may be paid to the Alternate Payee at any time after entry of the Qualified Domestic Relations Order even though the Member may not be entitled to payment under the Plan at such time, provided that the manner of payment is one which is available to the Member under the Plan. The Plan's obligation to the Participant and any Alternate Payee shall be fully discharged to the extent of any payments made pursuant to actions taken in accordance with this provision.

## **7.07 Procedures and Restrictions**

To make a withdrawal, a Member shall give written notice to the Committee. A withdrawal shall be made as soon as practicable upon receipt of such notice. The amount of the withdrawal shall be allocated on a pro-rata basis between all Investment Funds in which the Member's Accounts are invested. All payments to Members under this Article 7 shall be made in cash as soon as practicable.

# **Article 8**

## **Loans to Members**

### **8.01 Amount Available**

- (a) A Member may borrow, after (i) written or electronic application to the Committee or its designee, and (ii) approval by the Committee or its designee under such uniform rules as it shall adopt, up to 50% of his/her vested interest in his/her Accounts but not more than that amount which (when added to the outstanding balance of all other loans from the Plan to the Member) does not exceed the lesser of (1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Member during the one year

period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Member on the date on which such loan was made, or (2) one-half (½) of the present value of the non-forfeitable accrued benefit of the Member under the Plan. Notwithstanding the foregoing, loans of up to a total amount of \$10,000 may be made even though they exceed one-half of the non-forfeitable accrued benefit of the Member, so long as such loans do not exceed 90% of the Member's vested Account. The minimum loan shall be \$1,000. Only two loans may be made in any Plan Year.

- (b) The interest rate or rates to be charged on loans made during the Plan Year shall be reasonable as determined by the Committee and shall take into account interest rates currently in effect and such Federal and state rules and regulations as may be applicable thereto. The Committee shall not discriminate among Members in the matter of interest rates, but loans may bear different interest rates if granted or outstanding at different times, if the difference is justified by a change in general economic conditions, Federal or state requirements, or the terms of the particular loan.
- (c) The Member shall designate the Investment Fund(s) from which amounts may be withdrawn for any loan approved pursuant to paragraph (a) above, provided any amounts so withdrawn may not exceed the Member's non-forfeitable accrued benefit therein. All loan repayments shall be credited to a Member's Account(s) in accordance with the Member's most current investment authorization. The portion of the Member's Accounts, including the outstanding principal amount of note, equal to 110 percent of the amount of the loan outstanding, shall be pledged as security for the loan. No such amount shall be available for withdrawal under Article 7 except as permitted by the Committee. Payments of principal on the loan will reduce the amount of the outstanding loan. Such payments, together with the attendant interest payments, will be credited to the Member's Account(s) in accordance with the Member's most recent investment instructions.

## 8.02 Terms

In addition to such uniform non-discriminatory rules and regulations as the Committee may adopt, all loans shall comply with the following terms and conditions:

- (a) An application for a loan by a Member shall be made in writing or electronically or by telephone request, under uniform and nondiscriminatory procedures, to the Committee, whose action in approving or disapproving the application shall be final;
- (b) Each loan shall be evidenced by a promissory note payable to the Plan and shall provide for level amortization with payments made not less frequently than quarterly;
- (c) The period of repayment for any loan shall be arrived at by mutual agreement between the Committee and the Member, but that period shall not exceed five

years unless the loan is to be used in conjunction with the purchase of the principal residence of the Member;

- (d) Payments of principal and interest will be made by payroll deductions or in a manner agreed to by the Member and the Committee. Those payments will be in an amount sufficient to amortize the loan over the repayment period;
- (e) A loan may be prepaid in full, or in part, as of any date without penalty;
- (f) Unless specifically approved by the Committee under uniform rules applicable to all Members, only two loans may be outstanding at any given time. If a loan is not repaid in accordance with the terms contained in the promissory note and a default occurs, the Plan may execute upon its security interest in the Member's Accounts under the Plan to satisfy the debt; however, the Plan shall not levy against any portion of the outstanding loan attributable to amounts held in the Member's Accounts unless the Member fails to repay the entire loan outstanding within 60 days of the first day on which a total distribution (such as one attributable to the Member's termination of employment) could otherwise be made under the Plan.

## **Article 9**

### **Distribution of Accounts Upon Termination of Employment and Mandatory Distributions**

#### **9.01 Eligibility**

Upon the termination of employment with the Employer of a Member for any reason (involuntary or voluntary), the amount to the credit of a Member's Accounts determined as of the Valuation Date on or immediately after the date of termination of employment in which the Member is vested in accordance with Section 6.01 shall be distributed as provided in Section 9.02. Forfeitures resulting from the separation from employment with the Employer of employees who are less than 100 percent vested in their Employer Account will be used by the Employer to offset the cost of Employer Contributions.

#### **9.02 Method of Distribution**

- (a) If the value of a Member's vested balance in his/her Accounts is greater than \$1,000, and such amounts are "immediately distributable" for any reason other than death, the Member must consent to any such distribution. Amounts in a Member's Accounts are "immediately distributable" if it can be distributed to the Member prior to his/her attainment of the later of the Member's normal retirement age or age 62. The determination as to whether the \$1,000 amount is exceeded shall be determined as of the time of distribution.
- (b) All distributions shall be made soon as practicable after the date consent is received or the date of termination of employment, as applicable. Distributions

may be made in any of the following forms, as elected by the Member (or, in the case of the death of a Member, his or her Beneficiary).

- (i) A total or partial lump sum payment. The Plan Administrator may establish a minimum lump sum amount and may also establish a maximum number of partial distributions to be permitted in any Plan Year. Any partial lump sum payment shall be at least the minimum lump sum amount, if any, and the number of partial lump sum payments in any Plan Year may not exceed the maximum annual number of partial distributions, if any.
- (ii) Periodic monthly, quarterly, semi-annual or annual installment payments: provided, however, that a Member (or, in the case of the death of a Member, 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 Accounts in periodic monthly, quarterly, semi-annual or annual installment payments. Any installment payment shall be at least the minimum installment amount, if any. If the balance of the Member's Accounts is less than such minimum amount, then the payment will equal the total amount of the Member's Accounts. Installment payments may consist of (A) fixed amounts paid on each payment date as designated by the Member (or in the case of the death of a Member, his or her Beneficiary), or (B) formulaic amounts determined by the Plan Administrator, based on a fixed period designated by the Member (or in the case of the death of a Member, his or her Beneficiary), calculated by dividing the Member's Accounts on the date of the payment by the number of payments remaining during the fixed period.
- (iii) A Member (or, in the case of the death of a Member, his or her Beneficiary) who elects to receive installment payments, or who is currently receiving installment payments, may elect, subject to any limitations set forth by the Committee and in accordance with procedures established by the Plan Administrator, 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, if any; and provided further, that the number of such elections in any Plan Year may not exceed the maximum annual number of partial distributions, if any. Such lump sum payments shall not result in a discontinuation of subsequent installment payments; provided, however, that the amount of such subsequent payments may be redetermined in accordance with methods and procedures established by the Plan Administrator.
- (iv) For each distribution election under this Section, a Member (or, in the case of the death of a Member, his or her Beneficiary) shall designate the percentage of each distribution that will come from each of his or her Accounts, if the Plan Administrator so permits. For the avoidance of doubt, for purposes of the limitations and restrictions described in this Section, each distribution election made by a Member (or, in the case of the death of a

Member, his or her Beneficiary) and each payment made in accordance therewith shall be deemed to be one election and one payment, even if payment is made from multiple Accounts of the Member (to the extent applicable).

- (v) Subject to the requirements and restrictions of Section 9.03, and notwithstanding the foregoing, a Member 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 Member 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.

### **9.03 Mandatory Distribution**

All distributions required under this Plan will be determined and made in accordance with the Treasury regulations under Code §401(a)(9).

(a) Time and Manner of Distribution.

- (i) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (A) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, then, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
  - (B) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (C) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (D) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the



Participant but before distributions to the surviving Spouse begin, this Section 9.03(a)(ii), other than Section 9.03(a)(ii)(A), will apply as if the surviving Spouse were the Participant.

- (iii) For purposes of this Section 9.03(a)(ii), unless Section 9.03(a)(ii)(D) applies, distributions are considered to begin on the Participant's required beginning date. If Section 9.03(a)(ii)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 9.03(a)(ii)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 9.03(a)(ii)(A)), the date distributions are considered to begin is the date distributions actually commence.
- (iv) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Section 9.03(b). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Treasury regulations.

(b) Amount of Required Minimum Distribution

- (i) Distribution Required During Participant's Lifetime. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
  - (A) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in §1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
  - (B) if the Participant's sole Designated Beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in §1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.
  - (C) Required minimum distributions will be determined under this Article 9 beginning with the first distribution calendar year and up

to and including the distribution calendar year that includes the Participant's date of death.

(ii) Death On or After Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining Life expectancy of the Participant or the remaining Life expectancy of the Participant's Designated Beneficiary, determined as follows:

(1) The Participant's remaining Life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the remaining Life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining Life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(3) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining Life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (iii) Death Before the Date Distributions Begin.
  - (A) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining Life expectancy of the Participant's Designated Beneficiary, determined as provided in Section 9.03(b)(ii).
  - (B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 9.03(a)(ii), this Section 9.03(b)(iii) will apply as if the surviving Spouse were the Participant.
- (c) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Plan, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(6)(2) of TEFRA.
- (d) Suspension of 2009 Required Minimum Distributions. Notwithstanding any other provision of this Plan to the contrary, a Participant or Beneficiary who would have been required to receive required minimum distributions pursuant to Section 9.03 hereof for calendar year 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), 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 2009 RMDs.

#### **9.04 Direct Rollover**

Notwithstanding any provision of the Plan to the contrary, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an

eligible rollover distribution paid in a direct rollover directly to an eligible retirement plan specified by the distributee.

For purposes of this Article,

- (a) an “eligible rollover distribution” shall be defined as any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution shall not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or Life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s Designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code §401(a)(9); any hardship distribution; the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than \$200 during a year. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code §408(a) or (b), or to a qualified defined contribution plan described in Code §401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
- (b) an “eligible retirement plan” shall mean an individual retirement account described in Code §408(a) or 408A, an individual retirement annuity described in Code §408(b), an annuity plan described in Code §403(a), an annuity contract described in Code §403(b), a qualified trust described in Code §401(a) that accepts the distributee’s eligible rollover distribution, and an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a qualified domestic relation order, as defined in Code §414(p). In the case of an eligible rollover distribution to a non-Spouse Beneficiary, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (c) a “distributee” includes an Employee or former employee. In addition, the Employee’s or former employee’s surviving Spouse and the Employee’s or former employee’s Spouse or former Spouse who is the alternate payee under a domestic relations order, are distributees with regard to the interest of the Spouse or former Spouse. A distributee also includes the Employee’s non-Spouse Designated Beneficiary under Section 2.06 of the Plan. In the case of a non-

Spouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Code §408(a) or §408(b) that is established on behalf of the Designated Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11).

- (d) a “direct rollover” is a payment by the Plan to the eligible retirement plan specified by the distributee.

#### **9.05 Death**

In the event of the death of a Member prior to his/her disability, retirement, or other termination of employment with the Employer, the full value of his/her Accounts shall be distributed in a lump sum as soon as practicable after the Valuation Date coincident with or next following his/her date of death, unless the Beneficiary elects at the time distribution would be made that distribution be postponed. In no event however, shall distribution be made later than five years after the Member’s date of death. The Committee may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of the Accounts of a deceased Member as the Committee may deem proper and its determination of death and of the right of that Beneficiary or other person to receive payment shall be conclusive.

Subject to the requirements of Code section 414(u)(9), a Participant who dies while performing qualified military service will be treated as if the Participant had resumed employment in accordance with the Participant's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death and terminated employment on the actual date of death.

#### **9.06 Communications**

Any communications addressed to a Member or a Beneficiary at his/her last post office address filed with the Employer shall be binding on the Member or the Beneficiary for all purposes of the Plan. Except for the sending of a registered letter to the last known address, neither the Employer nor the Trustee shall be obligated to search for any Member or Beneficiary.

If a benefit is forfeited because the Member or Beneficiary cannot be found, such benefit will be reinstated if the Member or Beneficiary makes a claim.

### **Article 10**

#### **Administration of Plan**

##### **10.01 Appointment of Plan Committee**

The general administration of the Plan and the responsibility for carrying out the provisions of the Plan shall be placed in a Plan Committee of not less than three persons appointed from time to time by or pursuant to authority delegated by the Board to serve

for two-year terms subject to removal for cause. Any person who is appointed a member of the Committee shall signify acceptance by filing written acceptance with the Board and the Secretary of the Committee. Any member of the Committee may resign by delivering a written resignation to the Board and the Secretary of the Committee.

#### **10.02 Duties of Committee**

The members of the Committee shall elect a chairperson from their number and a secretary who may be but need not be one of the members of the Committee; shall develop, implement, revise or discontinue such investment options in accordance with Subsection 4.01(b) of the Plan; shall negotiate and enter into such arrangements with such financial or other institutions as may be necessary to provide, maintain, revise or discontinue Investment Funds in accordance with Article 4 of the Plan; may appoint from their number such subcommittees with such powers as they shall determine; may authorize one or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, and consulting services as they may require in carrying out the provisions of the Plan; and may allocate among themselves or delegate to other persons all or such portion of their duties under the Plan, other than those granted to the Trustee under the trust agreement adopted for use in implementing the Plan, as they, in their sole discretion, shall decide.

#### **10.03 Individual Accounts**

The Committee shall maintain, or cause to be maintained, records showing the individual balances in each Member's Accounts. However, maintenance of those records and Accounts shall not require any segregation of the funds of the Plan.

#### **10.04 Meetings**

The Committee shall hold meetings upon such notice, at such place or places, and at such time or times as it may from time to time determine.

#### **10.05 Action of Majority**

Any act which the Plan authorizes or requires the Committee to do may be done by a majority of its members. The action of that majority expressed from time to time by a vote at a meeting or in writing without a meeting shall constitute the action of the Committee and shall have the same effect for all purposes as if assented to by all members of the Committee at the time in office.

#### **10.06 Compensation**

No member of the Committee shall receive any compensation from the Plan for services as such.

#### **10.07 Establishment of Rules**

Subject to the limitations of the Plan, the Committee from time to time shall establish rules for the administration of the Plan and the transaction of its business. The determination of the Committee as to any disputed question shall be conclusive. Without limiting the authority and discretion of the Committee as provided above, the Committee is further empowered to establish rules, procedures, requirements for eligibility or similar conditions with respect to the determination and administration of service credit provided by the Plan for prior public service by Employees with eligible entities as to which such Employees may be eligible for service credit under the Plan, including, without limitation, the establishment of requirements with respect to application to the Plan in order to receive such credits and adjustments with respect to service credit by eligible employees. The Vice President of Human Resources is hereby delegated the authority to establish such rules, procedures, requirements for eligibility or similar conditions with respect to the determination and administration of service credit provided by the Plan, and, for good cause shown, to waive the one-year limitation for re-employment.

#### **10.08 Prudent Conduct**

The members of the Committee shall use that degree of care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use in his/her conduct of a similar situation.

#### **10.09 Indemnification**

To the maximum extent permitted by law, no member of the Committee shall be personally liable by reason of any contract or other instrument executed by him/her or on his/her behalf in his/her capacity as a member of the Committee nor for any mistake of judgment made in good faith, and each member of the Committee, and each other employee of the Employer to whom any duty or power with respect to this Plan may be delegated or allocated, shall be indemnified and held harmless, directly from the funds of the Plan, to the extent such member or other employee is not otherwise indemnified by the Employer, against any cost or expense (including counsel fees) and liability (including any sum paid in settlement of a claim or legal action) arising out of anything done or omitted to be done in connection with the Plan unless arising out of such Member's or other employee's own fraud or bad faith.

### **Article 11**

#### **Management of Funds**

#### **11.01 Trust Agreement**

All the funds of this Plan (which is intended to be a profit sharing plan within the meaning of Code §401(a)(27)) shall be held by a Trustee or Trustees appointed from time to time by the Board under a trust agreement adopted, or as amended, by the Board or its designee for use in providing the benefits of the Plan and paying its expenses not paid

directly by the Employer. The Employer shall have no liability for the payment of benefits under the Plan or for the administration of the funds paid over to such Trustee or the Trustees.

#### **11.02 Exclusive Benefit Rule**

Except as otherwise provided in the Plan, no part of the corpus or income of the funds of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Members and other persons entitled to benefits under the Plan or for paying Plan expenses not paid directly by the Employer. No person shall have any interest in or right to any part of the earnings of the funds of the Plan, or any right in, or to, any part of the assets held under the Plan, except as and to the extent expressly provided in the Plan.

### **Article 12**

#### **General Provisions**

##### **12.01 Non-alienation**

Except as required by any applicable law, no benefit under the Plan shall in any manner be anticipated, assigned or alienated, and any attempt to do so shall be void.

##### **12.02 Conditions of Employment Not Affected by Plan**

The establishment of the Plan shall not confer any legal rights upon any Employee or other person for a continuation of employment, nor shall it interfere with the rights of the Employer to discharge any Employee and to treat any Employee without regard to the effect which that treatment might have upon him/her as a Member of the Plan.

##### **12.03 Facility of Payment**

If the Committee shall find that a Member or other person entitled to a benefit is unable to care for his/her affairs because of illness or accident or is a minor or has died, the Committee may direct that any benefit due that Member or other person, unless a claim shall have been made for his/her benefit by a duly appointed legal representative, be paid to the Member's or other person's Spouse, a child, a parent or other blood relative, or to a person with whom the Member or other person resides. Any payment so made shall be a complete discharge of the liabilities of the Plan for that benefit.

##### **12.04 Information**

Each Member or other person entitled to a benefit, before any benefit shall be payable to that person from his/her account under the Plan, shall file with the Committee the information that it shall require to establish his/her rights and benefits under the Plan.



## **12.05 Construction**

- (a) The Plan shall be construed, regulated and administered under the laws of New York.
- (b) The masculine pronoun shall mean the feminine and the singular shall mean the plural wherever appropriate.
- (c) The titles and headings of the Articles and Sections in this instrument are for convenience only. In case of ambiguity or inconsistency, the text rather than such titles or headings shall control.

## **Article 13**

### **Amendment Merger and Termination**

#### **13.01 Amendment of Plan**

The Board reserves the right at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the Plan. The Plan Committee is authorized to make, on behalf of the Board, any such amendment or modification to any provision of this Plan pertaining to the administration of, operation of, or compliance with all applicable legislation and regulations by, the Plan. This authorization does not extend to Plan amendments or modifications reflecting policy determinations, such as, but not limited to, any change of investment options, investment manager, or employer match. All amendments or modifications adopted by the Plan Committee pursuant to this section shall be incorporated into this Plan document and evidenced in writing, signed by the President and Chief Executive Officer or anyone otherwise authorized by the Committee, with concurring signatures from the Executive Vice President and General Counsel and the Vice President Human Resources, or anyone otherwise authorized by the Committee. However, no amendment shall make it possible for any part of the funds of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the Plan. No amendment shall be made which has the effect of decreasing the balance of the Accounts of any Member or of reducing the non-forfeitable percentage of the balance of the Accounts of a Member below the non-forfeitable percentage computed under the Plan as in effect on the date on which the amendment is adopted or, if later, the date on which the amendment becomes effective.

#### **13.02 Merger or Consolidation**

The Plan may not be merged or consolidated with, and its assets or liabilities may not be transferred to, any other plan unless each person entitled to benefits under the Plan would, if the resulting plan were then terminated, receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit that person would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had then terminated. Subject to the preceding sentence, the Trustee

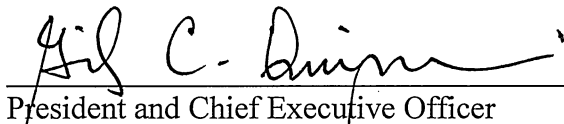
possesses the specific authority to transfer Plan assets to the Savings Plan of Entergy Corporation and Subsidiaries, pursuant to the Section 5.7(e) of the Purchase and Sale Agreement between Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 3, LLC, and the Employer. Prior to such transfer, the Trustee shall receive satisfactory evidence that the Savings Plan of Entergy Corporation and Subsidiaries is a tax qualified defined contribution plan that includes a qualified cash or deferred compensation arrangement within the meaning of Code §401(k).

**13.03 Termination of Plan**


The Board may terminate the Plan or completely discontinue contributions under the Plan for any reason at any time. Contributions by the Employer shall cease if the requirements of Code §401(a) or 401(k) are changed so that the Plan is no longer a qualified plan. In case of termination or partial termination of the Plan, or complete discontinuance of Employer contributions to the Plan, the rights of affected Members to their vested interest in their Accounts under the Plan as of the date of the termination or discontinuance shall remain non-forfeitable. The total amount in each Member's Accounts in which the Member has a vested interest shall be distributed, as the Committee shall direct, to the Member or for his/her benefit or continued in trust for his/her benefit.

POWER AUTHORITY OF THE STATE OF  
NEW YORK

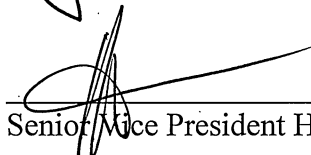
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President and Chief Executive Officer

Date: 11-25-15

  
\_\_\_\_\_  
Executive Vice President and General Counsel

Date: 11-15-15

  
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Senior Vice President Human Resources