

Fairfax County Public Schools 403(b) Plan

(Amended and Restated Effective as of January 1, 2016)

PREAMBLE

WHEREAS, the Fairfax County Public School District (the “Employer”) has heretofore maintained an arrangement intended to satisfy the requirements of Code section 403(b);

WHEREAS, final regulations under Code section 403(b) issued by the Internal Revenue Service on July 26, 2007 require that the Employer’s 403(b) arrangement be maintained pursuant to the terms of a written plan document;

WHEREAS, the Employer has amended and restated this plan document effective January 1, 2009; and

WHEREAS, the Employer wishes to again amend and restate the Employer’s 403(b) arrangement as set forth herein, effective as of January 1, 2016.

NOW THEREFORE, the Employer hereby amends and restates its 403(b) arrangement as provided herein, effective as of January 1, 2016. The terms of this amending restatement shall (1) apply only to employees of the Employer who remain employed by the Employer on or after January 1, 2016; such that the rights, benefits and obligations of employees who terminated employment, retired or died before January 1, 2016 shall be governed by the rules applicable to the 403(b) arrangement as of December 31, 2015; and (2) not apply to, or treat as not part of the Plan, any contracts issued before 2009 which it is permissible for Employer to treat as not part of its Plan as provided in Section 8 of Rev. Proc. 2007-71, applicable regulations, and other applicable guidance, subject to any requirement of reasonable good faith efforts to include the contract as part of the Plan as required under such Revenue Procedure, or other applicable guidance.

Section 1 Definition of Terms Used

The following words and terms, when used in the Plan, have the meaning set forth below.

1.1 **“Account”**. The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.

1.2 **“Account Balance”**. The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant’s Account under all Accounts, including the Participant’s Elective Deferrals, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant’s benefit, and any distribution made to the Participant or the Participant’s Beneficiary. Except to the extent provided in an applicable Individual Agreement, if a Participant has more than one Beneficiary

at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Code section 414(p)(8)).

1.3 **“Administrator”**. Fairfax County Public Schools (FCPS). The Administrator may delegate its duties to third parties, including but not limited to an investment committee to provide oversight regarding all or some aspects of available investments.

1.4 **“Annuity Contract”**. A nontransferable group or individual contract as defined in Code section 403(b)(1), established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in Virginia and that includes payment in the form of an annuity.

1.5 **“Beneficiary”**. The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.

1.6 **“Code”**. The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.7 **“Compensation”**. All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code section 125, 132(f), 401(k), 403(b), or 457(b) (including an election under Section 2 made to reduce compensation in order to have Elective Deferrals under the Plan). For purposes of determining Compensation, compensation reductions under Code section 125 shall include any amounts not available to the Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage and will be treated as a compensation reduction under Code section 125 only if the Employer does not request or collect information regarding the Participant's other health coverage, other than the request for certification of other health coverage, as part of the enrollment process for the health plan. Compensation shall not include compensation paid after severance from employment except as may be permitted by Treasury Regulations section 1.403(b)-3(b)(4) or other applicable guidance. Except with respect to eligible employees as provided in Treasury Regulations section 1.401(a)(17)-1(d)(4)(ii), the annual compensation of each Participant taken into account in determining allocations shall not exceed \$265,000, as adjusted for cost-of-living increases in accordance with Code section 401(a)(17)(B) for periods after 2016. If the Participant is entitled to differential wages, such differential wages shall be considered Compensation for purposes of the Plan and for this purpose “differential wages” means any payment made by the Employer with respect to any period during which the Participant is performing qualified military service within the meaning of Code section 414(u)(5) and represents all or a portion of the wages the Participant would have received from the Employer if the Participant were performing services for the Employer.

1.8 **“Custodial Account”**. The group or individual custodial account or accounts, as defined in Code section 403(b)(7), established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

1.9 **“Disabled”**. “Disabled” means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long continued and indefinite duration or, as applicable, the definition of disability provided in the applicable Individual Agreement.

1.10 **“Elective Deferral”**. The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.

1.11 **“Eligible Retirement Plan”**. An Eligible Retirement Plan is a qualified plan described in Code section 401(a), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), an individual retirement account or annuity described in Code section 408(a) or 408(b), or an eligible plan under section Code section 457(b), which is maintained by a State and which agrees to separately account for amounts transferred into such plan from this Plan, that accepts an Eligible Rollover Distribution as defined in Plan section 5.5(a). 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 relations order as defined in Code section 414(p).

1.12 **“Employee”**. Each individual performing services for a public school as a common law employee of the Employer. This definition is not applicable unless the Employee’s compensation for performing services for a public school is paid by the Employer. Further, a person occupying an elective or appointive public office is not an employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local government.

1.13 **“Employer”**. Fairfax County Public Schools.

1.14 **“Funding Vehicles”**. The Annuity Contracts or Custodial Accounts issued by Vendors currently approved by the Employer for funding amounts held under the Plan and to receive Elective Deferrals and Nonelective Employer Contributions under the Plan.

1.15 **“Includible Compensation”**. An Employee’s compensation received from the Employer that is includible in the Participant’s gross income for Federal income tax purposes (computed without regard to Code section 911, relating to United States citizens or residents living abroad), including differential wage payments under Code section 3401(h) for the most recent period that is a Year of Service. Includible Compensation also includes any Elective Deferral or other amount contributed or deferred by the Employer at the election of the Employee that would be includible in gross income but for the rules of Code section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For purposes of determining Includible

Compensation, compensation reductions under Code section 125 shall include any amounts not available to the Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage and will be treated as a compensation reduction under Code section 125 only if the Employer does not request or collect information regarding the Participant's other health coverage, other than the request for certification of other health coverage, as part of the enrollment process for the health plan. Includible Compensation does not include any compensation received during a period when the Employer was not an eligible employer within the meaning of Treasury Regulations section 1.403(b) 2(b)(8). The amount of Includible Compensation is determined without regard to any community property laws. Except with respect to eligible employees as provided in Treasury Regulations section 1.401(a)(17)-1(d)(4)(ii), the annual compensation of each Participant taken into account in determining allocations shall not exceed \$265,000, as adjusted for cost-of-living increases in accordance with Code section 401(a)(17)(B) for periods after 2016.

1.16 **"Individual Agreement"**. An Annuity Contract or Custodial Account established pursuant to an agreement between a Vendor and a Participant that satisfies the requirements of Treasury Regulations section 1.403(b)-3 and that is issued or established for funding amounts held under the Plan. A list of Vendors of Individual Agreements approved for use under the Plan, including sufficient information to identify the approved Individual Agreements, shall be maintained by the Employer. The terms governing each Individual Agreement under the Plan, excluding those terms that are inconsistent with the Plan or Code section 403(b), are hereby incorporated by reference in the Plan. Effective January 1, 2010, Individual Agreements, in the form of either an annuity contract or custodial contract, are no longer permitted. Individual Agreements existing prior to January 1, 2010 continue under this Plan; however, all new Participants entering the plan on or after January 1, 2010 participate, whether through an annuity contract or custodial account, in a group contract.

1.17 **"Limitation Year"**. The calendar year. However, if the Participant is in control of an Employer pursuant to Plan section 3.6, the Limitation Year shall be the Limitation Year in the defined contribution plan controlled by the Participant.

1.18 **"Participant"**. An individual for whom Elective Deferrals are currently being made, or for whom Elective Deferrals or nonelective Employer contributions under Plan section 2.7 have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

1.19 **"Plan"**. Fairfax County Public Schools 403(b) Plan

1.20 **"Plan Year"**. The calendar year.

1.21 **"Qualified Nonelective Contributions"**. Contributions (other than matching contributions) made by the Employer and allocated to Participants' Accounts that the Participants may not elect to receive in cash until distributed from the Plan, are nonforfeitable when made, and are distributable only in accordance with the distribution provisions (other than for hardships) applicable to Elective Deferrals.

1.22 **“Related Employer”**. The Employer and any other entity which is under common control with the Employer under Code section 414(b) or 414(c). For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

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

1.24 **“Spouse”**. The term “spouse” means, on and after June 26, 2013, and prior to September 16, 2013, the husband or wife of a Participant, whichever is applicable, whether of the same sex or opposite sex, if (1) the Participant is in a relationship legally denominated as marriage with such husband or wife under the laws of the jurisdiction in which the marriage occurred and such marriage has not subsequently been legally dissolved, and (2) the Participant is domiciled in a jurisdiction that recognizes the marriage as valid. Effective as of September 16, 2013 and thereafter, the additional requirement described in clause (2) above shall no longer apply. The determination of whether a “spouse” or “marriage” exists shall be subject to guidance issued by the Department of Treasury, to the extent applicable. The term “marriage” does not include domestic partnerships, civil unions, and similar types of formal relationships that are not denominated as marriage, even if the law of the state or other jurisdiction provides similar rights, protections, and benefits to persons in these relationships as to married persons.

1.25 **“State”**. A State, a political subdivision of a State, or any agency or instrumentality of a State. “State” includes the District of Columbia (pursuant to Code section 7701(a)(10)).

1.26 **“Vendor”**. The provider of an Annuity Contract or Custodial Account and, if applicable, the person or entity to whom such provider has delegated any of the provider’s responsibilities, but only to the extent the responsibilities have been delegated by the provider.

1.27 **“Year of Service”**. For purposes of determining Includible Compensation, each year during which an individual is a full-time Employee of the Employer for the entire work period, plus fractional credit for each part of a work period during which the individual is either a full-time Employee of the Employer for a part of a work period or a part-time Employee of the Employer for the work period. The Employee must be credited with a full Year of Service for each year during which the Employee is a full-time Employee for the entire work period and a fraction of a Year of Service for each part of a work period during which the Employee is a full-time or part-time Employee of the Employer. An Employee’s number of Years of Service equals the aggregate of the Years of Service, whether full or fractional, but shall not be less than one. The work period is the Employer’s annual work period as determined in accordance with Treasury Regulations section 1.403(b)-4(e).

Section 2 Participation and Contributions

2.1 **Eligibility.** Each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf hereunder immediately upon becoming employed by the Employer.

2.2 **Compensation Reduction Election.** An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral on his or her behalf) and filing it with the Administrator or its designee. This Compensation Reduction Election shall be made on the agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower or no minimum amount from time to time. The participation election shall also include designation of the Funding Vehicles and investment options therein to which Elective Deferrals are to be made and may include the designation of Beneficiary. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. All Elective Deferrals shall be made on a pre-tax basis. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the employee's election.

2.3 **Information Provided by the Employee.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

2.4 **Change in Elective Deferrals Election.** An Employee may at any time revise his or her participation election (*i.e.*, a change of the amount of his or her future Elective Deferrals), his or her investment direction (subject to provisions of an Individual Agreement, if applicable), and his or her designated Beneficiary (subject to provisions of an Individual Agreement, if applicable). A change in the amount of his or her Elective Deferrals shall take effect the first of the following month or such other time as the Administrator may determine to be administratively practical. Except as the Administrator and Vendor may otherwise agree, a change in the investment direction shall take effect as soon as administratively practical following the date of its receipt by the Vendor in the case of changes among investments offered by such Vendor, or following the date of its receipt by the Administrator or its designee in the case of changes from one Vendor to another. A change in the Beneficiary designation shall take effect as of the date of receipt by the Vendor, provided that it is received prior to the death of the Participant.

2.5 **Contributions Made Promptly.** Elective Deferrals under the Plan shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

2.6 **Leave of Absence.** Unless the Compensation Reduction Election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan shall continue to the extent that Compensation continues.

2.7 **Nonelective Employer Contributions.** At its sole discretion, or subject to any collective bargaining agreement or employee contract, the Employer may make nonelective Employer contributions, including Qualified Nonelective Contributions if needed, for any Participant or Participants it may select, provided that such nonelective contributions, when combined with any Elective Deferrals of such Participant, for any calendar year shall not exceed the limit on "annual additions" under Code section 415(c), including, without limitation and to the extent applicable, Code sections 415(c)(3)(E) and 415(k)(4). Nonelective Employer contributions in a Limitation Year for a former Employee following a Severance from Employment must not exceed the limitation of Code section 415(c)(1) up to the lesser of the dollar amount in Code section 415(c)(1)(A) or the former Employee's Includible Compensation during his or her most recent Year of Service. A Participant is deemed to have monthly Includible Compensation for the period through the end of the taxable year in which he or she ceases to be an Employee and through the end of the next five taxable years and, except as provided in Treasury Regulations section 1.403(b)-4(d), the amount of the monthly Includible Compensation is equal to 1/12th of the Participant's Includible Compensation during his or her most recent Year of Service. No contribution shall be made after the end of the Participant's fifth taxable year following the year in which the Participant terminated employment.

Section 3 Limitations on Amounts Deferred

3.1 **Basic Annual Limitation.** Except as provided in Sections 3.2 and 3.3, the maximum amount of the Elective Deferral under the Plan for any calendar year shall not exceed the lesser of (a) the applicable dollar amount; or (b) the Participant's Includible Compensation for the calendar year. The applicable dollar amount is the amount established under Code section 402(g)(1)(B), which is \$18,000 for 2016, and is adjusted for the cost-of-living each year to the extent provided under Code section 415(d).

3.2 **Age 50 Catch-up Elective Deferral Contributions.** An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$6,000 for 2016, and is adjusted for cost-of-living each year to the extent provided under the Code. All applicable employer plans, within the meaning of Code section 414(v), other than Code section 457(b) plans, are treated as one plan for purposes of this maximum dollar amount.

3.3 **Special Rule for a Participant Covered by another Section 403(b) Plan.** For purposes of this Section 3, if the Participant is or has been a participant in one or more other plans under Code section 403(b) (and any other plan that permits elective deferrals under Code section 402(g)) then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 3. For this purpose, the Administrator shall take into account any other such plan maintained by any Related Employer

and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

3.4 Correction of Excess Elective Deferrals. If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of the employer under Code section 403(b) (and any other plan that permits elective deferrals under Code section 402(g) for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto through the end of the applicable calendar year), shall be distributed to the Participant in accordance with applicable IRS guidance.

3.5 Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under Code section 414(u), this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

3.6 Limitation on Aggregate Annual Additions. A Participant's Annual Additions under the Plan for a Limitation Year may not exceed the Maximum Annual Addition as set forth below.

- (a) **Aggregation of Section 403(b) Plans of the Employer.** If Annual Additions are credited to a Participant under any section 403(b) plans of the Employer in addition to this Plan for a Limitation Year, the sum of the Participant's Annual Additions for the Limitation Year under this Plan and such other section 403(b) plans may not exceed the Maximum Annual Addition as set forth below.
- (b) **Aggregation Where Participant is in Control of Any Employer.** If a Participant is in control of any employer for a Limitation Year, the sum of the Participant's Annual Additions for the Limitation Year under this Plan, any other section 403(b) plans of the Employer, any defined contribution plans maintained by controlled employers, and any section 403(b) plans of any other employers may not exceed the Maximum Annual Addition as set forth in subsection (g) below. For purposes of this subsection (b), a Participant is in control of an employer based upon the rules of Code sections 414(b), 414(c), and 415(h); and a defined contribution plan means a defined contribution plan that is qualified under Code section 401(a) or 403(a),

a section 403(b) plan, or a simplified employee pension within the meaning of Code section 408(k).

- (c) **Annual Notice to Participants.** The Administrator will provide written or electronic notice to Participants that explains the limitation in subsection (b) in a manner calculated to be understood by the average Participant and informs Participants of their responsibility to provide information to the Administrator that is necessary to satisfy subsection (b). The notice will advise Participants that the application of the limitations in subsection (b) will take into account information supplied by the Participant and that failure to provide necessary and correct information to the Administrator could result in adverse tax consequences to the Participant, including the inability to exclude contributions to the Plan under Code section 403(b). The notice will be provided annually, beginning no later than the year in which the Employee becomes a Participant.
- (d) **Coordination of Limitation on Annual Additions Where Participant is in Control of Employer.** If the Participant is in control of an employer, the Annual Additions which may be credited to a Participant under this Plan for any Limitation Year will not exceed the Maximum Annual Addition under subsection (g) below, reduced by the Annual Additions credited to the Participant under any other defined contribution plans maintained by controlled employers and section 403(b) plans of any other employers. Contributions to the Participant's Accounts under this Plan will be reduced to the extent necessary to prevent this limitation from being exceeded.
- (e) **Excess Annual Additions.** If, notwithstanding this Plan section 3.6, a Participant's Annual Additions under this Plan, or under this Plan and plans aggregated with this Plan under this Plan section 3.6, result in an Excess Annual Addition for a Limitation Year, the Excess Annual Addition will be deemed to consist of the Annual Additions last credited, except Annual Additions to a defined contribution plan qualified under Code section 401(a) or a simplified employee pension maintained by an employer controlled by the Participant will be deemed to have been credited first.
 - (i) If an Excess Annual Addition is credited to a Participant under this Plan and another section 403(b) plan of the Employer on the same date, the Excess Annual Addition attributable to this Plan will be the product of:
 - (1) The total Excess Annual Addition credited as of such date, times
 - (2) The ratio of: (i) the Annual Additions credited to the Participant for the Limitation Year as of such date under this Plan, to (ii) the total Annual Additions credited to the Participant for

the Limitation Year as of such date under this Plan and all other section 403(b) plans of the Employer.

- (ii) Any Excess Annual Addition attributable to this Plan will be corrected in the manner described in section 3.6(f).
- (f) **Correction of Excess Annual Additions.** A Participant's Excess Annual Additions for a taxable year are includible in the Participant's gross income for that taxable year. A Participant's Excess Annual Additions attributable to this Plan will be credited in the year of the excess to a separate account under the Plan for such Excess Annual Additions which will be maintained by the Vendor until the Excess Annual Additions are distributed. This separate account will be treated as a separate contract to which Code section 403(c) (or another applicable provision of the Code) applies. Amounts in the separate account may be distributed at any time, notwithstanding any other provisions of the Plan.
- (g) **Definition of Annual Additions.** For purposes of this section and Plan, "Annual Addition" means the following amounts credited to a Participant under the Plan or any other plan aggregated with the plan under this section:
 - (i) Employer contributions, including Elective Deferrals (other than age 50 catch-up contributions described in Code section 414(v) and contributions that have been distributed to the Participant as Excess Elective Deferrals).
 - (ii) **Maximum Annual Addition.** The Annual Addition that may be contributed or allocated to a Participant's account under the Plan for any Limitation Year shall not exceed the lesser of:
 - (a) \$53,000 (for 2016), as adjusted for increases in the cost-of-living under Code section 415(d); or
 - (b) 100% of the Participant's Includible Compensation for the Limitation Year.

Section 4 Loans

4.1 **Loans.** Participants may obtain loans under the Plan, provided, however, that any such loans shall satisfy the requirements of Code section 72(p) and applicable Treasury Regulations and, if applicable, to the extent permitted under the terms of the applicable Individual Agreement. In determining whether a plan loan (when added to the outstanding balance of all of the borrower's other plan loans) satisfies the requirements of Code section 72(p), all 401(a), 403(a), 403(b), and 457(b) plans of the Employer and any Related Employer shall be treated as one plan. To the extent required by the Servicemembers Civil Relief Act, if

the loan was received before a period of military service (as defined by that act), the rate of interest charged during any period of military service shall not exceed a rate of 6 percent per year.

A Participant may obtain a loan only if: (i) there are no other loans outstanding from a Vendor, including any defaulted loan that has been deemed distributed and not fully repaid (or fully offset as part of a distribution to the Participant), including interest that accrues after the default and deemed distribution; and (ii) the loan is from an Annuity Contract or Custodial Account of a Vendor. Effective July 1, 2016, a Participant may have no more than five loans outstanding from any Vendor, regardless of whether from the same or different Vendors; provided, however, that the Participant may not obtain a loan if the Participant has a loan from any Vendor including any defaulted loan that has been deemed distributed and not fully repaid (or fully offset as part of a distribution to the Participant).

4.2 Information Coordination Concerning Loans. Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and State law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator or its designee shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Plan section 4.3, including the collection of information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator or its designee shall also take such steps as may be appropriate to collect information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

4.3 Maximum Loan Amount. No loan to a Participant under the Plan may exceed the lesser of:

- (a) \$50,000, reduced by the greater of:
 - (i) The outstanding balance on any loan from the Plan to the Participant on the date the loan is made; or
 - (ii) The highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator or its designee (not taking into account any payments made during such one-year period); or
- (b) One-half of the value of the Participant's vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved by the Administrator or its designee). Such valuation date shall be the last business day on which the Participant's Account Balance can be valued immediately preceding the date on which such loan is approved or, if applicable, the valuation date in accordance with the applicable Individual Agreement.

For purposes of this Plan section 4.3, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph (*i.e.*, the vested account balance of such other plans shall not be taken into account for determining the amount of a loan under this Plan.)

Section 5 Benefit Distributions

5.1 Benefit Distributions At Severance from Employment or Other Distribution Event. Except as permitted under Plan section 3.4 (relating to excess Elective Deferrals), Plan section 5.3 (relating to withdrawals of amounts rolled over into the Plan), Plan section 5.4 (relating to hardship), or Plan section 8.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements, if applicable.

5.2 Minimum Distributions.

- (a) **General Rules Regarding Minimum Distribution Requirements.** Unless and to the extent otherwise permitted by law and in regulations or other rules of general applicability published by the Department of the Treasury or the Internal Revenue Service, the Plan shall comply with the minimum distribution requirements Code section 401(a)(9) and the regulations thereunder. A 403(b) contract is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Treas. Reg. § 1.408-8, except as provided in Treas. Reg. § 1.403(b)-6(e). The minimum distribution requirements apply to a Participant's entire Account Balance. However, these requirements do not apply to the undistributed portion of a Participant's Account Balance valued as of December 31, 1986, exclusive of subsequent earnings (the pre 1987 account balance), provided that the applicable requirements of Treasury Regulations section 1.401(a)(9)-6(e)(6) are satisfied. In this case, a Participant's pre-1987 account balance shall be distributed in accordance with the incidental benefit requirements of Treasury Regulations section 1.401-1(b)(1)(i). To the extent permitted under Treasury Regulations section 1.403(b)-6(e)(7), a Participant's Accounts under the Plan, or under the Plan and other section 403(b) plans in which the Participant participates as an Employee, may be aggregated and the minimum distribution requirements satisfied by distribution from any one or more of the Accounts.
- (b) **Required Minimum Distributions.** Distribution of the Participant's Account Balance will begin no later than the first day of April following the later of the calendar year in which the Participant attains age 70½ or the calendar year

in which the Participant retires from employment (the “required beginning date”) over: (1) The life of the Participant; (2) The lives of the Participant and Beneficiary; or (3) A period certain not extending beyond the life expectancy of the Participant or the joint and last survivor expectancy of the Participant and Beneficiary. If the Participant’s Account Balance is distributed as an annuity, the distribution periods described in subsection (a) above cannot exceed the periods specified in Treasury Regulations section 1.401(a)(9)-6. Payments must be made in periodic payments at intervals of no longer than 1 year and must be either non-increasing or they may increase only as provided in Q&A-1 and 4 of Treasury Regulations section 1.401(a)(9)-6. In addition, any distribution must satisfy the incidental benefit requirements specified in Q&A-2 of Treasury Regulations section 1.401(a)(9)-6.

- (c) **Special Rule for 2009.** Notwithstanding the other provisions of this Plan section 5.2, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code section 401(a)(9)(H) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are: (1) equal to the 2009 RMDs; or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s designated Beneficiary, or for a period of at least 10 years (“Extended 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 the distributions described in the preceding sentence. In addition, notwithstanding Plan section 5.5(a), and solely for purposes of applying the direct rollover provisions of the plan, the 2009 RMDs and the Extended 2009 RMDs will be treated as eligible rollover distributions. To the extent an Individual Agreement provides different rules for 2009 RMDs than described in this subsection 5.2(c), the rules of such Individual Agreement shall apply.

5.3 In-Service Distributions from Rollover Account. If a Participant has a separate account attributable to rollover contributions to the plan, except as may be limited by an applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

5.4 Hardship Withdrawals. Distribution of Elective Deferrals may be made to a Participant in the event of hardship, except to the extent limited by the terms governing an applicable Individual Agreement. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need.

- (a) The following are the only financial needs considered immediate and heavy: expenses incurred or necessary for medical care, described in Code

section 213(d), of the Participant, the Participant's spouse or dependents, or the Participant's primary Beneficiary (an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account balance under the plan upon the death of the participant); the purchase (excluding mortgage payments) of a principal residence for the Participant; payment of tuition and related educational fees for the next 12 months of post-secondary education for the Participant, the Participant's spouse, children or dependents, or the Participant's primary beneficiary; payments necessary to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Employee's principal residence; payments for funeral or burial expenses for the Participant deceased parent, spouse, child or dependent, or the Participant's primary beneficiary; and expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

- (b) A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Participant only if:
- (i) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution);
 - (ii) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer (except to the extent such actions would be counterproductive to alleviating the financial need); and
 - (iii) All plans maintained by the Employer provide that the Participant's Elective Deferrals (and Employee Contributions) will be suspended for six months after the receipt of the hardship distribution.

The Individual Agreements shall provide for the exchange of information among the Administrator and its designee and the Vendors to the extent necessary to implement the Individual Agreements, as described in Plan section 7.5, including, in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the Participant's financial need (pursuant to Treasury Regulations section 1.401(k)-1(d)(3)(iv)(E)), the Vendor notifying the Administrator or its designee of the withdrawal in order for the Employer to implement the resulting six-month suspension of the Participant's right to make Elective Deferrals under the Plan. In addition, in the case of a hardship withdrawal that is not automatically deemed to be necessary to satisfy the financial need (pursuant to Treasury Regulations section 1.401(k)-1(d)(3)(iii)(B)), the Vendor shall obtain information from the Administrator or its designee or other Vendors to determine the amount of any plan loans and rollover accounts that are available to the Participant under the Plan to satisfy the financial need. Alternatively, at the direction of the Administrator, the Vendor shall provide information to the Administrator or its designee who shall make such determination of the availability of a hardship withdrawal and so advise the Vendor and the Employer.

5.5 Direct Rollovers Distributions. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover. A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Code section 414(p)) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in Code section 402(c)(4)) from the Plan paid directly to an eligible retirement plan (as defined in Code section 402(c)(8)(B)) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the Participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Code section 408(d)(3)(C)).

- (a) **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:
- (i) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a period of 10 years or more;
 - (ii) Any distribution to the extent such distribution is required under Code section 401(a)(9) (other than amounts that would have been required but for a statutory waiver of the requirements under Code section 401(a)(9));
 - (iii) Any hardship distribution;
 - (iv) The portion of any other distribution(s) not includible in gross income (determined without regard to the exclusion for net unrealized appreciation);
 - (v) Any corrective distribution of excess amounts under Code sections 402(g), 401(k), 401(m), and/or 415(c) and income allocable thereto;
 - (vi) Any loans that are treated as deemed distributions pursuant to Code section 72(p); and
 - (vii) The costs of life insurance coverage (P.S. 58 costs).

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

- (b) **Distributee.** 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 qualified domestic relations order, as defined in Code section 414(p), are Distributees with regard to the interest of the spouse or former spouse. A Distributee also includes the Participant's non-spouse designated Beneficiary. In the case of a non-spouse Beneficiary, the Direct Rollover may be made only to an individual retirement account or annuity described in Code section 408(a) or 408(b) that is established on behalf of the Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A-17, and 18, 2007 I.R.B. 395.
- (c) **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- (d) **Vendor Notifications Relating to Rollovers.** Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover. The Vendor shall provide, within a reasonable time period before making an Eligible Rollover Distribution, a written explanation to the Participant that satisfies the requirements of Code section 402(f).

5.6 **Death while on Military Leave.** In accordance with Plan section 3.5, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u) to the extent legally required. In addition, the survivors of any Participant who dies on or after January 1, 2007, while performing qualified military service within the meaning of Code section 414(u)(5), are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan had the Participant resumed employment and then terminated employment on account of death.

Section 6
Rollovers to the Plan and Transfers

6.1 Eligible Rollover Contributions to the Plan.

- (a) **Eligible Rollover Contributions.** An Employee who is a Participant who is entitled to receive an Eligible Rollover Distribution from another Eligible Retirement Plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Effective July 1, 2016, a Participant or Employee who is entitled to receive an Eligible Rollover Distribution from another Eligible Retirement Plan may request to have all or a portion of the eligible rollover distribution paid to the Plan, but only with a Vendor that is currently eligible to receive contributions under the Plan. Such rollover contributions shall be made in the form of cash only. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code section 402(c)(8)(B). However, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in Code section 402A(e)(1) or a Roth IRA described in Code section 408A, nor does the Plan accept a rollover contribution of employee after-tax contributions.
- (b) **Separate Accounts.** The Administrator, its designee, or the Vendor shall separately account for any eligible rollover distribution paid to the Plan.

6.2 **Plan-to-Plan Transfers.** Plan-to-plan transfers to and from the Plan are not permitted.

6.3 Contract and Custodial Account Exchanges.

- (a) A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Funding Vehicles available under the Plan and from the Vendors that are not Funding Vehicles to Funding Vehicles under the Plan. An investment change that includes an investment with a Vendor that is not currently eligible to receive contributions is not permitted.
- (b) If any Vendor ceases to be eligible to receive Elective Deferrals under the Plan, the Vendor and the Employer will enter into an information sharing agreement as described in Plan section 7.5 to the extent the Employer's contract with the Vendor does not provide for the exchange of information described in Plan section 7.5

6.4 Permissive Service Credit Transfers.

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code section 414(d)) that provides for the acceptance of plan to plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this subsection (a) may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under subsection (a) above only if the transfer is either for the purchase of permissive service credit (as defined in Code section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code section 415 does not apply by reason of Code section 415(k)(3).
- (c) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro-rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

Section 7 Investment of Contributions

7.1 **Manner of Investment.** All Elective Deferrals or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts.

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

7.3 **Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account and, if applicable, in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in Plan section 6.3 and, if applicable, the Individual Agreements and as permitted under applicable Treasury Regulations.

7.4 **Current and Former Vendors.** The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy Code

section 403(b) or other requirements of applicable law. In the case of a Vendor which is not eligible to receive Elective Deferrals under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals under the Plan but is holding assets under the Plan in accordance with Plan section 6.3(b)), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy Code section 403(b) or other requirements of applicable law.

7.5 Information Sharing. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy Code section 403(b) or other requirements of applicable law. Subject to the sole discretion of the Employer, the Vendor for the contract or custodial account must enter into an agreement with the Employer which is to the satisfaction of the Employer. Each Vendor will provide Administrator with the following information, in such form and at such time as the Employer may reasonably require:

- (a) Information necessary for the resulting contract or custodial account, or any other contract or custodial accounts to which contributions have been made by the Employer, to satisfy Code section 403(b), including the Employer or its designee providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Plan section 5.1);
- (b) The Vendor notifying the Employer or its designee of any hardship withdrawal under Plan section 5.4 if the withdrawal results in a six-month suspension of the Participant's right to make Elective Deferrals under the Plan;
- (c) The Vendor providing information to the Employer, its designee or other Vendors concerning the Participant's or Beneficiary's section 403(b) contracts or custodial accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules of Plan section 5.4); and
- (d) Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following: (i) the amount of any Plan loan that is outstanding to the Participant in order for a Vendor to determine whether an additional plan loan satisfies the loan limitations of Plan section 4.3, so that any such additional loan is not a deemed distribution under Code section 72(p)(1); and (ii) information concerning the Participant's or Beneficiary's after-tax employee contributions in order for a Vendor to determine the extent to which a distribution is includible in gross income.

In the case of a Vendor which is not eligible to receive Elective Deferrals under the Plan (such that the Vendor is no longer eligible to issue Funding Vehicles), the Employer shall keep

the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy Code section 403(b) or other requirements of applicable law.

Section 8 Amendment and Plan Termination

8.1 Termination of Contributions. The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.

8.2 Amendment and Termination. The Employer reserves the authority to amend or terminate this Plan at any time.

8.3 Distribution upon Termination of the Plan. The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative Code section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Treasury Regulations.

Section 9 Miscellaneous

9.1 Non-Assignability. Except as provided in Plan sections 9.2 and 9.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

9.2 Domestic Relation Orders. Notwithstanding Plan section 9.1, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator or its designee, which may be the Vendor, shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

9.3 **IRS Levy.** Notwithstanding Plan section 9.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

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

9.5 **Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator or its designee, which may be the Vendor, benefits will be paid to such person as the Administrator or its designee, which may be the Vendor, may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

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

9.7 **Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means: (a) the mailing by certified mail of a notice to the last known address shown on Fairfax County Public School's records; (b) (notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans); and (c) the payee has not responded within six months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Annuity Contract or Custodial Account shall continue to hold the benefits due such person. The foregoing shall not preclude the Vendor following its own procedures with respect to accountholders who cannot be located.

9.8 **Incorporation of Individual Agreements.** The Plan, together with the Individual Agreements, is intended to satisfy the requirements of Code section 403(b) and the Treasury Regulations thereunder. Terms and conditions of the Individual Agreements are hereby

incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Code section 403(b).

9.9 **Governing Law.** The Plan will be construed, administered and enforced according to the Code and the laws of the Commonwealth of Virginia and Fairfax County.

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

9.11 **Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

IN WITNESS WHEREOF, the Employer has caused this Plan to be executed by a duly authorized representative this 27 day of June, 2016.

Fairfax County Public Schools (Employer):

By: RC [Signature]
Title: Asst. Supt. HR
Date signed: 6/27/16