

PSC-CUNY WELFARE FUND TRUST INDENTURE

This document is the PSC-CUNY Welfare Fund Trust Indenture (hereinafter referred to as “Indenture”) entered into on the 30th day of July 2007 among **THE CITY UNIVERSITY OF NEW YORK** (hereinafter referred to as “**CUNY**” or “**the University**” and formerly known as the Board of Higher Education of the City of New York), the **PSC-CUNY WELFARE FUND**, an unincorporated association (hereinafter referred to as the “**FUND**”, and formerly known as the City University Faculty Welfare Fund and, at one time, the PSC-BHE Welfare Fund and sometimes formerly referred to as the City University Faculty Welfare Trustees and the PSC-BHE Welfare Trustees), and the **PROFESSIONAL STAFF CONGRESS/CUNY**, the collective bargaining representative for the CUNY instructional staff (hereinafter referred to as “**the PSC**”).

WHEREAS, during the fiscal year ending June 30, 1967, CUNY called for the election of Fund Trustees and their creation as a body; an indenture creating the Fund was adopted and approved by the Internal Revenue Service as creating an exempt organization; and an Agreement was entered into between CUNY and the Fund on or about June 9, 1967; and

WHEREAS, CUNY pursuant to collective bargaining agreements with collective bargaining representatives of the CUNY instructional staff has continued to make payments to the Fund for welfare benefits for its instructional staff and for certain other persons, whether active, on leave or retired; and whenever advisable and feasible for members of their families, dependents and survivors; and

WHEREAS, the collective bargaining agreements between CUNY and the PSC effective September 1, 1977 changed the name of the City University Faculty Welfare Trustees to the PSC-BHE Welfare Trustees; and

WHEREAS, the collective bargaining agreement between CUNY and the PSC effective September 1, 1978 provided for the parties to support a reconstitution of the PSC-BHE Welfare Fund which was negotiated by the PSC and the Fund, and was approved by the PSC and CUNY; and

WHEREAS, the collective bargaining agreement between CUNY and the PSC effective September 1, 1984, provided in Section 26.3 for a reorganization of the structure of the Fund which provided in part, as follows:

1. A Board of Trustees shall be established to govern and be accountable for the operation of the Fund.
2. The President of the PSC or the Treasurer of the PSC if so designated by the President of the PSC shall serve as the chairperson of the PSC-CUNY Welfare Fund. In the event the President of the PSC designates the PSC Treasurer to serve as chairperson of the Fund, the PSC Secretary shall assume the responsibility indicated in Section (3), (b), below.
3. The Board shall consist of the following members:
 - a. Chairperson of the PSC-CUNY Welfare Fund.
 - b. Treasurer of the PSC (ex officio without a vote).
In temporary absence of the Chairperson, the PSC Treasurer shall preside and be eligible to vote at Fund meetings.
 - c. Secretary
 - d. Treasurer
 - e. Two Executive Officers, each with responsibility designated by the Chairperson for internal and external matters relating to the Fund.
 - f. Four additional members of the instructional staff.
 - g. The Vice-Chancellor for Faculty & Staff Relations.
 - h. A member of the instructional staff appointed by the Chancellor, selected from among the titles covered by the Fund but excluded from the PSC unit, shall be ex officio without vote but shall have a vote in the absence of the Vice-Chancellor for Faculty & Staff Relations.
 - i. The General Administrator of the PSC-CUNY Welfare Fund (ex officio without a vote). The General Administrator shall report to the Chairperson of the Fund.

Unless otherwise indicated, the members of the Board of Trustees shall be appointed by the President of the PSC, after consultation with the PSC Executive Council. The members of the Board appointed by the President of the PSC shall serve a three year term of office, with the initial appointments staggered for periods of one-to-three years. The Board shall meet bi-monthly during the academic year.

4. The Chairperson of the Fund shall nominate a General Administrator whose appointment shall be subject to confirmation by the Board of Trustees. The General Administrator shall participate in the development of the policies and programs of the Fund, be responsible for the administration and implementation of the Fund policies and programs, coordinate contacts with vendors, and supervise the operation of the Fund office and its professional and support staff.

5. A PSC-CUNY Welfare Fund Advisory Council shall be established consisting of the Board of Trustees of the Fund, elected representatives of each unit of CUNY, and a representative of the PSC Retirees Chapter. The Council representatives shall meet each semester to advise the Board of Trustees on matters of policy and programs, act as campus liaison with their colleagues, and to serve on committees of the Fund. The restructured Fund shall for all purposes be considered the successor entity to the current Fund.

This Whereas Clause shall hereinafter be referred to as the "1985 RESTRUCTURE WHEREAS CLAUSE"; and

WHEREAS, the parties hereto have had a Trust Indenture dated on or about June 9, 1967, which was amended and restated on February 27, 1981, that governs the operations of the Fund; and

WHEREAS, a Welfare Fund Clarification Agreement was executed by CUNY and the PSC in September 1993; and

WHEREAS, the Trustees of the Fund, the PSC, and CUNY now desire to amend and restate the Trust Indenture effective as of the date first stated herein, to integrate the Tripartite Agreement, Trust Indenture, and Clarification Agreement, and to conform, simplify and update all of the Fund's governing documents;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I
RESTATED TRIPARTITE AND CLARIFICATION AGREEMENT PROVISIONS

(1) This Indenture, effective immediately, incorporates, modifies, and supersedes the Trust Indenture dated on or about June 9, 1967 entered into between CUNY and the Fund and amended and restated February 27, 1981; the Tripartite Agreements dated May 27, 1980 and January 2, 1986, entered into among CUNY, the PSC, and the Fund; and the Welfare Fund Clarification Agreement by CUNY and the PSC executed in September 1993.

(2) This Indenture is entered into for the benefit of the instructional staff of the City University and such other persons, whether active, on leave or retired as the PSC, after consultation with the Fund, and CUNY, shall agree to be the participants in this Indenture and of the Fund. Such persons shall hereinafter be referred to as "participants." In addition, wherever advisable and feasible, this Indenture is also entered into for the benefit of dependents and survivors of participants, who shall hereinafter be referred to as "beneficiaries."

(a) The CUNY employees in the instructional staff whom the parties have agreed shall be participants are as follows:

(i) All full-time members of the instructional staff of CUNY

- (ii) Full-time instructional staff employed in PSC-represented titles who are excluded from representation
- (iii) Full-time instructional staff who are in the Executive Compensation Plan
- (iv) Persons employed full-time in the following non-instructional staff titles:
 - Administrative Superintendent of Buildings and Grounds
 - University Chief Architect
 - University Chief Engineer
 - Assistant College Security Director
 - Chief Administrative Superintendent of Campus Buildings and Grounds
 - College Security Director
 - Computer Operations Manager
 - Computer Systems Manager
 - Deputy University Security Director
 - University Associate Chief Engineer
 - University Security Director
- (v) Retirees who were instructional staff members who separated from service subsequent to June 30, 1970, who were eligible to receive supplemental welfare benefits at the time of such separation, and who remain primary beneficiaries of the New York City Health Insurance Program and are entitled to benefits paid for by the City through such program. Benefits shall be purchased for each class of such Retirees. The two classes of such Retirees are those Retirees separated from service from July 1, 1970 through August 31, 1982 and those Retirees separated from service after August 31, 1982.
- (vi) Retirees who were instructional staff members who separated from service prior to July 1, 1970. Such Retirees shall receive benefits as determined by the Trustees. CUNY is not obligated to make contributions for such Retirees.
- (vii) Adjuncts, effective February 1, 1986, provided that benefits shall be available only to those non-teaching adjuncts who are working

ten (10) or more hours per week and who have worked ten (10) or more hours for two (2) consecutive semesters and to those teaching adjuncts who are teaching six (6) or more hours (or the equivalent) in the semester and who have taught one (1) or more courses for two (2) consecutive semesters (not including Summer Sessions), and provided further that said non-teaching and teaching adjuncts are not covered by other primary health care insurance provided by or through another source. Adjuncts who establish eligibility as provided in this paragraph, which is based upon CUNY-wide service, shall be eligible to receive benefits in the third consecutive semester. Effective August 25, 2006, where an adjunct's continuous appointments in a teaching or non-teaching title are immediately followed by an appointment to a Substitute full-time position on the instructional staff with no break in service, and the period of Substitute service is immediately followed by continuous appointment to an adjunct teaching or non-teaching title with no break in service, the period of adjunct service immediately preceding the Substitute appointment will be added to the continuous adjunct service immediately following the Substitute service, as though there were no break in adjunct service, for the purposes of determining eligibility for health benefits under this section. An adjunct who has established eligibility for this health benefit shall lose eligibility if in any two out of three academic years the adjunct teaches in only one semester of the year at CUNY.

(viii) Such other categories of employees on whose behalf the University has agreed with the PSC to make contributions.

(b) The definition of the survivors of CUNY employees whom the parties have agreed shall be beneficiaries is as follows:

(i) Widows, widowers, eligible domestic partners, and dependent children of employees who died in active service shall be eligible for such benefits and for such length of time as the Trustees shall determine.

(c) PSC membership shall not be required of participants or their beneficiaries.

(3) The Fund shall be governed, administered and managed by the Fund Trustees pursuant to this Indenture, the Fund Bylaws, and the collective bargaining agreements between CUNY and the PSC. The collective bargaining agreement between CUNY and the PSC shall take precedence in determining all matters affecting the Fund and changes required by such collective bargaining agreement shall be incorporated immediately into this Indenture and into the Fund Bylaws. The Fund Bylaws shall incorporate the provisions specified in the “1985 RESTRUCTURE WHEREAS CLAUSE” hereof, as amended by this Indenture.

(4) The Board of Trustees Fund shall be constituted of twelve (12) voting members, one (1) of whom shall be the President of the PSC, or, in his or her stead, the First Vice President, the Treasurer, or the Secretary of the PSC, as may be designated by the President; eight (8) of whom shall be members of the Instructional Staff of the University who are members of the PSC in good standing; one (1) of whom shall be a retiree from the Instructional Staff of the University who is a member in good standing of the PSC Retiree Chapter; one (1) of whom shall be the Vice Chancellor of the University for Faculty and Staff Relations; and one (1) of whom shall be a member of the Instructional Staff who is employed in a title covered by the Fund but excluded from the PSC unit. In addition to the voting members, the Board shall include the Executive Director of the Fund as a non-voting member.

(5) The President of the PSC, in consultation with the PSC Executive Council, shall appoint officers and the eight (8) Trustees who are members of the Instructional Staff and the one (1) Trustee who is a retiree from the Instructional Staff. The Chancellor of CUNY shall appoint as a Trustee the member of the Instructional Staff who is employed in a title covered by the Fund but excluded from the PSC unit.

(6) The PSC-CUNY Welfare Fund Advisory Council shall continue and shall consist of the Board of Trustees of the Fund, elected representatives of each unit of CUNY, a representative of the PSC Retirees Chapter, and a representative of full-time instructional staff in PSC-represented titles who are excluded from representation. The Council representatives shall meet each semester to advise the Board of Trustees on matters of policy and programs, act as campus liaison with their colleagues, and to serve on committees of the Fund.

(7) An amendment to the Fund Bylaws requires an affirmative vote of no less than two-thirds of the Trustees present and voting at two duly called meetings of the Fund Trustees. A provision of an agreement between the PSC, after consultation with the Fund, and CUNY shall take precedence over the Fund Bylaws. No amendment may be adopted which permits the use of funds contrary to the basic purposes expressed herein, nor may any such amendment change the nature of the purposes of the Fund. A copy of each proposed amendment shall be distributed to each Trustee at least five (5) days prior to any meeting at which such amendment is to be proposed.

(8) An agreement to adhere to this Indenture shall be executed by each Fund Trustee and all new Trustees upon assuming office as a Trustee. The individual Trustee adherence agreement shall include provisions obligating each individual Trustee to perform the obligations of the Fund under this Indenture. A provision of an agreement between the PSC, after consultation with the Fund, and CUNY shall supersede and take precedence over the provisions of Articles II *et seq.* of this Indenture.

(9) The Fund shall maintain accurate and suitable records, data and information relating to its financial activities in conformance with generally accepted accounting principles, including accurate and detailed accounts of all assets, liabilities, receipts and disbursements and other transactions engaged in during the year. All books and records of account shall be open to inspection and audit at all reasonable times by CUNY, the Comptroller of the City of New York, the Comptroller of the State of New York, and the PSC, or their duly authorized representatives.

(10) Each year an annual report of the Fund shall be prepared reflecting in summary the assets, liabilities, receipts, disbursements and other transactions engaged in during the year. Each year, as soon as possible, the annual report shall be audited by a firm of Certified Public

Accountants. Copies of the certified annual report shall be submitted to CUNY, the Comptroller of the City of New York, the Comptroller of the State of New York, the PSC, and all of the Fund Trustees. A summary of such report shall be submitted to the participants.

(11) CUNY shall requisition from the appropriate bodies for payment to the Fund such sums as it may be required to contribute to the Fund by the collective bargaining agreement or any other agreement between CUNY and the PSC. The liability of CUNY shall in no event exceed such sums.

(12) The Fund shall continue to provide appropriate welfare benefits. The Fund shall use its best efforts to obtain the most desirable contracts at the lowest cost and containing the most advantageous provisions.

(13) The Fund Trustees shall be responsible in a fiduciary capacity for all money, property or other assets received, managed or disbursed by them or under their authority, and shall exercise their duties prudently in reliance upon advice and opinions rendered by competent counsel, consultants, actuaries, auditors and other professional consultants.

(14) The Fund, Fund Trustees, Fund officers and employees, CUNY, CUNY Trustees, CUNY employees, PSC, and PSC officers and employees are prohibited from receiving directly or indirectly any payment, commission, loan or other thing of value from any insurance company, insurance agent, insurance broker of any hospital, surgical, dental or medical service or other plan, or any corporate trustee or agent holding or administering any part of the assets of the Fund, in connection with the solicitation, sale, service or administration of a contract providing participant and beneficiary benefits for the Fund; and from receiving any payment, commission, loan service or any other thing of value from the Fund or which is charged against the Fund or would otherwise be payable to the Fund, either directly or indirectly, except that any such person may be reimbursed for his or her reasonable expenses necessarily incurred and any such person may receive any employee benefits to which he or she is otherwise entitled, and any employee, officer, or Trustee of the Fund may receive from the Fund reasonable compensation for necessary services rendered or incurred by him or her in connection with his or her duties as such; provided that nothing contained in this section shall affect the payment to the Fund of any dividend or rate credit or other adjustment due under the terms of any insurance or annuity

contract, or the receipt by the Fund of reasonable payments for administration of benefits that are not paid out of the assets of the Fund. Any employee, officer, or Trustee who violates this provision shall be removed from his or her position.

(15) No political contributions shall be made directly or indirectly from assets or property of the Fund.

(16) The Fund shall comply with all the city, state or federal laws applicable to the Fund, and take all steps necessary for such compliance.

(17) CUNY and its officials and employees shall not be liable for any mistake or error of judgment, whether intentional, negligent or otherwise, or any other act of omission or commission, of the Fund or the Fund Trustees, in the Fund's receipt, transmission, or expenditure of the sums CUNY contributes to the Fund, in the operation or administration of the Fund, or for any failure of the Fund for any reason whatsoever, to carry out the terms of this Indenture in part or in whole for the benefit of each participant and beneficiary. The Fund hereby further agrees that out of its funds it will hold CUNY and its officials and employees harmless against any claim whatsoever arising out of the Fund's receipt, transmission, or expenditure of the CUNY contributions, or the operation or administration of such Fund, or the failure of the Fund or Fund Trustee for any reason whatsoever, to carry out the terms of this Indenture in part or in whole for the benefit of each participant and beneficiary, except for the default of CUNY in making its contributions under this Indenture. For the purposes of this paragraph, the Fund shall be fully responsible for the administration and provision of all Fund welfare benefits to each participant and beneficiary.

(18) The term of this Indenture shall be from the date of this Indenture until such time as it shall be cancelled by any party on at least six months notice to the others provided that the terminal date shall be August 31st of any year. In the event of the cancellation of this Indenture, the Fund shall forthwith account to CUNY and the PSC for all its funds and other assets at the time of the expiration of this Indenture and shall pay such balances and other assets to CUNY for the continuation of the existing welfare benefits for the participants and beneficiaries hereof.

(19) Contributions for Retirees

(a) This Indenture and all prior agreements between the University and the PSC shall be interpreted as intending and allowing all welfare contributions made by the University on behalf of retirees to be made to the Fund and to continue to be so made.

(b) The contributions referred to in subsection (a) of this section were intended to be and shall continue to be combined and commingled with contributions made at any time, either directly or indirectly, on behalf of active employees of the University. The University and the PSC did not and do not intend that separate trust funds be set up for active employees and retirees.

(c) The Board of Trustees has had and continues to have the sole authority to devise and administer plans of benefits for active employees or groupings of active employees (based upon rational classifications such as adjunct status) and retirees or groupings of retirees and such benefits shall be paid and were intended to be paid from the body of all monies contributed to the Fund on behalf of both active employees and retirees.

(d) Any preceding agreement between the University and the PSC relating to contributions on behalf of active employees or retirees shall be read to conform to this section and this section is binding upon the University and the PSC and all participants and beneficiaries.

(20) The provisions of this Article I may be amended only by the mutual consent of CUNY, the PSC, and the Fund. All following provisions of this Indenture (Article II *et seq.*) may be amended by the Trustees or by agreement of CUNY and the PSC.

ARTICLE II PURPOSE

The purpose of the Fund shall be to provide for the participants and their beneficiaries such welfare benefits as prescription drug, medical, hospital, dental, life, disability, and other insurance, and other health, security, and welfare insurance and other benefits as may be determined by the Fund and its Trustees; provided however, that the Fund shall always be maintained on a sound fiscal basis.

ARTICLE III ORGANIZATION AND OPERATION

(1) This Trust Fund shall be known as the PSC-CUNY WELFARE FUND.

(2) It is intended that this Trust shall be established and operated in a manner that shall qualify it as an organization exempt from income taxation under Section 501(a) of the Internal Revenue Code (hereinafter referred to as the "Code"), so as to ensure that the earnings of the Trust Fund remain exempt from income tax under the Code. Notwithstanding anything to the contrary contained herein, the Trust shall be operated exclusively for such purposes as will comply with Section 501(a) of the Code. To the extent that anything herein is inconsistent with the Code, this Indenture shall be deemed amended in such fashion as will implement the purposes of this Trust while continuing to comply with the requirements of the Code.

(3) The Trustees shall conduct all of the business of the Fund. They shall receive reports, make plans and take such actions as they shall deem to be in the best interests of the Fund and consistent with their obligations as Trustees.

(4) The Fund and the Trustees shall adopt such rules, regulations and procedures as shall facilitate the operation and administration of the Fund, collection of contributions, investments, plans and programs. The Trustees are authorized to establish the policies and administrative machinery and adopt appropriate Bylaws for the proper functioning of the Fund, which Bylaws shall not conflict with the terms and conditions of this Indenture or agreements between the University and the PSC with respect to the establishment and operation of the Fund.

(5) In the event that action upon a matter cannot reasonably be delayed until either the next meeting or a specially scheduled meeting of the Board of Trustees, at the request of the Chairperson of the Board of Trustees, a vote of the Board of Trustees may be conducted by mail, telephone, facsimile, or email; provided that in such circumstances an affirmative vote of a majority of the Trustees with vote shall be required, and provided further that amendments to this Indenture may not be made pursuant to this section. Notice of the motion to be voted upon shall be provided to all Trustees by email or facsimile transmission where possible and more than one attempt at contacting each Trustee shall be made.

ARTICLE IV TRUSTEES, OFFICERS, AND EXECUTIVE DIRECTOR

(1) Appointments of the voting Trustees appointed by the President of the PSC shall be for a three-year term beginning September 1 in the year of appointment.

(2) No vacancy in the office of Trustee shall impair the power of the remaining Trustees, acting in the manner herein provided, to administer the affairs of this Trust.

(3) Any successor Trustee shall, upon acceptance in writing of the terms of this Trust, be vested with all the rights, powers, obligations and duties of his or her predecessor as a Trustee and shall be bound by the terms of this Indenture.

(4) An officer of the Fund may hold such office only as long as such officer continues to be a Trustee. If such officer ceases to remain eligible, or resigns, or is removed, or if a vacancy in such office occurs for any reason, the President of the PSC shall appoint to fill the vacancy for the unexpired term.

(5) The Board of Trustees shall have the following officers:

(a) Chairperson: The Chairperson of the Board shall be the President of the PSC or his or her designee as per Article I, Section 4.

- (b) Executive Officer: The Executive Officer shall be appointed by the Chairperson from among the nine (9) members appointed by the President of the PSC, and shall also serve as the Fund's Vice Chairperson.
 - (c) Secretary. The Chairperson shall appoint a Secretary from among the nine (9) members appointed by the President of the PSC.
 - (d) Treasurer. The Chairperson shall appoint a Treasurer from among the nine (9) members appointed by the President of the PSC.
- (6) Duties of Officers
- (a) Chairperson: The Chairperson of the Board of Trustees shall be the Chief Administrative Officer of the Fund. He or she shall preside at meetings of the Board, and shall execute appointing powers. The Chairperson or his/her designee shall sign and execute in the name and on behalf of the Trustees all documents required by the Trustees or as reasonably incidental to this office. The Chairperson may delegate to other officers of the Board, as well as the Fund's Executive Director, such duties and responsibilities as will best serve the needs of the Fund.
 - (b) Executive Officer: The Executive Officer shall have responsibility for oversight of the Fund's benefits design, membership relations, public relations, administrative budget development, benefit program development and implementation in accordance with the master plan, and Fund asset investment. In the temporary absence of the Chairperson, the Executive Officer, as Vice Chairperson, shall perform the duties of the Chairperson.
 - (c) Treasurer: The Treasurer shall oversee the property of the Fund, the development of the Fund's administrative budget, the investment of the Fund's assets, and the performance of such other duties relating to the Fund's property, including any pension or welfare programs or trusts that may be established for the benefit of the employees of the Fund, as may be imposed by this Indenture,

the Bylaws, or by the Trustees. The Treasurer shall Chair any Committee of the Trustees responsible for overseeing the staff benefit programs, if any, established by the Trustees for the benefit of the employees of the Fund Office of the Fund. The Treasurer shall oversee the maintenance of true and accurate accounts of all receipts and expenditures and a true and accurate record of all financial transactions of the Fund, and shall oversee the furnishing of such reports as may be required.

(d) Secretary: The Secretary shall oversee the maintenance of the records of the Fund and of accurate minutes of all regular and special meetings of the Trustees.

(7) Executive Director

(a) Appointment: The Chairperson of the Fund shall nominate an Executive Director whose appointment shall be subject to confirmation by a majority vote of the total number of voting members of the Board of Trustees. The Executive Director shall report to the Chairperson of the Board or to his or her designee.

(b) Duties: The Executive Director, under the supervision of the Chairperson, shall be responsible for the following:

- (i) Development of the policies and programs of the Fund;
- (ii) Administration and implementation of the Fund's policies and programs;
- (iii) Review of utilization and performance of contracts with vendors and the making of recommendations to appropriate officers and the Board of Trustees;
- (iv) Day-to-day operations of the Fund's office and its staff;

- (v) Management of the Fund office staff;
- (vi) Execution, together with those officers designated by the Trustees, of checks drawn upon the accounts of the Fund, which shall include the authority to sign alone checks in the petty cash and other special accounts up to amounts to be determined by the Trustees upon the recommendation of the Treasurer;
- (vii) Maintenance of the minutes of the meetings of the Board of Trustees and other minutes and records of the Fund;
- (viii) Maintenance of the financial records and reports of the Fund;
- (ix) Communications with the Fund's participants, Trustees, the University and the PSC;
- (x) Management of the Fund's fiduciary insurance and bonding;
- (xi) Oversight of all mandated disclosure and reporting; and
- (xii) Carrying out any additional duties that may be assigned by the Board's Chairperson and/or the Trustees.

ARTICLE V FUNDS AND PROPERTY

(1) The funds, property and assets of the Fund are and shall continue to be Trust Funds and be kept separate and apart from any and all other funds and property of CUNY or the PSC.

(2) The assets of the Fund shall be used to provide for the participants and beneficiaries such benefits as the Trustees may deem desirable and to pay the expenses of operating the Fund.

(3) Assets of the Fund may further be used to set up a proper reserve to be invested, to purchase property, to obtain the facilities or other media which will provide, enhance or promote the health, welfare, education, or material or mental well-being of the participants and beneficiaries.

ARTICLE VI OBLIGATIONS OF TRUSTEES

(1) In exercising any and all powers, duties and responsibilities under this Indenture, the Board of Trustees shall discharge its duties and responsibilities hereunder solely in the interest of the Fund's participants and beneficiaries for the exclusive purpose of providing benefits to the participants of the Fund and their beneficiaries and defraying reasonable expenses of administering the Plan with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and shall diversify all Trust Fund assets so as to avoid the risk of large losses (unless, under the circumstances, it is clearly prudent not to do so).

(2) The Board of Trustees of the Fund pursuant to the terms and conditions of the Bylaws of the Fund shall be responsible for the deposit and investments of funds and earnings under the care and custody of the Trustees.

ARTICLE VII POWERS AND DUTIES OF TRUSTEES

(1) The Trustees shall have all powers available under New York law and shall also have all powers necessary and desirable to effectuate the purposes of the Trust, including, without limiting the generality of the foregoing, the following:

- (a) Committees.
 - (i) The Board may delegate one or more of its fiduciary responsibilities to one or more other Committees.

- (ii) Each such Committee shall comprise two or more Trustees, and may include other persons as appointed by the Chairperson of the Board of Trustees.
- (iii) Except as otherwise provided by applicable law, to the extent that such responsibilities are so delegated, the remaining Trustees shall not be liable for any loss resulting to the Trust Fund resulting from the acts or omissions of any Committee.

(b) Discretionary Authority.

- (i) The Board shall have the exclusive right, power, and authority, in its sole and absolute discretion, to administer, apply and interpret this Indenture, the Plan and any other Plan or Trust documents and to decide all factual and legal matters arising in connection with the operation or administration of the Plan or the Trust and the investment of Plan assets. Where authorized by the Board, the Executive Director shall have the exclusive right, power, and authority, in his or her sole and absolute discretion, to administer, apply and interpret the Plan and any other Plan documents and to decide all factual and legal matters arising in connection with the operation or administration of the Plan and the investment of Plan assets.
- (ii) Without limiting the generality of the foregoing, the Board (or, where authorized by the Board, the Executive Director) shall have the sole and absolute discretionary authority to:
 - (A) take all actions and make all decisions (including factual decisions) with respect to the eligibility for, and the amount of, benefits payable under the Plan to participants and beneficiaries;

- (B) formulate, interpret and apply rules, regulations and policies necessary to administer this Indenture, the Plan or other Plan documents in accordance with their terms;
 - (C) decide questions, including legal or factual questions, relating to the calculation and payment of benefits, and all other determinations made, under the Plan or other Plan documents;
 - (D) resolve and/or clarify any factual or other ambiguities, inconsistencies and omissions arising under this Indenture, the Plan or other Plan documents; and
 - (E) process, and approve or deny, benefit claims and rule on any benefit exclusions.
- (iii) All determinations made by the Board (or, where authorized by the Board, the Executive Director) with respect to any matter arising under the Plan, this Indenture and any other Plan documents shall be final and binding on all parties affected thereby.
- (c) The Fund shall have and maintain an office at a location in the City of New York designated by the Trustees, which shall be deemed the principal place of business of the Fund.

**ARTICLE VIII
EXPENSES AND TRUSTEES' COMPENSATION**

(1) The expenses incurred in the collection of contributions and in the administration and operation of this Trust shall be paid by the Fund.

(2) A Trustee shall be reimbursed for all reasonable and necessary expenses which he or she incurs in the performance of his or her duties as such and, if the Board so determines, may receive reasonable compensation for services rendered to the Fund other than his or her ordinary Trustee services, but shall not be compensated for services rendered as Trustee.

**ARTICLE IX
CLAIMS AND INDIVIDUAL RIGHTS**

(1) No participant or any beneficiary or other person claiming by or through such participant by reason of having been named a participant, in a certificate or otherwise, or the Board, shall have any right, title or interest in or to the funds or other property of the Fund or any part thereof, except as specifically provided by this Indenture and the applicable rules and regulations thereunder.

(2) No monies, property or equity of any nature whatsoever in the Fund, or policies or benefits or monies payable therefrom shall be subject in any manner, by a participant or beneficiary or other person claiming through such participant, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien, or charge, and any attempt to cause the same to be subject thereto shall be null and void.

**ARTICLE X
INDEMNIFICATION AND PROTECTION OF
TRUSTEES AND OTHER PERSONS**

(1) Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Fund contracted by them as such Trustees, or for the non-fulfillment of contracts. The same shall be paid by the Fund and the Fund shall be charged with a first lien in favor of each such Trustee for his or her security and indemnification for any amounts paid out by such Trustee for any such liability and for his or her security and indemnification against any liability of any kind which the Trustees, or any of them, may incur hereunder, provided, however, that nothing herein shall exempt any Trustee from liability arising out of his or her own willful misconduct, bad faith, or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

(2) The Trustees and each individual Trustee shall not be liable for any mistake or error of judgment or for any loss arising out of any act of commission or omission in the execution of their obligations hereunder, so long as they act in good faith and without gross negligence; nor shall any Trustee be personally liable for the acts of commission or omission of

any other Trustee, or of any employee, agent or attorney elected or appointed by or acting for the Trustees.

(3) The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

(4) The Trustees shall not be liable for the proper application of any part of the Fund or for any other liabilities arising in connection with the administration or operation of the Fund, except as herein provided.

(5) The Trustees shall from time to time consult with legal counsel and shall be fully protected in acting and relying upon advice in writing of such counsel. The Trustees shall have the right to exercise their duties prudently in reliance upon advice and opinions rendered by competent counsel, consultants, actuaries, auditors and other professional consultants.

(6) The costs and expenses of any action, suit or proceeding brought by or against the Trustees or any of them (including counsel fees), involving the business or affairs of the Fund, shall be paid by the Fund, except in relation to matters as to which it shall be adjudicated in such action, suit or proceeding that such Trustee was acting in bad faith or was grossly negligent in the performance of his or her duties hereunder.

(7) The Trustees shall not be bound by any notice, direction, requisition, advice or request, unless and until it shall have been received by the Trustees at the principal place of business of the Fund.

(8) No person, partnership, corporation or association dealing with the Trustees shall be obliged to see to the application of any funds, securities or other property paid or delivered to or received from the Trustees as a purchase price or otherwise or to see that the terms of this Indenture have been complied with, or be obliged to inquire into the authority of the Trustees, or the necessity or expediency of any act of the Trustees. Every instrument executed by the

Trustees shall be conclusive in favor of any such person, partnership, corporation or association relying thereon that (a) at the time of delivery of said instrument this Indenture was in full force and effect; (b) said instrument was effected in accordance with the terms and conditions of this Indenture, and (c) the Trustees were duly authorized and empowered to execute such instrument.

(9) The Trustees shall be protected in the equitable and uniform application of any Plan they adopt for the payment of (a) death benefits, disability benefits, group insurance or any other forms of insurance as the Trustees may determine, subject to rules of eligibility, amount of contribution, feasibility and safety of the Fund, (b) premiums for such kinds of life, disability, medical, hospital or other insurance for the participants or beneficiaries as the Trustees may determine, (c) the cost of appliances, physical aids, sundries, etc. (d) reimbursement for expenditures or programs involving, health, welfare, or general well-being of the participants or beneficiaries, (e) such other benefits for the participants or beneficiaries as the Trustees may determine, (f) the direct payment of benefits, in whole or in part, in lieu of providing insurance or other coverage to the participants or beneficiaries, as the Trustees may determine, (g) benefits pursuant to a self-insurance program.

(10) Bonding. Any person who is a fiduciary with respect to the Fund or who handles the assets of the Fund including without limitation the Trustees, Executive Director, Investment Managers, Custodians (and any employees, agents or other representatives of the Trust handling monies, Securities and negotiable paper on behalf of the Trust or otherwise entrusted with any portion of the Trust Fund), shall be bonded under a fidelity bond issued by an insurance carrier or duly authorized surety company qualified under the laws of the State of New York. The Board shall, in its sole discretion, have the discretion to determine the amount of such bond and to require the bonding of any other employee of the Trust. The cost of premiums for such bonds for employees and Trustees of the Fund shall be paid out of the Trust Fund.

(11) Fiduciary Insurance. The Board shall purchase with Fund assets and maintain a policy or policies of fiduciary liability (or errors or omissions) insurance covering the Trust Fund, the Trustees, the Executive Director and, if the Board so determines, any other person to whom a fiduciary responsibility with respect to the Plan or Fund has been allocated or delegated, to protect such persons against any and all claims arising out of such fiduciary's breach of his or her fiduciary responsibility to the Plan or the Trust Fund.

**ARTICLE XI
MISCELLANEOUS**

(1) The Fund was created, and this Indenture executed and amended in the State of New York and all questions pertaining to the validity or construction of this Indenture and of the acts and transactions thereunder shall be determined in accordance with the Laws of the State of New York.

(2) The provisions herein shall be liberally construed in order to promote and effectuate the establishment and operation of the program herein contemplated.

(3) In the event that any provision of this Indenture shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of this Indenture; and the provision or provisions held illegal or invalid shall be fully severable and this Indenture shall be construed and enforced as if said illegal or invalid provision had never been inserted herein.

(4) If any provision of this Indenture is determined to be inconsistent with or to contradict the terms and provision of the current collective bargaining agreement between the University and the PSC, or any other agreement between them, such inconsistent or contradictory provisions shall be deemed null and void without affecting the validity of the remaining provisions of this Indenture, provided that the University and the PSC shall not make any amendment to this Indenture or enter into any agreement that shall deprive the Fund of its tax-exempt status under Section 501 of the Code.

**ARTICLE XII
AMENDMENT OF ARTICLES II - XII**

(1) The provisions of Articles II through XII inclusive herein may be modified or changed only by an affirmative vote of no less than three-quarters of the Trustees present and voting, provided such changes or modifications do not conflict with the terms and provisions of the collective bargaining agreement between the PSC and the University, Article I hereof, and any other applicable governing and superseding document then in effect.

(2) A copy of each proposed amendment shall be distributed to each Trustee at least five (5) days prior to any meeting at which such amendment is to be proposed. Such proposed amendment may not be adopted until a subsequent meeting.

(3) No amendment may be adopted which permits the use of funds contrary to the basic purposes expressed herein, nor may any such amendment change the nature of the purposes of the Fund.

The foregoing PSC-CUNY Welfare Fund Trust Indenture is hereby approved, accepted, and adopted as of the date first stated herein by the following entities and individuals;

CITY UNIVERSITY OF NEW YORK

By: _____

Date:

PROFESSIONAL STAFF CONGRESS/CUNY

By: _____

Barbara Bowen, President, PSC

Date:

PSC-CUNY WELFARE FUND

By: _____

Steven London, Executive Officer,
PSC-CUNY Welfare Fund

Date:

Trustees:

- | | |
|-----------|--------|
| 1. _____ | Dated: |
| 2. _____ | Dated: |
| 3. _____ | Dated: |
| 4. _____ | Dated: |
| 5. _____ | Dated: |
| 6. _____ | Dated: |
| 7. _____ | Dated: |
| 8. _____ | Dated: |
| 9. _____ | Dated: |
| 10. _____ | Dated: |
| 11. _____ | Dated: |