

DRAKE UNIVERSITY

**VOLUNTARY TAX-DEFERRED ANNUITY
RETIREMENT PLAN**

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**DRAKE UNIVERSITY
VOLUNTARY TAX-DEFERRED ANNUITY RETIREMENT PLAN**

PURPOSE

This Plan is established by Drake University to satisfy the requirements for an arrangement described in Code Section 403(b) that allows for Employee Elective Deferrals. The Plan will be subject to the relevant portions of ERISA. The Plan assets may be invested in Code Section 403(b)(1) annuity contracts or Code Section 403(b)(7) custodial accounts that are authorized by the University for use under the Plan.

DEFINITIONS

The following words and phrases when used in the Plan with initial capital letters shall, for the purpose of this Plan, have the meanings set forth below unless the context indicates that other meanings are intended:

1.1 **AGE 50 CATCH-UP CONTRIBUTION** means Elective Deferrals made pursuant to Plan Section 3, that are in excess of an otherwise applicable Plan limit and that are made by Participants who are age 50 or older by the end of their taxable years. An otherwise applicable Plan limit is a limit in the Plan that applies to Elective Deferrals without regard to Catch-up Contributions, such as the limits on Annual Additions, the dollar limitation on Elective Deferrals under Code Section 402(g) (not counting Catch-up Contributions), or any other allowable limit imposed by the University. Age 50 Catch-up Contributions for a Participant for a taxable year may not exceed (a) the dollar limit on Age 50 Catch-up Contributions under Code Section 414(v)(2)(B)(i) for the taxable year or (b) when added to other Elective Deferrals, an amount that would enable the University to satisfy other statutory or regulatory requirements (e.g., income tax withholding, FICA and FUTA withholding, etc.). The dollar limit on Age 50 Catch-up Contributions in Code Section 414(v)(2)(B)(i) is \$1,000 for taxable years beginning in 2002, increasing by \$1,000 for each year thereafter up to \$5,000 for taxable years beginning in 2006 and later years. After 2006, the \$5,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code Section 414(c)(2)(C). Any such adjustments will be in multiples of \$500.

1.2 **ALTERNATE PAYEE** means any Spouse, former Spouse, child, or other dependent of a Participant who is recognized by a Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant.

1.3 **ANNUAL ADDITIONS** means the following amounts credited to a Participant for the Limitation Year under this Plan and other plans deemed to be maintained by the Participant as described in Plan Section 3.6:

- A. Plan Contributions,
- B. similar contributions or amounts under such other plans deemed to be maintained by the Participant, and
- C. any additional amounts required by regulations under Code Section 415.

1.4 ANNUITY STARTING DATE means the first day of the first period for which an amount is paid as an annuity or any other form.

1.5 BENEFICIARY means the individual(s) or entity(ies) designated pursuant to Plan Section 5.3 a.

1.6 CATCH-UP CONTRIBUTIONS means, Age 50 Catch-up Contributions and the Special Code Section 403(b) Catch-up Contributions.

1.7 CODE means the Internal Revenue Code of 1986, as amended from time to time.

1.8 COMPENSATION. Compensation means information required to be reported under Code Sections 6041 and 6051, and 6052 (Wages, tips and other compensation as reported on Form W-2). Unless excluded in Plan Section 1.8.A., Compensation is defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an Employee by the University (in the course of the University's business) for which the University is required to furnish the Employee a written statement under Code Sections 6041(d) and 6051(a)(3), and 6052. Compensation must be determined without regard to any rules under Code Section 3401 (a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)). In addition, Compensation means wages that would have been received and includible in gross income but for an election under Code Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)).

A. Items not includible as Compensation. The term Compensation does not include amounts paid as bonuses, overtime, overload and stipends.

B. Compensation for ACP and Code Section 401(a)(4) Testing. Compensation for purposes of ACP and Code Section 401(a)(4) testing will be W-2 wages unless another definition is required by law or regulation. Notwithstanding the foregoing, the Plan Administrator has the option from year to year to use a different definition of Compensation for testing purposes provided the definition of Compensation satisfies Code Section 414(s) and the regulations thereunder.

C. Limits On Compensation. The annual Compensation of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Annual Compensation means Compensation during the Plan Year or such other consecutive 12-month period over which Compensation is otherwise determined under the Plan ("determination period"). The cost-of-living adjustment in effect for the calendar year applies to annual Compensation for the determination period that begins with or within such calendar year.

Amounts under Code Section 125 exclude any amounts not available to a Participant in cash in lieu of group health coverage (deemed Code Section 125 compensation). An amount will be treated as an amount under Code Section 125 only if the University does not request or collect information regarding the Participants' other health coverage as part of the enrollment process for the health plan.

If a determination period consists of fewer than 12 months, the annual Compensation limit is an amount equal to the otherwise applicable annual Compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12.

If Compensation for any prior determination period is taken into account in determining an Employee's allocations or benefits for the current determination period, the Compensation for such prior determination period is subject to the applicable annual Compensation limit in effect for that prior period.

1.9 CONTRIBUTING PARTICIPANT means a Participant who has enrolled as a Contributing Participant pursuant to Plan Section 3.1 and on whose behalf the University is contributing Elective Deferrals to the Plan.

1.10 DESIGNATED BENEFICIARY means the individual who is designated by the Participant (or the Participant's surviving Spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation 1.401(a)(9)-4.

1.11 DIRECT ROLLOVER means a payment by the Plan to the Eligible Retirement Plan specified by the Recipient.

1.12 DISABILITY means the inability to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The permanence and degree of such impairment shall be supported by medical evidence satisfactory to the Plan Administrator.

1.13 DISTRIBUTION CALENDAR YEAR means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Plan Section 5.5 d. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

1.14 DOMESTIC RELATIONS ORDER Means any judgment, decree, or order (including approval of a property settlement agreement) that:

A. relates to the provision of child support, alimony payments, or marital property rights to a Spouse, former Spouse, child, or other dependent of a Participant, and

B. is made pursuant to state domestic relations law (including applicable community property laws).

1.15 EARLIEST RETIREMENT AGE means, for purposes of the Qualified Joint and Survivor Annuity provisions of the Plan, the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

1.16 EFFECTIVE DATE means January 1, 2009.

1.17 ELECTION PERIOD means the period that begins on the first day of the Plan Year in which the Participant attains age 35 and ends on the date of the Participant's death. If a Participant separates from service before the first day of the Plan Year in which age 35 is attained, with respect to the account balance as of the date of separation, the Election Period shall begin on the date of separation.

1.18 ELECTIVE DEFERRALS means Plan Contributions made either as Pre-Tax Elective Deferrals to the Plan at the election of the Participant, in lieu of cash compensation, and shall include contributions made pursuant to a salary reduction agreement. With respect to any taxable year, a Participant's Elective Deferrals are the sum of all University contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement as described in Code Section 401(k), any simplified employee pension plan cash or deferred arrangement as described in Code Section 408(k)(6), any SIMPLE IRA Plan described in Code Section 408(p), any plan as described under Code Section 501(c)(18), and any University contributions made on the behalf of a Participant for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. Elective Deferrals shall not include any deferrals properly distributed as Excess Annual Additions.

No Participant shall be permitted to have Elective Deferrals made under this Plan, or any other plan maintained by the University, during any taxable year of the Participant, in excess of the dollar limitation contained in Code Section 402(g) in effect at the beginning of such taxable year. In the case of a Participant age 50 or over by the end of the taxable year, the dollar limitation described in the preceding sentence is increased by the amount of Elective Deferrals that can be Age 50 Catch-up Contributions. In addition, if applicable, the dollar limitation described in this paragraph is increased by the amount of Elective Deferrals that can be Special Code Section 403(b) Catch-up Contributions. The dollar limitation contained in Code Section 402(g) is \$10,500 for taxable years beginning in 2000 and 2001 increasing to \$11,000 for taxable years beginning in 2002 and increasing by \$1000 for each year thereafter up to \$15,000 for taxable years beginning in 2006 and later years. After 2006, the \$15,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code Section 402(g)(4). Any adjustments will be in multiples of \$500.

1.19 ELIGIBLE EMPLOYEE means an Employee eligible to make Elective Deferrals under the Plan for any part of the Plan Year or who would be eligible to make Elective Deferrals but for a suspension due to statutory limitations, such as Code Sections 402(g) and 415, except student workers who perform service described in Code Section 3121(b)(10) whose employment is incidental to his or her educational program.

1.20 ELIGIBLE RETIREMENT PLAN means, for purposes of the Direct Rollover provisions of the Plan, an individual retirement account described in Code Sections 408(a) or 408A, an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state (and which agrees to separately account for amounts transferred into such plan from this Plan), or a qualified plan described in Code Section 401(a) that accepts the Recipient's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee under a Qualified Domestic Relations Order, as defined in Code Section 414(p).

If any portion of an Eligible Rollover Distribution is attributable to payments or distributions of Roth Elective Deferrals, an Eligible Retirement Plan with respect to such portion shall mean: (a) a qualified plan under Code Section 401(a) or a tax-sheltered annuity under Code Section 403(b) and only

if such plan permits Roth elective deferrals of Roth payments, or (b) a Roth individual retirement account described in Code Section 408A.

The definition of Eligible Retirement Plan shall include an inherited individual retirement account or annuity described in Code Sections 408(a), 408(b), or 408A in the case of a distribution to a Beneficiary that is made after December 31, 2006.

1.21 ELIGIBLE ROLLOVER DISTRIBUTION means any distribution of all or any portion of the balance to the credit of the Recipient, except that an Eligible Rollover Distribution does not include:

- A. any distribution that is one of a series of substantially equal periodic payments (paid at least annually) made for the life (or Life Expectancy) of the Recipient or the joint lives (or joint life expectancies) of the Recipient and the Recipient's Designated Beneficiary, or for a specified period of ten years or more;
- B. any distribution to the extent such distribution is required under Code Section 401(a)(9);
- C. any hardship distribution described in Plan Section 5.1 f. ii.; and
- D. any other distribution(s) that is reasonably expected to total less than \$200 during a year.

For distributions made after December 31, 2001, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income.

For distributions after December 31, 2006, Eligible Rollover Distribution shall also mean any distribution to a Beneficiary which would be treated as an Eligible Rollover Distribution by reason of Code Section 403(b)(8)(B) if the requirements of Code Section 402(c)(1) were satisfied.

1.22 EMPLOYEE means any person employed by the University, except that student workers who perform services described in Code Section 3121(b)(10) whose employment is incidental to his or her educational program shall not be eligible to become Participants.

1.23 EMPLOYER means Drake University, Des Moines Iowa, which is an employer described in Code Section 501(c)(3) which is exempt from tax under Code Section 501(a).

1.24 EMPLOYMENT COMMENCEMENT DATE means, with respect to an Employee, the date such Employee first performs an Hour of Service for the University.

1.25 ENTRY DATE means the first day of the month immediately after the Employee's Employment Commencement Date.

1.26 ERISA means the Employee Retirement Income Security Act of 1974, as amended from time-to-time.

1.27 EXCESS ANNUAL ADDITIONS means the excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

1.28 **EXCESS ELECTIVE DEFERRALS** means those Elective Deferrals that either (a) are made during the Participant's taxable year and exceed the dollar limitation under Code Section 402(g) (increased, if applicable, by the dollar limitation on Age 50 Catch-up Contributions defined in Code Section 414(v) or Special Code Section 403(b) Catch-up Contributions) for such year; or (b) are made during a calendar year and exceed the dollar limitation under Code Section 402(g) (increased, if applicable, by the dollar limitation on Age 50 Catch-up Contributions defined in Code Section 414(v) or Special Code Section 403(b) Catch-up Contributions) for the Participant's taxable year beginning in such calendar year, counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the University. Excess Elective Deferrals shall be treated as Annual Additions under the Plan, unless such amounts are distributed no later than the first April 15 following the close of the Participant's taxable year.

1.29 **FUNDING VEHICLE** means an annuity contract or custodial account that meets the requirements of Code Section 403(b) and is available for investment of Plan Contributions pursuant to Plan Section 7.1.

1.30 **HIGHLY COMPENSATED EMPLOYEE** means any Employee who for the preceding year had Compensation from the Employer in excess of \$80,000 and, if elected by the Adopting Employer in the Adoption Agreement, was in the top-paid group for the preceding year. The \$80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996.

For this purpose the applicable year of the Plan for which a determination is being made is called a determination year and the preceding 12-month period is called a look-back year, unless the Adopting Employer made a calendar year data election in the Adoption Agreement. If a calendar year data election is made, the look-back year shall be the calendar year ending within the Plan Year for purposes of determining who is a Highly Compensated Employee.

A highly compensated former employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for that determination year, in accordance with Treasury Regulation 1.414(q)-IT, A-4, Notice 97-45 and any subsequent guidance issued by the IRS.

The determination of who is a Highly Compensated Employee, including but not limited to, the determinations of the number and identity of Employees in the top-paid group and the Compensation that is considered, will be made in accordance with Code Section 414(q) and the regulations thereunder. Adoption Agreement elections to include or exclude items from Compensation that are inconsistent with Code Section 414(q) will be disregarded for purposes of determining who is a Highly Compensated Employee.

1.31 **INCLUDIBLE COMPENSATION** means the Employee's compensation received from the University that is includible in gross income for Federal income tax purposes (computed without regard to Code Section 911) for the most recent period that constitutes a year of service, as that term is defined in the Treasury Regulations under Code Section 403(b). Includible Compensation includes any amounts deferred by the University at the election of the Employee that would be includible in gross income but for the rules of Code Sections 125, 132(f), 402(e)(2), 402(h)(1)(B), 402(k), or 457(b).

Includible Compensation does not include any compensation received during a period when the University is not an eligible employer within the meaning of Code Section 403(b).

The amount of Includible Compensation is determined without regard to any community property laws.

For purposes of determining the limitation under Code Section 415(c), a former Employee is deemed to have monthly Includible Compensation for the period through the end of the taxable year in which such Employee ceases employment and through the end of each of the next five taxable years. The monthly amount is equal to one-twelfth of the former Employee's Includible Compensation during the former Employee's most recent year of service as described in Treasury Regulation 1.403(b)-4(d).

1.32 **INDIRECT ROLLOVER** means a rollover contribution received by this Plan from a Participant that previously received a distribution from another plan rather than having such amount directly rolled over to this Plan from the distributing plan.

1.33 **INDIVIDUAL ACCOUNT** means the accounting record established and maintained under this Plan for each Participant in accordance with Plan Section 7.2 b.

1.34 **INDIVIDUAL AGREEMENT** means the agreement between the Vendor and the University or Participant that constitutes or governs the annuity contract or custodial account used as a Funding Vehicle under the Plan.

1.35 **ISSUER** means an insurance or other company who issues annuity contracts described in Code Section 403(b)(1) that are authorized by the University for use under the Plan.

1.36 **LIFE EXPECTANCY** means life expectancy as computed by using the Single Life Table in Treasury Regulation 1.401(a)(9)-9, Q&A-1.

1.37 **LIMITATION YEAR** means the calendar year with respect to a Participant. If the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, the Plan is treated as if the Plan was amended to change its Limitation Year. As a result of this deemed amendment, the Code Section 415(c)(1)(A) dollar limit must be prorated under the short Limitation Year rules.

1.38 **NORMAL RETIREMENT AGE** means age 65.

1.39 **PARTICIPANT** means any Employee or former Employee of the University who has met the Plan's eligibility requirements of Plan Section 2, has entered the Plan and who is or may become eligible to receive a benefit of any type from this Plan or whose Beneficiary may be eligible to receive any such benefit.

1.40 **PARTICIPANT'S BENEFIT** means the Participant's Individual Account as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the Participant's Individual Account as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The Participant's Benefit for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

For purposes of determining the value of a Participant's Individual Account, the portion of the Individual Account equal to the value of Participant's Individual Account as of December 31, 1986 (pre-87 balance) may be excluded for purposes of the required minimum distribution calculation until the Participant reaches age 75. If, for any year, the Participant receives a distribution greater than the amount required to satisfy the current years required minimum distribution, such excess amount shall be deemed distributed from the pre-1987 balance.

1.41 PLAN means this “Drake University Voluntary Tax-Deferred Annuity Retirement Plan.” The Plan consists of this Plan Document and any other documents required to be considered part of the Plan by the IRS, including but not limited to those that contain any of the material terms and conditions for eligibility, benefits, applicable limitations, the time and form under which benefit distributions may be made and other optional features allowed under Code Section 403(b).

1.42 PLAN ADMINISTRATOR. The University shall be the Plan Administrator unless the University’s Board of Trustees designates a person or persons other than the University as the Plan Administrator. The University shall also be the Plan Administrator if the person or persons so designated ceases to be the Plan Administrator. The University may establish an administrative committee that will carry out the Plan Administrator’s duties. Members of the administrative committee may allocate the Plan Administrator’s duties among themselves. If the Board of Trustees of the University designates a person or persons other than the University as Plan Administrator, such person or persons shall serve at the pleasure of the University and shall serve pursuant to such procedures as such managing body may provide. Each such person shall be bonded as may be required by law. The term Plan Administrator shall include any person authorized to perform the duties of the Plan Administrator. The Plan Administrator shall be a named fiduciary of the Plan for purposes of ERISA Section 402(a).

1.43 PLAN CONTRIBUTIONS means Elective Deferrals.

1.44 PLAN SEQUENCE NUMBER means the three digit number the University shall assign to the Plan. The Plan Sequence Number identifies the number of plans the University maintains or has maintained. The Plan Sequence Number is 001 for the University’s first plan, 002 for the second, etc.

1.45 PLAN YEAR means the 12-consecutive month period that coincides with the University’s tax year.

1.46 PRE-AGE 35 WAIVER. A Participant who will not yet attain age 35 as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age 35. Such election shall not be valid unless the Participant receives an explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required in Plan Section 5.10 d.i. Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of Plan Section 5.10.

1.47 PRE-TAX ELECTIVE DEFERRALS means Elective Deferrals that are not included in a Contributing Participant’s gross income at the time deferred. Elective Deferrals will be characterized as Pre-Tax Elective Deferrals.

1.48 PRIOR PLAN means the “Drake University Voluntary Tax-Deferred Annuity Retirement Plan” which has been restated by adoption of this Plan document.

1.49 QUALIFIED DOMESTIC RELATIONS ORDER

A. In General means a Domestic Relations Order

i. that creates or recognizes the existence of an Alternate Payee's rights to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant under the Plan, and

ii. with respect to which the requirements described in the remainder of this definition are met.

B. Specification of Facts. A Domestic Relations Order shall be a Qualified Domestic Relations Order only if the order clearly specifies:

i. the name and last known mailing address (if any) of the Participant and the name and mailing address of each Alternate Payee covered by the order, the amount or percentage of the Participant's benefits to be paid by the Plan to each such Alternate Payee, or the manner in which such amount or percentage is to be determined, the number of payments or period to which such order applies, and

ii. each plan to which such order applies.

C. Additional Requirements. In addition to paragraph (B) above, a Domestic Relations Order shall be considered a Qualified Domestic Relations Order only if such order:

i. does not require the Plan to provide any type or form of benefit, or any option not otherwise provided under the Plan,

ii. does not require the Plan to provide increased benefits, and

iii. does not require benefits to an Alternate Payee that are required to be paid to another Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order.

D. Exception for Certain Payments. A Domestic Relations Order shall not be treated as failing to meet the requirements above solely because such order requires that payment of benefits be made to an Alternate Payee:

i. on or after the date on which the Participant attains (or would have attained) the earliest retirement age as defined in ERISA Section 206(d)(3)(E)(ii),

ii. as if the Participant had retired on the date on which such payment is to begin under such order, and

iii. in any form in which such benefits may be paid under the Plan to the Participant (other than in a Qualified Joint and Survivor Annuity) with respect to the Alternate Payee and their subsequent spouse.

1.50 QUALIFIED ELECTION means a waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless (a) the Participant's Spouse consents to the election (either in writing or in any other form permitted under rules promulgated by the IRS and DOL), (b) the election designates a specific Beneficiary, including any class of beneficiaries or any contingent beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent), (c) the Spouse's consent

acknowledges the effect of the election, and d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment that may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver by the Participant will be deemed a Qualified Election. In addition, if the Spouse is legally incompetent to give consent, the Spouse's legal guardian, even if the guardian is the Participant, may give consent. If the Participant is legally separated or the Participant has been abandoned (within the meaning of local law) and the Participant has a court order to such effect, spousal consent is not required unless a Qualified Domestic Relations Order provides otherwise.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Plan Section 5.10 d.

1.51 **QUALIFIED JOINT AND SURVIVOR ANNUITY** means an immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is not less than 50 percent and not more than 100 percent of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's vested account balance. The percentage of the survivor annuity under the Plan shall be 50 percent.

1.52 **QUALIFIED OPTIONAL SURVIVOR ANNUITY.** A Qualified Optional Survivor Annuity is an annuity (a) for the life of the Participant with a survivor annuity for the life of the Spouse that is equal to the applicable percentage of the amount of the annuity that is payable during the joint lives of the Participant and the Spouse, and (b) that is the actuarial equivalent of a single annuity for the life of the Participant. If the survivor annuity provided by the Qualified Joint and Survivor Annuity is less than 75 percent of the annuity payable during the joint lives of the Participant and Spouse, the applicable percentage for the Qualified Optional Survivor Annuity is 75 percent. If the survivor annuity provided by the Qualified Joint and Survivor Annuity is greater than or equal to 75 percent of the annuity payable during the joint lives of the Participant and Spouse, the applicable percentage for the Qualified Optional Survivor Annuity is 50 percent.

1.53 **QUALIFIED PRERETIREMENT SURVIVOR ANNUITY** means a survivor annuity for the life of the surviving Spouse of the Participant if the payments are not less than the amounts which would be payable as a survivor annuity under the Qualified Joint and Survivor Annuity under the Plan in accordance with ERISA Section 205.

1.54 **RECIPIENT.** A Recipient 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 Recipients with regard to the interest of the Spouse or former Spouse. With respect to distributions made after December 31, 2006, a Recipient includes a Beneficiary.

1.55 REQUIRED BEGINNING DATE means April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or retires, whichever is later. However, the portion of a Participant's Individual Account attributable to the period before 1987 shall not be subject to required minimum distributions until the Participant reaches age 75. If, in any year, a Participant withdraws an amount greater than the required minimum, such additional amounts are considered to be distributed from the pre-1987 balance.

1.56 SEVERANCE FROM EMPLOYMENT means an Employee ceases to be an Employee of the University. An employee does not have a Severance from Employment if, in connection with a change of employment, the Employee's new employer maintains the Plan with respect to the Employee.

A Severance from Employment shall also occur with respect to Employees of the University who cease to be employed by the University on account of a sale of the assets of the University, provided that the subsequent or continuing employer of those Employees doesn't maintain the Plan and Plan assets are not transferred to a plan maintained by that subsequent or continuing employer.

Severance from Employment occurs on any date on which an Employee ceases to be an employee of an eligible employer as defined in Treasury Regulation 1.403(b)-2(b)(8), which describes employers that may participate in 403(b) arrangements, even though the Employee may continue to be employed either (a) by another entity that is treated as the same employer where the other entity is not an eligible employer or (b) in a capacity for the same employer that is not employment with such eligible employer.

1.57 SPECIAL CODE SECTION 403(b) CATCH-UP CONTRIBUTIONS means Elective Deferrals that exceed an otherwise applicable Plan limit and that are made by a qualified employee of a qualified organization in accordance with Code Section 402(g)(7), as described in Plan Section 3.1 c.

Any Elective Deferrals that exceed an otherwise applicable Plan limit will first be applied as Special Code Section 403(b) Catch-up Contributions, with any additional Elective Deferrals being treated as Age 50 Catch-up Contributions, if applicable.

1.58 SPOUSE means the Spouse or surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or surviving Spouse and a current Spouse will not be treated as the Spouse or surviving Spouse to the extent provided under a Qualified Domestic Relations Order.

1.59 TAXABLE WAGE BASE means, with respect to any taxable year, the contribution and benefit base in effect in Section 230 of the Social Security Act at the beginning of the Plan Year.

1.60 UNIVERISTY means Drake University, Des Moines, Iowa, which is the employer sponsoring this Plan, as an employer described in Code Section 501(c)(3) which is exempt from tax under Code Section 501(a).

1.61 VALUATION DATE. The Valuation Date shall be the last day of the Plan Year and each other date designated by the Plan Administrator which is selected in a uniform and nondiscriminatory manner when the assets of the Plan are valued at their then fair market value.

1.62 VENDOR means the provider of an annuity contract or custodial account approved by the University for use under this Plan. Vendors are either insurance companies who may issue annuity contracts described in Treasury Regulation 1.403(b)-2(b)(2) or a bank or other person (described in Treasury Regulation 1.403(b)-8(d)(2)) who may hold amounts in a custodial account that meets the requirements of Treasury Regulation 1.403(b)-8(d) including the requirement that the amounts are invested in stock of a regulated investment company.

1.63 VESTED means nonforfeitable, that is, an unconditional and legally enforceable claim against the Plan obtained by a Participant or the Participant's Beneficiary to that part of an immediate or deferred benefit under the Plan that arises from a Participant's Years of Vesting Service.

1.64 VESTED ACCOUNT BALANCE means the aggregate value of the Participant's Vested account balances derived from Plan Contributions (including rollovers), whether Vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. This definition shall apply to a Participant who is vested in amounts attributable to Plan Contributions at the time of death or distribution.

SECTION 1 EFFECTIVE DATE

The Effective Date of this restated "Drake University Voluntary Tax-Deferred Annuity Retirement Plan" is January 1, 2009.

SECTION 2 ELIGIBILITY

2.1 ELIGIBILITY TO PARTICIPATE. Each Employee (except an Employee who is a student worker who performs services described in Code Section 3121(b)(10) whose employment is incidental to his or her educational program) shall be eligible to participate in this Plan by electing to contribute a portion of their Compensation as an Elective Deferral.

2.2 PLAN ENTRY

a. Each Employee who was a Participant in the Prior Plan before the Effective Date shall continue to be a Participant in this Plan.

b. Effective Date – Employees will enter the Plan for purposes of making Elective Deferrals as of the first day of the month immediately following the Employee's Employment Commencement Date and following the completion of Administrative Requirements (equally applicable to all Employees) established by the Plan Administrator for purposes of orderly and reasonable administration of this Plan.

c. Notification - The Plan Administrator shall notify each Employee who is or shall become eligible to be a Participant under this Plan and shall furnish the Employee with the enrollment forms or other documents which are required of Participants. Such notification shall be in writing (or any other form permitted under rules promulgated by the IRS or DOL). The eligible Employee shall execute such forms or documents and make available such information as may be required in the administration of the Plan.

2.3 DETERMINATIONS UNDER THIS SECTION. The Plan Administrator shall determine the eligibility of each Employee to become a Participant. This determination shall be conclusive and binding upon all persons except as otherwise provided herein or by law.

2.4 TERMS OF EMPLOYMENT. Nothing with respect to the establishment of the Plan or any action taken with respect to the Plan, nor the fact that a common law Employee has become a Participant shall give to that Employee any right to employment or continued employment or to grant any

other rights except as specifically set forth in this Plan document or other applicable law; nor shall the Plan limit the right of the University to discharge an Employee or to otherwise deal with an Employee without regard to the effect such treatment may have upon the Employee's rights under the Plan.

2.5 INFORMATION PROVIDED BY THE EMPLOYEE. Each Employee who participates in the Plan shall provide to the Plan Administrator both at the time of initial enrollment, and on an ongoing basis, any information reasonably necessary or advisable for the Plan Administrator to administer the Plan, including any information regarding the Individual Agreements under the Plan.

2.6 RECLASSIFICATION. No judicial or administrative reclassification, or reclassification by the University, of an individual as a common law employee will be applied to grant retroactive eligibility to any individual under this Plan.

SECTION 3 CONTRIBUTIONS

3.1 ELECTIVE DEFERRALS. Each Employee may begin making Elective Deferrals to the Plan by enrolling as a Contributing Participant as described below.

a. Requirements To Enroll As A Contributing Participant - Each Employee may enroll as a Contributing Participant with respect to Elective Deferrals. A Participant shall be eligible to enroll as a Contributing Participant after the first day of the month following their Employment Commencement Date, and following the completion of administrative requirements (equally applicable to all Employees) established by the Plan Administrator for purposes of orderly and reasonable administration of the Plan. A Participant who wishes to enroll as a Contributing Participant must deliver (either in writing or in any other form permitted by the IRS and the DOL) a salary reduction agreement to the Plan Administrator. The Plan Administrator may establish an annual minimum Elective Deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time.

Except for occasional, bona fide administrative considerations as set forth in the Treasury Regulations, contributions made pursuant to such election cannot precede the earlier of (1) the date on which services relating to the contribution are performed, and (2) the date on which the Compensation that is subject to the election would be payable to the Employee in the absence of an election to defer.

Notwithstanding anything in this Plan to the contrary, Elective Deferrals shall be transferred to the applicable Funding Vehicle as soon as such contributions can reasonably be segregated from the general assets of the University. In no event, however, shall Elective Deferrals be transferred to the applicable Funding Vehicle later than the 15th business day of the month following the month in which the Elective Deferrals would otherwise have been payable to a Participant in cash or by such other deadline determined under rules promulgated by the DOL.

b. Ceasing or Changing Elective Deferral Amounts - A Contributing Participant or a Participant who has met the eligibility requirements in Plan Section 2 but who is not currently making Elective Deferrals, may modify their salary reduction agreement to increase or decrease or cease Elective Deferrals at least annually and as of any such additional times established by the Plan Administrator in a uniform and nondiscriminatory manner.

i. Notice to Cease or Change Elective Deferral Amounts -A Contributing Participant who desires to modify their elections shall complete and deliver (either in

writing or in any other form permitted by the IRS and the DOL) a new salary reduction agreement to the Plan Administrator either changing the amount of their Elective Deferrals or revoking the authorization to the Employer to make Elective Deferrals on their behalf. The Plan Administrator may prescribe such uniform and nondiscriminatory rules as it deems appropriate to carry out the terms of this Plan Section 3.1 b. A Participant shall automatically cease to be a Contributing Participant upon their Severance from Employment, or on account of termination of the Plan.

ii. Return As A Contributing Participant After Ceasing Elective Deferrals - A Participant who has withdrawn as a Contributing Participant in Plan Section 3.1 b.i. (or because the Participant has taken a hardship distribution pursuant to Plan Section 5.1 c.ii.) may not again become a Contributing Participant until the first day of the Plan Year or the first day of the seventh month of the Plan Year following such withdrawal, unless the Plan Administrator, in a uniform and nondiscriminatory manner, permits withdrawing Participants to resume their status as Contributing Participants sooner (provided that Participants who take withdrawals pursuant to Plan Section 5.1 c.ii. shall be subject to the conditions of that Plan Section).

c. Catch-up Contributions.

i. Age 50 Catch-up Contributions - All Employees who are eligible to make Elective Deferrals under this Plan and who are age 50 or older by the end of their taxable year will be eligible to make Age 50 Catch-up Contributions. Age 50 Catch-up Contributions are not subject to the limits on Annual Additions under Code Section 415.

ii. Special Code Section 403(b) Catch-up Contributions (Employees With 15 Years of Service) As long as the Employer is a qualified organization (within the meaning of Treasury Regulation 1.403(b)-4(c)(3)(ii)), all qualified Employees will be eligible to make Special Code Section 403(b) Catch-up Contributions equal to the lesser of:

(a) \$3,000;

(b) The excess of:

(i) \$15,000, over

(ii) The total Special Code Section 403(b) Catch-up Contributions made for the qualified Employee by the qualified organization for prior years; or

(c) The excess of:

(i) \$5,000 multiplied by the number of years of service, (as defined in Treasury Regulations 1.403(b)-2(b)(21) and 1.403(b)-4(e)) of the Employee with the qualified organization, over

(ii) The total Elective Deferrals made for the Employee by the qualified organization for prior years.

For purposes of this Plan Section 3.1 c., a qualified Employee means an Employee who has completed at least 15 years of service (as defined in Treasury Regulations 1.403(b)-2(b)(21) and 1.403(b)-4(e)) taking into account only employment with the University.

However, in no event can the amount of the Elective Deferrals for a Participant's taxable year be more than the Participant's Compensation for the year.

3.2 ROLLOVER. A Participant may make Indirect Rollover and/or Direct Rollover contributions to the Plan from distributions made from other plans to the extent permitted by Code Section 402 and related law or regulations. The Plan Administrator may require the Participant or prior plan to certify, either in writing or in any other form permitted under rules promulgated by the IRS and DOL, and to produce documentation regarding the prior plan establishing that the contribution qualifies as a rollover contribution under the applicable provisions of the Code or regulations.

A separate account shall be maintained by the Plan Administrator for each Participant's rollover contributions, which will be nonforfeitable at all times. Such account will share in the income and gains and losses of the Funding Vehicles in which invested in the manner described in Plan Section 7.2 a. Only Participants in the Plan may make rollover contributions to this Plan.

3.3 LIMITATION ON ALLOCATIONS.

a. The Participant, not the University, is deemed to maintain any annuity contract or custodial account approved by the University for use under this Plan for purposes of applying the limitation under Code Section 415(c).

The following rules apply to such a Participant:

i. The amount of Annual Additions which may be credited to the Participant's Individual Account for any Limitation Year will not exceed the Maximum Permissible Amount, reduced by the Annual Additions credited to a Participant under any other 403(b) annuity contract or custodial account which is deemed under Treasury Regulation 1.415(f)-1(f) to be maintained by the Participant. If the Annual Additions with respect to the Participant under the other annuity contracts or custodial accounts are less than the Maximum Permissible Amount and the amounts that would otherwise be contributed or allocated to the Participant's Individual Account under this Plan would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions under all such annuity contracts or custodial accounts for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under the other annuity contracts or custodial accounts are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Individual Account under this Plan for the Limitation Year.

ii. Before determining the Participant's actual Includible Compensation for the Limitation Year, the University may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimate of the Participant's Includible Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

iii. As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Includible Compensation for the Limitation Year.

iv. If, pursuant to paragraph (iii) above or as a result of the allocation of Forfeitures or a reasonable error in determining a Participant's Elective Deferrals or any other circumstance permitted under the rules promulgated by the IRS, a Participant's Annual Additions under this Plan and such other contracts or accounts would result in Excess Annual Additions for the Limitation Year, the Excess Annual Additions will be deemed to consist of the Annual Additions last allocated.

v. If Excess Annual Additions were allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another contract or account, the Excess Annual Additions attributed to this Plan will be the product of:

(a) the total Excess Annual Additions allocated as of such date, multiplied by

(b) the ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other annuity contracts and custodial accounts.

vi. Any Excess Annual Additions allocated to a Participant under this Plan are included in a Participant's gross income and must be separately accounted for under Plan Section 7.2 b. and may be distributed pursuant to Treasury Regulation 1.403(b)-4(f).

b. The Employee Plans Compliance Resolution System of the Internal Revenue Service or such other correction method allowed by statute, regulations, or regulatory authorities may be used to make corrections necessary because of a failure to comply with this Section.

c. This provision shall be administered in accordance with Treasury Regulations issued under Code Section 415 and those regulations are incorporated into this Plan to the extent inconsistent with or not covered by the foregoing provisions.

SECTION 4 VESTING

4.1 **DETERMINING THE VESTED PORTION OF PARTICIPANT INDIVIDUAL ACCOUNTS.** In determining the Vested portion of a Participant's Individual Account, the following rules apply:

a. **Plan Contributions** - A Participant is fully vested in their Individual Account derived from Plan Contributions.

b. **Other Contributions** - A Participant is fully Vested in their rollover contributions.

4.2 **SEPARATE ACCOUNTS.** The Participant's accrued benefit derived from Elective Deferrals is nonforfeitable. Separate Accounts for Plan Contributions and rollover contributions will be

maintained for each Participant. Each account will be credited with the applicable contributions and earnings thereon.

SECTION 5 DISTRIBUTIONS

5.1 DISTRIBUTIONS

a. Eligibility for Distributions. The Participant's Individual Account attributable to Plan Contributions shall be distributable to the Participant upon the Participant's Severance from Employment. If a Participant who is entitled to a distribution is not legally competent to request or consent to a distribution, the Participant's court-appointed guardian, an attorney in fact acting under a valid power of attorney, or any other individual or entity authorized under state law to act on behalf of the Participant may request and accept a distribution of the Vested portion of a Participant's Individual Account under this Plan Section 5.1 a. All distributions are subject to the applicable Individual Agreements.

b. Special Requirements for Certain 403(b) Contributions - Notwithstanding the prior provisions of this Plan Section 5, Elective Deferrals and income allocable thereto are not distributable to a Participant or their Beneficiary or Beneficiaries, in accordance with such Participant's or Beneficiaries' election, earlier than upon the Participant's Severance from Employment, death, or Disability, except as listed below.

Such amounts may also be distributed upon any one of the following events:

- i. existence of a hardship incurred by the Participant as described in Plan Section 5.1 c.ii.(b), if elected in the Adoption Agreement; or
- ii. attainment of age 59½.

All distributions that may be made pursuant to one or more of the foregoing distribution eligibility requirements are subject to the spousal and Participant consent requirements (if applicable) contained in ERISA Section 205 and the Individual Agreements.

c. Special Requirements for Annuity Contracts and Custodial Accounts - Notwithstanding the provisions in Plan Sections 5.1 above, a Participant's Individual Account attributable to Elective Deferrals (including earnings thereon) in annuity contracts as of the close of the taxable year beginning before December 31, 1988, shall be distributable at any time, to the extent permitted in the Prior Plan, the annuity contract, and the Code. Notwithstanding the foregoing, amounts transferred from a custodial account to an annuity contract must retain the more stringent withdrawal restrictions applicable under the custodial account and may not be distributable in accordance with this paragraph.

Notwithstanding the prior paragraph, unless the distribution is one to which Code Section 72(t)(2)(G) applies (concerning qualified reservist distributions), distributions from a custodial account that is approved by the University for use under the Plan of the portion of a Participant's Individual Account that is not attributable to Elective Deferrals may not be paid to a Participant before the Participant has a Severance from Employment, dies, becomes disabled (within the meaning of Code Section 72(m)(7)), or attains age 59½.

d. Distribution Exceptions.

i. Excess Elective Deferrals - None of the prior provisions of this Plan Section 5.1 a. shall prevent distribution in the case of correction of Excess Elective Deferrals as permitted by Treasury Regulation 1.403(b)-4(f).

ii. Plan Termination - None of the prior provisions of this Plan Section 5.1 a. shall prevent distribution in the case of plan termination as permitted by Treasury Regulation 1.403(b)-10(a).

e. Distribution Request. When Distributed - A Participant or Beneficiary entitled to a distribution who wishes to receive a distribution must submit a request (either in writing or in any other form permitted under rules promulgated by the IRS and DOL) to the Plan Administrator. If required in writing, such request shall be made upon a form provided or approved by the Plan Administrator. Upon a valid request, if applicable, the Plan Administrator shall direct the Vendors to commence distribution as soon as administratively feasible after the request is received.

Distributions will be made based on the value of the Vested portion of the Individual Account available at the time of actual distribution. To the extent the distribution request is for an amount greater than the Individual Account, the Vendors shall be entitled to distribute the entire Vested portion of the Individual Account.

f. Distributions During Employment

i. Pre-1989 Distributions from Annuity Contracts - Subject to the Individual Agreements, a Participant who is not otherwise eligible to receive a distribution of their Individual Account may elect to receive an in-service distribution of all or part of the Vested portion of their Individual Account attributable to Elective Deferrals from annuity contracts issued before January 1, 1989, if the Participant has participated in the Plan for five or more years and the requirements of Plan Section 5.10 are satisfied.

ii. Hardship Withdrawals of Elective Deferrals from Annuity Contracts and Custodial Accounts - To the extent permitted by the Individual Agreements, distribution of Elective Deferrals (and any earnings credited to a Participant's account as of the later of December 31, 1988, and the end of the last Plan Year ending before July 1, 1989) may be made to a Participant in the event of hardship. For the purposes of this Plan Section 5.1 f.ii., hardship is defined as an immediate and heavy financial need of the Employee where the distribution is needed to satisfy the immediate and heavy financial need of such Employee. Hardship distributions are subject to the spousal consent requirements contained in ERISA Section 205, if applicable.

For purposes of determining whether a Participant has a hardship, a hardship is defined as an immediate and heavy financial need of the Participant where such Participant lacks other available resources. Financial needs considered immediate and heavy include, but are not limited to, (a) expenses incurred or necessary for medical care, described in Code Section 213(d), of the Employee, the Employee's primary Beneficiary, the Employee's Spouse or dependents, (b) the purchase (excluding mortgage payments) of a principal residence for the Employee, (c) payment of tuition and related educational fees for the next 12 months of post-secondary education for the Employee, the

Employee's primary Beneficiary, the Employee's Spouse, children or dependents, (d) payment to prevent the eviction of the Employee from, or a foreclosure on the mortgage of, the Employee's principal residence, (e) funeral or burial expenses for the Participant's deceased parent, Spouse, primary Beneficiary, child or dependent, and (f) payment to repair damage to the Employee's principal residence that would qualify for a casualty loss deduction under Code Section 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income).

A distribution will be considered necessary to satisfy an immediate and heavy financial need of the Employee only if (a) the Employee has obtained all distributions, other than hardship distributions, and all nontaxable loans available under all plans maintained by the Employer; and (b) the distribution is not in excess of the amount of an 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).

In addition, only listed financial needs shall be considered, and a distribution will be considered as necessary to satisfy an immediate and heavy financial need of the Employee only if all plans maintained by the University provide that the Employee's Elective Deferrals will be suspended for six months.

iii. Transfers from the Plan - Nothing in this Plan shall prohibit the Plan Administrator from permitting (or prohibiting) Participants to transfer their Individual Accounts to other eligible plans, provided such transfers are permitted (or prohibited) in a uniform and nondiscriminatory manner. The Plan Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it.

g. Miscellaneous Distribution Issues.

i. Entitlement to Distribution of Rollovers and Transfers - Rollover contributions and earnings thereon may be distributed at any time upon request to the extent permitted by the Individual Agreements. To the extent any amount transferred to the Plan is subject to any distribution restrictions required under Code Section 403(b) and Treasury Regulation 1.403(b)-6, distribution restrictions under the Plan which apply to the Participant or Beneficiary whose assets are being transferred will not be less stringent than those imposed under the transferor plan

ii. Direct Rollovers of Eligible Rollover Distributions - Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Recipient's election under this Plan Section 5.1 a., a Recipient may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution that is equal to at least \$500 (or such lesser amount if the Plan Administrator permits in a uniform and nondiscriminatory manner) paid directly to an Eligible Retirement Plan specified by the Recipient in a Direct Rollover. The Plan will also permit a non- Spouse Beneficiary to directly roll over his or her portion of the Individual Account to an inherited individual retirement arrangement (under Code Sections 408 or 408A). Such Direct Rollovers must otherwise qualify as an Eligible Rollover Distribution

iii. Qualified Reservist Distributions - To the extent permitted by the Individual Agreements, Participants may take penalty-free qualified reservist distributions from the Plan. A qualified reservist distribution means any distribution to a Participant if (a) such distribution is made from Elective Deferrals, (b) such Participant was ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and (c) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period. The Participant must have been ordered or called to active duty after September 11, 2001. This Plan Section applies to distributions after September 11, 2001.

iv. Commencement of Benefits - Notwithstanding any other provision, unless the Participant elects otherwise, distribution of benefits will begin no later than the 60th day after the latest of the close of the Plan Year in which

(a) the Participant attains age 65 (or Normal Retirement Age, if earlier),

(b) the Participant reaches the 10th anniversary of the year in which the Participant commenced participation in the Plan, or

(c) the Participant incurs a Severance from Employment.

5.2 FORM OF DISTRIBUTION TO A PARTICIPANT. If the value of the Vested portion of a Participant's Individual Account exceeds \$1,000 and the Participant has properly waived the Qualified Joint and Survivor Annuity (if applicable), as described in Plan Section 5.10, the Participant may request (either in writing or in any other form permitted under rules promulgated by the IRS and DOL) that the Vested portion of their Individual Account be paid to them, to the extent permitted by the Individual Agreements, in a lump sum.

5.3 DISTRIBUTIONS UPON THE DEATH OF A PARTICIPANT.

a. Designation of Beneficiary - Each Participant (or the Participant's surviving Spouse) may designate, upon a form provided by or approved by and delivered to the Plan Administrator and/or Vendor, one or more primary and contingent Beneficiaries to receive all or a specified portion of the Participant's Individual Account in the event of their death. A Participant may change or revoke such Beneficiary designation by completing and delivering the proper form to the Plan Administrator and/or Vendor. If the Participant designates their Spouse as their Beneficiary and the individual later ceases to be a Spouse, such designation of the individual who becomes an ex-Spouse (other than by death) will be deemed to remain valid and in effect unless the Participant has revoked the designation and/or has designated a different Beneficiary in accordance with this Plan Section 5.3.

b. Spouse Consent - In the event that a Participant wishes to designate a primary Beneficiary who is not their Spouse, the Participant's Spouse must consent (either in writing or in any other form permitted under rules promulgated by the IRS and DOL) to such designation, and the Spouse's consent must acknowledge the effect of such designation and be witnessed by a notary public or plan representative. Notwithstanding this consent requirement, if the Participant establishes to the satisfaction of the Plan Administrator that such written consent may not be obtained because there is no Spouse or the Spouse cannot be located, no consent shall be required. In addition, if the Spouse is legally incompetent to give consent, the Spouse's legal

guardian, even if the guardian is the Participant, may give consent. If the Participant is legally separated or the Participant has been abandoned (within the meaning of local law) and the Participant has a court order to such effect, spousal consent is not required unless a Qualified Domestic Relations Order provides otherwise. Any change of Beneficiary will require a new spousal consent to the extent required by the Code or Treasury Regulations.

In the event that a Participant fails to designate a Beneficiary, the rights of Beneficiaries will be determined under the Individual Agreements, to the extent applicable.

c. Payment to Beneficiary - Subject to the Individual Agreements, if a Participant dies before the Participant's entire Individual Account has been paid to them, such deceased Participant's Individual Account shall be payable to any surviving Beneficiary designated by the Participant, or, if no Beneficiary survives the Participant, 50 percent to the Participant's Spouse and 50 percent to the Participant's estate or, where no Spouse exists, to the Participant's estate, unless otherwise set forth in the Individual Agreement. If the Beneficiary is a minor, distribution will be deemed to have been made to such Beneficiary if the portion of the Participant's Individual Account to which the Beneficiary is entitled is paid to their legal guardian or, if applicable, to their custodian under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act. If a Beneficiary is not a minor but is not legally competent to request or consent to a distribution, distributions will be deemed to have been made to such Beneficiary if the portion of the Participant's Individual Account to which the Beneficiary is entitled is paid to the Participant's court-appointed guardian, an attorney in fact acting under a valid power of attorney, or any other individual or entity authorized under state law to act on behalf of the Beneficiary.

d. Written Request: When Distributed - A Beneficiary of a deceased Participant entitled to a distribution who wishes to receive a distribution must submit a written request (either in writing or in any other form permitted under rules promulgated by the IRS and DOL) to the Plan Administrator. If required in writing, such request shall be made on a form provided by or approved by the Plan Administrator. Upon a valid request, if applicable, the Plan Administrator shall direct the Vendor to commence distribution as soon as administratively feasible after the request is received.

5.4 FORM OF DISTRIBUTION TO BENEFICIARIES

a. Value of Individual Account Does Not Exceed \$5,000 - If the value of the Vested portion of a Participant's Individual Account does not exceed \$5,000, the value of the Vested portion of a Participant's Individual Account may be made to the Beneficiary as permitted by the Individual Agreements.

The value of the Participant's Vested Individual Account for purposes of this paragraph shall be determined by including rollover contributions (and earnings allocable thereto) within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii) and 457(e)(16).

b. Value of Individual Account Exceeds \$5,000 - If the value of the Vested portion of a Participant's Individual Account exceeds \$5,000, the preretirement survivor annuity requirements of Plan Section 5.10 shall apply unless waived in accordance with that Plan Section 5.10. However, a surviving Spouse Beneficiary may elect any form of payment allowable under the Plan in lieu of the preretirement survivor annuity. Any such payment to the surviving Spouse must meet the requirements of Plan Section 5.5.

c. Other Forms of Distribution to Beneficiary - If the value of a Participant's Individual Account exceeds \$5,000, and the Participant has properly waived the preretirement survivor annuity, as described in Plan Section 5.10 (if applicable), or if the Beneficiary is the Participant's surviving Spouse, the Beneficiary may, subject to the requirements of Plan Section 5.5, request (either in writing or in any other form permitted under rules promulgated by the IRS and DOL) that the Participant's Individual Account be paid in any form of distribution permitted to be taken by the Participant under this Plan and the Individual Agreements other than applying the Individual Account toward the purchase of an annuity contract. Notwithstanding the foregoing, installment payments to a Beneficiary cannot be made over a period exceeding the Life Expectancy of such Beneficiary.

5.5 REQUIRED MINIMUM DISTRIBUTION REQUIREMENTS

a. General Rules.

i. Subject to Plan Section 5.10, the requirements of this Section shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Plan Section 5.5 apply to calendar years beginning after December 31, 2002.

ii. All distributions required under this Plan Section 5.5 shall be determined and made in accordance with Treasury Regulation 1.401(a)(9), including the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

iii. Limits on Distribution Periods - As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods (or a combination thereof):

- (a) the life of the Participant,
- (b) the joint lives of the Participant and a Designated Beneficiary,
- (c) a period certain not extending beyond the Life Expectancy of the Participant, or
- (d) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary.

iv. Nothing in this Plan shall prohibit or otherwise limit a Participant's option to apply the aggregation rules for purposes of satisfying their required minimum distribution as described in Treasury Regulations 1.408-8 and 1.403(b)-6(e).

b. Time and Manner of Distribution

i. Required Beginning Date - The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date. However, the undistributed portion of a Participant's Individual Account valued as of December 31, 1986, exclusive of subsequent earnings, shall not be subject to required minimum distributions under Code Section 401(a)(9) but must be distributed in accordance with the incidental benefit requirements of Treasury Regulation 1.401-1(b)(1)(i) (generally the later of age 75 or separation from service) if

such amounts are accounted for separately. If, in any year, a Participant withdraws an amount greater than the required minimum, such additional amounts will be considered to be distributed from the pre-1987 balance.

For purposes of Plan Sections 5.5 b. and 5.5 d., unless Plan Section 5.5 d.ii.(a)(iii) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Plan Section 5.5 d.ii.(a)(iii) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Plan Section 5.5 d.ii.(a)(i). If distributions under an annuity contract purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse in Plan Section 5.5 d.ii.(a)(i)), the date distributions are considered to begin is the date distributions actually commence.

Participants or Beneficiaries may elect on an individual basis whether the five-year rule or the life expectancy rule in Plan Section 5.5 d. applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin in Plan Section 5.5 b., or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor the Beneficiary makes an election under this paragraph, distributions will be made in accordance with Plan Sections 5.5 b. and 5.5 d. and, if applicable, the election in a separate good-faith amendment, if applicable.

ii. Forms of Distribution - Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Plan Sections 5.5 c. and 5.5 d. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the related Treasury Regulations.

c. Required Minimum Distributions During Participant's Lifetime.

i. Amount of Required Minimum Distribution for Each Distribution Calendar Year - During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of

(a) the quotient obtained by dividing the Participant's Benefit by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(b) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's Spouse, the quotient obtained by dividing the Participant's Benefit by the number in the Joint and Last Survivor Table set forth in Treasury Regulation 1.401(a)(9)-9, Q&A-3, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.

ii. Lifetime Required Minimum Distributions Continue Through Year of Participant's Death - Required minimum distributions will be determined under this Plan Section 5.5 c. beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

d. Required Minimum Distributions After Participant's Death

i. Death On or After Date Distributions Begin

(a) Participant Survived by Designated Beneficiary - If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Benefit by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

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

(ii) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving Spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving Spouse's death, the remaining Life Expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

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

(b) No Designated Beneficiary - If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Benefit by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

ii. Death Before Date Distributions Begin

(a) Participant Survived by Designated Beneficiary - If the Participant dies before the date distributions are required to begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient

obtained by dividing the Participant's Benefit by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Plan Section 5.5 d.i.

(i) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, then, except as provided in a separate good-faith amendment, if applicable, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(ii) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, then, except as provided in a separate good faith amendment, if applicable, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse are required to begin, this Plan Section 5.5 d.ii., other than Plan Section 5.5 d.ii.(a), will apply as if the surviving Spouse were the Participant.

(b) No Designated Beneficiary - If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions -Unless specified otherwise in a separate IRS model amendment, a Designated Beneficiary who is receiving payments under the five-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the five-year period.

e. Transition Rules. For plans in existence before 2003, required minimum distributions before 2003 were made pursuant to this Plan Section 5.5 e., if applicable, and Plan Sections 5.5 e.i. through 5.5 e.iii. below.

i. 2000 and Before - Required minimum distributions for calendar years after 1984 and before 2001 were made in accordance with Code Section 401(a)(9) and the Proposed Treasury Regulations thereunder published in the Federal Register on July 27, 1987 (the "1987 Proposed Regulations").

ii. 2001 - Required minimum distributions for calendar year 2001 were made in accordance with Code Section 401(a)(9) and Proposed Treasury Regulation 1.401(a)(9) as published in the Federal Register on January 17, 2001 (the "2001 Proposed

Regulations”) unless a prior IRS model amendment was adopted that stated that the required minimum distributions for 2001 were made pursuant to the 1987 Proposed Regulations. If distributions were made in 2001 under the 1987 Proposed Regulations before the date in 2001 that the Plan began operating under the 2001 Proposed Regulations, the special transition rule in Announcement 2001-82, 2001-2 C.B. 123, applied.

iii. 2002 - Required minimum distributions for calendar year 2002 were made in accordance with Code Section 401(a)(9) and the 2001 Proposed Regulations unless the prior IRS model amendment, if applicable, provided either a. or b. below applies.

(a) Required minimum distributions for 2002 were made pursuant to the 1987 Proposed Regulations.

(b) Required minimum distributions for 2002 were made pursuant to the Final and Temporary Treasury Regulations under Code Section 401(a)(9) published in the Federal Register on April 17, 2002 (the “2002 Final and Temporary Regulations”) which are described in Plan Sections 5.5 e.i. through 5.5 e.iii. If distributions were made in 2002 under either the 1987 Proposed Regulations or the 2001 Proposed Regulations before the date in 2002 that the Plan began operating under the 2002 Final and Temporary Regulations, the special transition rule in Section 1.2 of the model amendment in Revenue Procedure 2002-29, 2002-22 C.B. 1176, applied.

5.6 ANNUITY CONTRACTS. Any annuity contract distributed under the Plan (if permitted or required by Plan Section 5) must be nontransferable. The terms of any annuity contract purchased and distributed by the Plan to a Participant or Spouse shall comply with the requirements of the Plan. Notwithstanding any provision of the Plan to the contrary, the availability of any form of distribution is subject to the terms of the Issuer’s annuity contracts.

5.7 DISTRIBUTIONS IN-KIND. Any distribution under this Plan to be made either in any form permitted by the Individual Agreements, or in cash by converting assets other than cash into cash, or in any combination of the two foregoing methods but only to the extent permitted by the Individual Agreements.

5.8 PROCEDURE FOR MISSING PARTICIPANTS OR BENEFICIARIES. The Plan Administrator must use all reasonable measures to locate Participants or Beneficiaries who are entitled to distributions from the Plan. Such measures may include using certified mail, checking records of other plans maintained by the University, contacting the Participant’s Beneficiaries, using a governmental letter-forwarding service, or using internet search tools, commercial locator services, and credit reporting agencies. The Plan Administrator should consider the cost of the measures relative to the Individual Account balance when determining which measures are used.

In the event that the Plan Administrator cannot locate a Participant or Beneficiary who is entitled to a distribution from the Plan after using all reasonable measures, the Plan Administrator may, consistent with applicable laws, regulations, and other pronouncements under the Code and ERISA, as well as the Individual Agreements, use any reasonable procedure to dispose of distributable Plan assets, including but not limited to any of the following: (a) establish an individual retirement arrangement (IRA), under Code Section 408 or 408 A, that complies with the automatic rollover safe harbor regulations, without regard to the amount in the Individual Account, (b) establish a federally-insured bank account for and in the name

of the Participant or Beneficiary and transfer the assets to such bank account, (c) purchase an annuity contract with the assets in the name of the Participant or Beneficiary, (d) transfer the assets to the unclaimed property fund of the state in which the Participant or Beneficiary was last known to reside, or (e) after the expiration of five years after the benefit becomes payable, treat the amount distributable as a Forfeiture and allocate it in accordance with the terms of the Plan, and if the Participant or Beneficiary is later located, restore such benefit in the amount of the Forfeiture, unadjusted for earnings and losses to the Plan to the extent permitted by the Individual Agreements.

In the event the Plan is terminated, payments must be made in a manner that protects the benefit rights of a Participant or Beneficiary. Benefit rights shall be deemed to be protected if the amount in a Participant's or Beneficiary's Individual Account is placed into an individual retirement account, used to purchase an annuity contract, or transferred to another qualified retirement plan. Benefit rights need not, however, be protected if an Individual Account becomes subject to state escheat laws or if a payment is made to satisfy Code Section 401(a)(9), or if such other process is followed that is consistent with applicable statutory or regulatory guidance.

5.9 CLAIMS PROCEDURES

a. **Filing a Claim for Plan Distributions.** A Participant or Beneficiary who has been denied a request for a distribution or loan (if loans are permitted by the Plan) and desires to make a claim for the Vested portion of their individual Account shall file a request (either in writing or in any other form permitted under rules promulgated by the IRS and DOL and acceptable to the Plan Administrator) with the Plan Administrator. If such request is required in writing, such request must be made on a form provided by or acceptable to the Plan Administrator for such purpose. The request shall set forth the basis of the claim. The Plan Administrator is authorized to conduct such examinations as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the terms of the Plan.

b. **Denial of a Claim.** Whenever a claim for a Plan distribution or loan submitted in accordance with this Plan Section 5.9 by any Participant or Beneficiary has been wholly or partially denied, the Plan Administrator must furnish such Participant or Beneficiary notice (either in writing or in any other form permitted under rules promulgated by the IRS and DOL and acceptable to the Plan Administrator) of the denial within 90 days of the date the original claim was filed. This notice shall set forth the specific reasons for the denial, specific reference to pertinent Plan provisions on which the denial is based, a description of any additional information or material needed to perfect the claim, an explanation of why such additional information or material is necessary and an explanation of the procedures for appeal.

c. **Remedies Available.** The Participant or Beneficiary shall have 60 days from receipt of the denial notice in which to make written application for review by the Plan Administrator. The Participant or Beneficiary may request that the review be in the nature of a hearing. The Participant or Beneficiary shall have the right to representation, to review pertinent documents and to submit comments in writing (or in any other form permitted under rules promulgated by the IRS and DOL). The Plan Administrator shall issue a decision on such review within 60 days after receipt of an application for review as provided for in this Plan Section 5.9. Upon a decision unfavorable to the Participant or Beneficiary, such Participant or Beneficiary shall be entitled to bring such actions in law or equity as may be necessary or appropriate to protect or clarify his or her right to benefits under this Plan.

5.10 JOINT AND SURVIVOR ANNUITY REQUIREMENTS

a. Application - The provisions of this Section shall apply to any Participant who is credited with at least one Hour of Service with the University on or after August 23, 1984 and such other Participants as provided in Treasury Regulations.

b. Qualified Joint and Survivor Annuity - Unless an optional form of benefit is selected pursuant to a Qualified Election within the 180-day period ending on the Annuity Starting Date, a married Participant's Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested balance will be paid in the form of a life annuity. The Participant may elect to have such annuity distributed upon attainment of the Earliest Retirement Age under the Plan. In the case of a married Participant, the Qualified Joint and Survivor Annuity must be at least as valuable as any other optional form of benefit payable under the Plan at the same time.

Effective for Plan Years beginning after December 31, 2007, a Plan that is subject to the Qualified Joint and Survivor Annuity requirements must offer an additional survivor annuity option in the form of a Qualified Optional Survivor Annuity.

c. Qualified Preretirement Survivor Annuity - Unless an optional form of benefit has been selected within the Election Period pursuant to a Qualified Election, if a Participant dies before the Annuity Starting Date then the Participant's Vested balance shall be applied toward the purchase of an annuity for the life of the surviving Spouse. The surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death.

d. Notice Requirements

i. In the case of a Qualified Joint and Survivor Annuity, the Plan Administrator shall no less than 30 days and not more than 180 days prior to the Annuity Starting Date provide each Participant a written explanation (either in writing or in any other form permitted under rules promulgated by the IRS and DOL) of (1) the terms and conditions of a Qualified Joint and Survivor Annuity, (2) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit, (3) the rights of a Participant's Spouse, and (4) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity.

The Annuity Starting Date for a distribution in a form other than a Qualified Joint and Survivor Annuity may be less than 30 days after receipt of the explanation described in the preceding paragraph provided 1) the Participant has been provided with information that clearly indicates that the Participant has at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and elect (with spousal consent) a form of distribution other than a Qualified Joint and Survivor Annuity, 2) the Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time before the expiration of the seven-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant, and 3) the Annuity Starting Date is a date after the date that the explanation was provided to the Participant.

ii. In the case of a Qualified Preretirement Annuity as described in Plan Section 5.10 c., the Plan Administrator shall provide each Participant within the applicable period for such Participant an explanation (either in writing or in any other form permitted under rules promulgated by the IRS and DOL) of the Qualified

Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Plan Section 5.10 d.i. applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last (a) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35, (b) a reasonable period ending after the individual becomes a Participant, (c) a reasonable period ending after Plan Section 5.10 d.iii. ceases to apply to the Participant, (d) a reasonable period ending after this Plan Section 5.10 first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age 35.

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (b), (c) and (d) is the end of the two-year period beginning one year before the date the applicable event occurs, and ending one year after that date. In the case of a Participant who separates from service before the Plan Year in which age 35 is attained, notice shall be provided within the two-year period beginning one year before separation and ending one year after separation. If such a Participant thereafter returns to employment with the University, the applicable period for such Participant shall be redetermined.

iii. Notwithstanding the other requirements of this Plan Section 5.10 d., the respective notices prescribed by this Plan Section 5.10 d., need not be given to a Participant if (a) the Plan “fully subsidizes” the costs of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and (b) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Plan Section 5.10 d.iii., a plan fully subsidizes the costs of a benefit if no increase in cost, or decrease in benefits to the Participant may result from the Participants failure to elect another benefit.

5.11 DISTRIBUTION OF EXCESS ELECTIVE DEFERRALS

a. General Rule - A Participant may assign to this Plan any Excess Elective Deferrals made during a taxable year of the Participant by notifying the Plan Administrator of the amount of the Excess Elective Deferrals to be assigned to the Plan. Participants who claim Excess Elective Deferrals for the preceding calendar year must submit their claims (either in writing or in any other form permitted under rules promulgated by the IRS and DOL) to the Plan Administrator by March 1. A Participant is deemed to notify the Plan Administrator of any Excess Elective Deferrals that arise by taking into account only those Elective Deferrals made to this Plan and any other plan, contract, or arrangement of the Employer.

Notwithstanding any other provision of the Plan, Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15th to any Participant to whose Individual Account Excess Elective Deferrals were assigned for the preceding year and who claims Excess Elective Deferrals for such taxable year except to the extent such Excess Elective Deferrals were classified as Catch-up Contributions. The Plan Administrator, in a uniform and nondiscriminatory manner, will determine whether the distribution of Excess Elective Deferrals for a year will be made first from the Participant’s Pre-

Tax Elective Deferral account or the Roth Elective Deferral account, or a combination of both, to the extent both Pre-Tax Elective Deferrals and Roth Elective Deferrals were made for the year, or may allow Participants to specify otherwise.

b. Determination of Income or Loss - Excess Elective Deferrals shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to Excess Elective Deferrals is the sum of: 1) the income or loss allocable to the Participant's Elective Deferral account for the taxable year multiplied by a fraction, the numerator of which is such Participant's Excess Elective Deferrals for the taxable year and the denominator of which is the Participant's Individual Account balance attributable to Elective Deferrals without regard to any income or loss occurring during such taxable year and 2) 10 percent of the amount determined under 1) multiplied by the number of whole calendar months between the end of the Participant's taxable year and the date of distribution, counting the month of distribution if distribution occurs after the 15th day of such month. Notwithstanding the preceding sentence, the Plan Administrator may compute the income or loss allocable to Excess Elective Deferrals in the manner described in Plan Section Seven (i.e., the usual manner used by the Plan for allocating income or loss to Participants' Individual Accounts or any reasonable method), provided such method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year.

5.12 LOANS TO PARTICIPANTS. A Participant may receive a loan from the Funding Vehicles authorized by the University for use under the Plan, subject to the following rules, the Individual Agreements, if applicable, and the Plan's loan policy.

- a. Loans shall be made available to all Participants on a reasonably equivalent basis.
- b. The amount of any loan shall not be less than \$1,000.
- c. Loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other Employees.
- d. Loans must be adequately secured and bear a reasonable interest rate.
- e. No Participant loan shall exceed the Present Value of the Vested portion of a Participant's Individual Account.
- f. A Participant shall not have more than one loan outstanding during a Plan Year.
- g. A Participant must obtain the consent of his or her Spouse, if any, to the use of the Individual Account as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the 90 day period that ends on the date on which the loan is to be so secured. The consent must be in writing (or any other form permitted by the IRS and DOL), must acknowledge the effect of the loan, and must be witnessed by a plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting Spouse or any subsequent Spouse with respect to that loan. A new consent shall be required if the Individual Account is used for renegotiation, extension, renewal, or other revision of the loan. Notwithstanding the foregoing, no spousal consent is necessary if, at the time the loan is secured, no consent would be required for a distribution from the Plan. In addition, spousal consent is not required if the Plan or the Participant is not subject to ERISA Section 205 at the time the

Individual Account is used as security, or if the total Individual Account subject to the security is less than or equal to \$5,000.

h. In the event of default, foreclosure on the Participant's account balance in an annuity authorized by the Employer for use under the Plan, if applicable, or the note and attachment of security, if applicable, will not occur until a distributable event occurs in the Plan.

i. Loan repayments will be suspended under the Plan as permitted under Code Section 414(u)(4).

If a valid spousal consent has been obtained in accordance with this Plan Section 5.13 e., then, notwithstanding any other provisions of this Plan, the portion of the Participant's Vested Individual Account used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Individual Account payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100 percent of the Participant's Vested Individual Account (determined without regard to the preceding sentence) is payable to the surviving Spouse, then the Individual Account shall be adjusted by first reducing the Vested Individual Account by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving Spouse.

To avoid taxation to the Participant, unless otherwise permitted by law or regulatory guidance, no loan to any Participant can be made to the extent that such loan when added to the outstanding balance of all other loans to the Participant would exceed the lesser of (i) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (ii) 50 percent of the present value of the nonforfeitable Individual Account of the Participant. For the purpose of the above limitation, all loans from all plans of the Employer and other members of a group of employers described in Code Sections 414(b), 414(c), and 414(m) are aggregated. Furthermore, any loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan, unless such loan is used to acquire a dwelling unit which, within a reasonable time (determined at the time the loan is made), will be used as the principal residence of the Participant. Notwithstanding the foregoing, a Participant will suspend their loan repayments under this Plan as permitted under Code Section 414(u)(4).

The loan program will be administered in accordance with specific rules that are documented either in writing, under the Individual Agreements, if applicable, the Plan's loan policy, or in such other format as permitted by the IRS and the DOL. Such rules shall include, at a minimum, the following (i) the identity of the person or positions authorized to administer the Participant loan program; (ii) the procedure for applying for loans; (iii) the basis on which loans will be approved or denied; (iv) limitations (if any) on the types and amounts of loans offered; (v) the procedure under the program for determining a reasonable rate of interest; (vi) the types of collateral which may secure a Participant loan, and (vii) the events constituting default and the steps that will be taken to preserve Plan assets in the event of such default.

5.13 DISTRIBUTION OF EXCESS AGGREGATE CONTRIBUTIONS

a. General Rule - Notwithstanding any other provision of this Plan, Excess Aggregate Contributions, plus any income and minus any loss allocable thereto, shall be forfeited,

b. Determination of Income or Loss - Excess Aggregate Contributions shall be adjusted for any income or loss up to the end of the Plan Year to which such contributions were allocated. The income or loss allocable to Excess Aggregate Contributions allocated to each Participant is equal to the income or loss allocable to the Participant's Nondeductible Employee Contributions, if applicable, and Matching Contribution account for the Plan Year multiplied by a fraction, the numerator of which is such Participant's Excess Aggregate Contributions for the year and the denominator is the Participant's Individual Account balance(s) attributable to Contribution Percentage Amounts without regard to any income or loss occurring during such Plan Year. Notwithstanding the preceding sentence, the Plan Administrator may compute the income or loss allocable to Excess Aggregate Contributions in the manner described in Plan Section Seven (i.e., the usual manner used by the Plan for allocating income or loss to Participants' Individual Accounts or any reasonable method), provided such method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year.

c. Forfeitures of Excess Aggregate Contributions - Forfeitures of Excess Aggregate Contributions may either be reallocated to the accounts of Contributing Participants who are not Highly Compensated Employees or applied to reduce Plan Contributions, as elected by the University.

SECTION 6 DEFINITIONS

Words and phrases used in the Plan with initial capital letters shall, for the purpose of this Plan, have the meanings set forth in the portion of the Plan entitled "Definitions" unless the context indicates that other meanings are intended.

SECTION 7 MISCELLANEOUS

7.1 VENDORS, FUNDING VEHICLES AND INDIVIDUAL AGREEMENTS

a. In General. The Plan Administrator shall select the Vendors that will provide the Funding Vehicles under the Plan. As indicated by the definition of Vendor, the Vendors are insurance companies or banks or other entities that hold amounts in custodial accounts that invest in regulated investment companies (mutual fund companies). The Plan Administrator will identify each entity that will be treated as a Vendor for purposes of the Plan.

The Plan Administrator will also identify the investment accounts that each Vendor may offer under the Funding Vehicles, subject to the Individual Agreements. The Vendor may be permitted to offer one or more Funding Vehicles as authorized by the Plan Administrator.

Each Funding Vehicle offered by a Vendor may provide a range of investment options. The Plan Administrator shall determine the investment options that will be available under a Funding Vehicle. The Plan Administrator may alter the investment options available under a Funding Vehicle. Participants must be notified of any alterations to the investment options available under the Funding Vehicles.

A Participant may elect to use the investment options of one or more Vendors to receive contributions under the Plan made on their behalf and may change the Vendor or Vendors who are to receive those contributions, but only pursuant to rules specified by the Plan Administrator and the Individual Agreements and acceptable to the affected Vendors. Each Participant shall complete an application form or use another method of application made available by the Plan Administrator and Vendor or Vendors in order for one or more Funding Vehicles to be issued or utilized on behalf of the Participant under the Plan. The Plan Administrator may, at its discretion, and for the benefit of Participants and Beneficiaries, change the Vendors available under the Plan for future allocations to the extent permitted by the Individual Agreements. The Plan Administrator must notify affected Participants regarding any such change.

Funding Vehicles shall be made available for the sole purpose of providing benefits under this Plan in accordance with Code Section 403(b) and any other laws relating thereto. Documents establishing such Funding Vehicles shall be consistent with the terms of the Plan. In the event of any conflict between the terms of this Plan and the terms of any document that is made a part of the Plan, the Plan Administrator shall resolve the conflict. In the event of any conflict between the terms of this Plan and the terms of any portion of any document that is not a part of the Plan, the Plan provisions shall control. Notwithstanding the foregoing, in no event will the terms of the Plan expand or change the benefits, rights or features available under the Individual Agreements.

If any Vendor ceases to be eligible to receive contributions under the Plan, the University will enter into an information sharing agreement with the former Vendor to the extent another agreement with the Vendor does not provide for the exchange of information, as required by the Code and Treasury Regulations thereunder.

b. Investment of Contributions. Contributions made on behalf of a Participant shall be forwarded in accordance with applicable regulations to the Vendors authorized to accept contributions under the terms of the Plan.

c. Allocation Among Vendors. A Participant may elect to allocate the Plan Contributions made for the Participant among the investment options which are available under the Individual Agreements. The Plan Administrator may permit, in a uniform and nondiscriminatory manner, a Beneficiary of a deceased Participant or the Alternate Payee under a Qualified Domestic Relations Order to individually direct investments in accordance with this Plan Section Seven, Part C.

Each separate investment option shall be charged or credited (as appropriate) with the earnings, gains, losses, or expenses attributable to such separate investment option under the Individual Agreement.

d. Transfers to Vendors Not Eligible to Accept New Plan Contributions. Participants or Beneficiaries may transfer any portion of their Individual Account among the investment options under the Funding Vehicles of the eligible Vendors or to another Funding Vehicle of a Vendor not permitted to accept new Plan Contributions, provided that (i) such transfers are permissible under the restrictions of the relevant Individual Agreement, and (ii) such transfers are consistent with any procedures and rules which may be established by the Plan Administrator and the Vendors. In addition, the following conditions must be satisfied:

i. The Participant or Beneficiary must have a balance in their Individual Account immediately after the exchange that is at least equal to the balance in their Individual Account immediately before the exchange,

ii. The Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the Individual Agreements being exchanged, and

iii. The University and any Vendor not eligible to receive contributions under the Plan enter into an agreement under which the University and the Vendor agree to share information as may be necessary to ensure that the Funding Vehicle issued by the Vendor will satisfy Section 403 (b) of the Code (“information sharing agreement”).

e. ERISA Section 404(c) Compliance. The University intends to operate the Plan in conformance with ERISA Section 404(c). If all of the requirements of ERISA Section 404(c)(1) are satisfied, then to the extent of the investment directions made by Participants, the Employer, the Plan Administrator, a Vendor (if applicable), and all other Fiduciaries are relieved of fiduciary liability under ERISA Section 404(c).

7.2 VALUATION AND INDIVIDUAL ACCOUNTS

a. Valuation - The Participants' Individual Accounts will be valued each Valuation Date at fair market value.

b. Establishment and Maintenance - The Plan Administrator (or Vendor, if applicable) shall establish and maintain an Individual Account in the name of each Participant to reflect the total value of their interest in the Funding Vehicle. Each Individual Account established hereunder shall consist of such subaccounts as may be needed for each Participant:

i. a subaccount to reflect Plan Contributions and Forfeitures allocated on behalf of a Participant;

ii. a subaccount to reflect a Participant's rollover contributions;

iii. a subaccount to reflect a Participant's Voluntary Employee Contributions;

iv. a subaccount to reflect a Participant's pre-1987 contributions

v. exempt from the distribution rules described in Code Section 401(a)(9);

vi. a subaccount to reflect a Participant's pre-1989 Elective Deferrals in an annuity contract, and

vii. a subaccount to reflect a Participant's pre-2009 Employer Contributions and Matching Contributions in an annuity contract.

The Plan Administrator (or Vendor, if applicable) may establish additional accounts as it may deem necessary for the proper administration of the Plan, including, but not limited to, a suspense account for Forfeitures as required pursuant to Plan Section Four. Also, separate accounts will be established whenever specified in the Plan or required by regulations under Code Section 403(b), including for Excess Annual Additions and for portions of a Participant's Individual Account that are not Vested.

7.3 POWERS AND DUTIES OF THE PLAN ADMINISTRATOR

a. The Plan Administrator shall have the authority to control and manage the operation and administration of the Plan. The Plan Administrator shall administer the Plan for the exclusive benefit of the Participants and their Beneficiaries in accordance with the specific terms of the Plan.

The Plan Administrator may, by appointment, allocate the duties of the Plan Administrator among several individuals or entities, including Vendor(s), if appropriate.

b. The Plan Administrator shall be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

i. To determine all questions of interpretation or policy in a manner consistent with the Plan's documents. The Plan Administrator's construction or determination in good faith shall be conclusive and binding on all persons except as otherwise provided herein or by law. Any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall continue to be deemed a plan under the terms of Code Section 403(b), as amended from time to time, and shall comply with the terms of ERISA, as amended from time to time;

ii. To determine all questions relating to the eligibility of Employees to become or remain Participants hereunder;

iii. To compute the amounts necessary or desirable to be contributed to the Plan;

iv. To compute the amount and kind of benefits to which a Participant or Beneficiary shall be entitled under the Plan and to direct the Vendor with respect to all disbursements under the Plan, and, when requested by the Vendor, to furnish the Vendor with instructions, in writing, on matters pertaining to the Plan and the Vendor may rely and act thereon;

v. To maintain all records necessary for the administration of the Plan;

vi. To prepare and file such disclosures and tax forms as may be required from time to time by the Secretary of Labor or the Secretary of the Treasury;

vii. To furnish each Employee, Participant or Beneficiary such notices, information, and reports under such circumstances as may be required by law; and

viii. To periodically review the performance of each Fiduciary and all other relevant parties to ensure such individuals' obligations under the Plan are performed in a manner that is acceptable under the Plan and applicable law.

c. The Plan Administrator shall have all of the powers necessary or appropriate to accomplish their duties under the Plan, including, but not limited to, the following:

i. To appoint and retain such persons as may be necessary to carry out the functions of the Plan Administrator;

ii. To appoint and retain counsel, specialists, or other persons as the Plan Administrator deems necessary or advisable in the administration of the Plan;

iii. To resolve all questions of administration of the Plan;

iv. To establish such uniform and nondiscriminatory rules which it deems necessary to carry out the terms of the Plan;

v. To make any adjustments in a uniform and nondiscriminatory manner which it deems necessary to correct any arithmetical or accounting errors which may have been made for any Plan Year;

vi. To correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; and

vii. To change the Vendors and/or Funding Vehicles (and the investment options available under the Funding Vehicles) which are authorized by the University for use under the Plan for future allocations to the extent permitted by the Individual Agreements.

7.4 EXPENSES AND COMPENSATION. All reasonable expenses of administration, including, but not limited to, those involved in retaining necessary professional assistance, may be paid from the assets of the Funding Vehicles, subject to the Individual Agreements. Alternatively, the University may, in its discretion, pay any or all such expenses. Pursuant to uniform and nondiscriminatory rules that the Plan Administrator may establish from time to time, and subject to the Individual Agreements, administrative expenses and expenses unique to a particular Participant or group of Participants may be charged to the Individual Account of such Participant or may be assessed against terminated Participants even if not assessed against active Participants (subject to rules promulgated by the IRS and the DOL), or the Plan Administrator may allow Participants to pay such fees outside of the Plan. The University shall furnish the Plan Administrator with such clerical and other assistance as the Plan Administrator may need in the performance of its duties.

7.5 INFORMATION FROM UNIVERSITY. To enable the Plan Administrator to perform its duties, the University shall supply complete, accurate, and timely information to the Plan Administrator (or its designated agents) on all matters relating to the Compensation of all Participants; their regular employment; retirement, death, Disability, or Severance from Employment; and such other pertinent facts as the Plan Administrator (or its agents) may require. The Plan Administrator shall advise

the Vendor of the foregoing facts as may be pertinent to the Vendor's duties under the Plan. The Plan Administrator (or its agents) is entitled to rely on such information as is supplied by the University and shall have no duty or responsibility to verify such information. Such information, including authorizations and directions, may be exchanged among the University, the Plan Administrator, the Vendor, or its agents through electronic, telephonic, or other means (including, for example, through the Internet) pursuant to applicable servicing arrangements in effect for the Plan.

7.6 PLAN AMENDMENTS

a. Right of University to Amend the Plan - The University reserves the right to replace the Plan in its entirety by adopting another retirement plan which the University designates as a replacement plan or to amend the Plan.

b. Limitation On Power To Amend -No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accumulated benefit. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Individual Account with respect to benefits attributable to service before the amendment shall be treated as reducing an accumulated benefit.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of their Individual Account under a particular optional form of benefit if the amendment provides a single-sum distribution form, to the extent such form is available under the Individual Agreements. Where this Plan document is being adopted to amend another plan that contains a protected benefit not provided for in this document, the University must complete Attachment A, "Protected Benefit and Prior Plan Provisions," describing such protected benefit which shall become part of the Plan.

c. Amendment Of Vesting Schedule - If the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the Vested percentage (determined as of such date) of such Employee's Individual Account derived from Employer Contributions or Matching Contributions will not be less than the percentage computed under the Plan as of that date without regard to such amendment. Furthermore, if the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's Vested percentage, each Participant with at least three Years of Vesting Service with the University may elect, within the time set forth below, to have the Vested percentage computed under the Plan without regard to such amendment.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end the later of

- i. 60 days after the amendment is adopted;
- ii. 60 days after the amendment becomes effective; or
- iii. 60 days after the Participant is issued a notice (either in writing or in any other form permitted under rules promulgated by the IRS and DOL) of the amendment by the University or Plan Administrator.

With respect to benefits accrued as of the later of the adoption or effective date of the amendment, the Vested percentage of each Participant will be the greater of the Vested percentage under the old vesting schedule or the Vested percentage under the new vesting schedule.

7.7 PLAN MERGER OR CONSOLIDATION. Subject to the Individual Agreements, in the case of any merger or consolidation of the Plan with, or transfer of assets or liabilities of such Plan to, any other plan, each Participant shall be entitled to receive benefits immediately after the merger, consolidation, or transfer (if the Plan had then terminated) which are equal to or greater than the benefits they would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

7.8 METHOD AND PROCEDURE FOR TERMINATION. The Plan may be terminated by the University at any time by appropriate action of its managing body. Such termination shall be effective on the date specified by the University. Written notice of the termination and effective date thereof shall be given to the Vendors, Plan Administrator, and the Participants and Beneficiaries of deceased Participants. The required filings (such as the Form 5500 series and others) must be made by the University with the IRS and any other regulatory body as required by current laws and regulations. Until all of the Plan assets (including annuity contracts, if applicable) have been distributed, the University must keep the Plan in compliance with current laws and regulations by making appropriate amendments to the Plan and by taking such other measures as may be required.

Upon termination of the Plan, the balance of the Individual Accounts of each Participant will be distributed in a lump sum or by delivery of a fully paid annuity contract, as permitted by Treasury Regulation 1.403(b)-10(a). Distribution is permitted only if the University and the Related Employers do not make contributions to any Funding Vehicles that are not part of the Plan during the period beginning on the date of Plan termination and ending 12 months after distribution of all assets from the Plan. An exception to that requirement may apply as described in Treasury Regulation 1.403(b)-10(a).

7.9 CONTINUANCE OF PLAN BY SUCCESSOR EMPLOYER. Notwithstanding the preceding Plan Section 7.08, a successor of the University may continue the Plan and be substituted in the place of the University. The successor employer and the University must execute a written instrument authorizing such substitution, and the successor shall amend the Plan in accordance with Plan Section 7.06.

7.10 STATE COMMUNITY PROPERTY LAWS. The terms and conditions of this Plan shall be applicable without regard to the community property laws of any state.

7.11 HEADINGS. The headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

7.12 GENDER AND NUMBER. Whenever any words are used herein in the masculine gender they shall be construed as though they were also used in the feminine gender in all cases where they would so apply, and whenever any words are used herein in the singular form they shall be construed as though they were also used in the plural form in all cases where they would so apply.

7.13 STANDARD OF FIDUCIARY CONDUCT. The University, Plan Administrator, and any other Fiduciary under this Plan shall discharge their duties with respect to this Plan solely in the interests of Participants and their Beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters

would use in the conduct of an enterprise of a like character and with like aims. No fiduciary shall cause the Plan to engage in any transaction known as a “non-exempt prohibited transaction” under ERISA.

7.14 GENERAL UNDERTAKING OF ALL PARTIES. All parties to this Plan and all persons claiming any interest whatsoever hereunder agree to perform any and all acts and execute any and all documents and papers which may be necessary or desirable for the carrying out of this Plan and any of its provisions.

7.15 AGREEMENT BINDS HEIRS, ETC. This Plan shall be binding upon the heirs, executors, administrators, successors, and assigns, as those terms shall apply to any and all parties hereto, present and future.

7.16 INALIENABILITY OF BENEFITS. No benefit or interest available under the Plan will be subject to assignment or alienation, either voluntarily or involuntarily. The preceding sentence shall not apply to judgments and settlements described in ERISA Section 206(d)(4). Such sentence shall, however, apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a Domestic Relations Order, unless such order is determined to be a Qualified Domestic Relations Order as defined in the Definitions Section of the Plan.

Generally, a Domestic Relations Order cannot be a Qualified Domestic Relations Order until January 1, 1985. However, in the case of a Domestic Relations Order entered before January 1, 1985, the Plan Administrator:

a. shall treat such order as a Qualified Domestic Relations Order if the Plan Administrator is paying benefits pursuant to such order on January 1, 1985, and

b. may treat any other such order entered before January 1, 1985, as a Qualified Domestic Relations Order even if such order does not meet the requirements of Code Section 414(p).

Notwithstanding any provision of the Plan to the contrary, a distribution to an Alternate Payee under a Qualified Domestic Relations Order shall be permitted even if the Participant affected by such order is not otherwise entitled to a distribution, and even if such Participant has not attained the earliest retirement age as defined in Code Section 414(p).

7.17 BONDING. Every fiduciary and every person who handles funds or other property of the Plan shall be bonded to the extent required by ERISA Section 412 and the regulations thereunder for purposes of protecting the Plan against loss by reason of acts of fraud or dishonesty on the part of the person, group, or class, alone or in connivance with others, to be covered by such bond. The amount of the bond shall be fixed at the beginning of each Plan Year and shall not be less than 10 percent of the amount of funds handled. The amount of funds handled shall be determined by the funds handled the previous Plan Year or, if none, the amount of funds estimated, in accordance with rules provided by the Secretary of Labor, to be handled during the current Plan Year. Notwithstanding the foregoing, no bond shall be less than \$1,000 nor more than \$500,000, except that the Secretary of Labor shall have the right to prescribe an amount in excess of \$500,000.

7.18 DISPUTES. A Participant, Beneficiary or alternate payee may not commence a civil action pursuant to ERISA Section 502(a)(1), with respect to a benefit under the Plan after the earlier of:

a. three years after the occurrence of the facts or circumstances that give rise to or form the basis for such action; and

b. one year from the date the Participant, Beneficiary or Alternate Payee had actual knowledge of the facts or circumstances that give rise to or form the basis for such action,

except that in the case of fraud or concealment, such action may be commenced not later than three years after the date of discovery of the facts or circumstances that give rise to, or form the basis for, such action.

In the case of a dispute between a Participant, Beneficiary, Alternate Payee or other person claiming a right or entitlement pursuant to the Plan and the University, the Plan Administrator, or other person relating to or arising from the Plan, the United States District Court for the state in which the University is domiciled will apply for purposes of resolving such dispute.

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