

**DRAKE UNIVERSITY**

**MANDATORY TAX-DEFERRED ANNUITY  
RETIREMENT PLAN**

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**DRAKE UNIVERSITY  
MANDATORY 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 Mandatory Employee Contributions, Matching Contributions, and Employer Contributions. 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 ACTUAL CONTRIBUTION PERCENTAGE (ACP) means the average of the Contribution Percentages of the eligible Participants in a group of either Highly Compensated Employees or non-Highly Compensated Employees.

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. Forfeitures,
- C. Excess Aggregate Contributions,
- D. similar contributions or amounts under such other plans deemed to be maintained by the Participant, and
- E. 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 BREAK IN ELIGIBILITY SERVICE means a 12-consecutive month period that coincides with an Eligibility Computation Period during which an Employee fails to complete 1,000 or more Hours of Service.

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 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.

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

1.11 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.

1.12 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.

1.13 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).

1.14 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.

1.15 EFFECTIVE DATE means January 1, 2009.

1.16 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.

1.17 ELIGIBILITY COMPUTATION PERIOD means, with respect to an Employee's initial Eligibility Computation Period, the 12-consecutive month period commencing on the Employee's Employment Commencement Date. The Employee's subsequent Eligibility Computation Periods shall commence on the anniversary of the first day of the Employee's initial Eligibility Computation Period. An Employee shall not be credited with a Year of Eligibility Service before the end of the 12-consecutive

month period regardless of when during such period the Employee completes the required number of Hours of Service.

1.18 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.

1.19 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); and
- C. 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.

1.20 EMPLOYEE means any person employed by the University, other than a student worker who performs services described in Code Section 3121(b)(10) whose employment is incidental to his or her educational program.

1.21 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).

1.22 EMPLOYER CONTRIBUTION(S) means the amount, if any, contributed to the Plan by the University each Plan Year as a discretionary contribution.

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

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

1.25 EXCESS AGGREGATE CONTRIBUTIONS means, with respect to any Plan Year, the excess of:

A. the aggregate Contribution Percentage Amounts taken into account in computing the numerator of the Contribution Percentage actually made on behalf of Highly Compensated Employees for such Plan Year, over

B. the maximum Contribution Percentage Amounts permitted by the ACP test (determined by hypothetically reducing contributions made on behalf of Highly Compensated Employees in order of their Contribution Percentages beginning with the highest of such percentages).

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

1.27 FORFEITURE means that portion of a Participant's Individual Account derived from Employer Contributions and Matching Contributions that the Participant is not entitled to receive (the nonvested portion).

1.28 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.

1.29 HIGHLY COMPENSATED EMPLOYEE means any Employee who for the preceding year had Compensation from the University in excess of \$80,000. 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 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)-1T, 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. The

inclusion or exclusion of items from Compensation that are inconsistent with Code Section 414(q) will be disregarded for purposes of determining who is a Highly Compensated Employee.

1.30 HOURS OF SERVICE - means:

A. General Rules for Crediting Hours of Service.

i. Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the University. These hours will be credited to the Employee for the computation period in which the duties are performed; and

ii. Each hour for which an Employee is paid, or entitled to payment, by the University on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 Hours of Service will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single computation period). Hours under this paragraph shall be calculated and credited pursuant to Labor Regulation 2530.200b-2 that is incorporated herein by this reference.

iii. Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the University. The same Hours of Service will not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c). These hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment is made.

iv. An individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, eight Hours of Service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of a birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this paragraph shall be credited in the Eligibility Computation Period or Plan Year in which the absence begins if the crediting is necessary to prevent a Break in Eligibility Service in the applicable period, or (b) in all other cases, in the following Eligibility Computation Period or Plan Year.

v. Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the University is a member, and any other entity required to be aggregated with the University pursuant to Code Section 414(o) and the regulations thereunder and under Treasury Regulation 1.414(c)-5.

Hours of Service will also be credited for any individual considered an Employee for purposes of this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.



vi. Hours of Service will be credited for employment with an institution of higher education for the purpose of determining an Employee's eligibility to participate in this Plan.

B. Changes in Methods of Crediting Service. The Plan may be amended to change the method of crediting service provided each Employee with respect to whom the method of crediting service is changed is afforded the protection described in Treasury Regulation 1.410(a)-7(g) and other applicable rules promulgated by the IRS.

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 MANDATORY EMPLOYEE CONTRIBUTION means any pre-tax contribution made to the Plan by or on behalf of a Participant that is mandatory as a condition of employment.

1.39 MATCHING CONTRIBUTION means a contribution made to this Plan by the University on behalf of a Participant on account of a Mandatory Employee Contribution made by such Participant under the Plan.

1.40 MAXIMUM PERMISSIBLE AMOUNT means the maximum Annual Addition that may be contributed or allocated to a Participant's Individual Account under the Plan for any Limitation Year in accordance with Treasury Regulation 1.415(c)-1(a)(1), which is the lesser of \$40,000, as adjusted for cost-of-living under Code Section 415(d), or 100 percent of the Participant's compensation for the Limitation Year. If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the Maximum Permissible Amount will not exceed \$40,000, as adjusted under Code Section 415(d), multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

1.41 NORMAL RETIREMENT AGE means age 65.

1.42 PARTICIPANT means any Employee or former Employee of the University who has met the Plan's service requirements, 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.

1.43 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.

1.44 PLAN means this "Drake University Mandatory 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).

1.45 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).

1.46 PLAN CONTRIBUTIONS means any amounts contributed by the University each year as determined under this Plan, including Matching Contributions and Employer Contributions. The term Plan Contribution shall also include Mandatory Employee Contributions made to the Plan unless such contributions are intended to be excluded for purposes of either the Plan or any act under the Code, ERISA, or any additional rules, regulations, or other pronouncements promulgated by either the IRS or DOL.

1.47 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.

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

1.49 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.

1.50 PRIOR PLAN means the "Drake University Mandatory Tax-Deferred Annuity Retirement Plan" which has been restated by adoption of this Plan document.

1.51 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

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.

1.52 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.

1.53 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.

1.54 QUALIFIED NONELECTIVE CONTRIBUTIONS means Plan Contributions (other than Matching Contributions or Employer Contributions) allocated to Participants' Individual Accounts that the Participants may not elect to receive in cash until distributed from the Plan; that are nonforfeitable when made to the Plan; and that are distributable only in accordance with the distribution provisions (other than hardships) that are applicable to Elective Deferrals.

1.55 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.

1.56 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.

1.57 QUALIFYING CONTRIBUTING PARTICIPANT means a Contributing Participant who satisfies the requirements described in Plan Section 3.2 to be entitled to receive a Matching Contribution (and Forfeitures, if applicable) for a Plan Year.

1.58 QUALIFYING PARTICIPANT. A Participant is a Qualifying Participant and is entitled to share in the Employer Contribution for any Plan Year if the Participant was a Participant on at least one day during the Plan Year and completes at least 1,000 Hours of Service during the Plan Year. The determination of whether a Participant is entitled to share in the Employer Contribution shall be made as of the last day of each Plan Year.

1.59 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.

1.60 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.

1.61 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 or stock 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.

1.62 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.

1.63 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.

1.64 UNIVERISTY 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).

1.65 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.

1.66 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.

1.67 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.

1.68 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.

1.69 YEAR OF ELIGIBILITY SERVICE means a 12-consecutive month period that coincides with an Eligibility Computation Period during which an Employee completes at least 1,000 Hours of Service. An Employee does not complete a Year of Eligibility Service before the end of the 12 consecutive month period regardless of when during such period the Employee completes the required number of Hours of Service. A Year of Eligibility Service with an institution of higher education other than the University will be counted for meeting the eligibility requirements of Section 2.1.

## **SECTION 1 EFFECTIVE DATE**

The Effective Date of this restated "Drake University Mandatory 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, as a condition of employment, participate in this Plan as of the first day of the month immediately following the completion of one (1) Year of Eligibility Service.

### 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 - An Employee will become a Participant in the Plan as of the Effective Date if the Employee has met the eligibility requirements of Plan Section 2.1 as of such date. After the Effective Date, each Employee shall become a Participant for that purpose on the first day of the month immediately following the completion of one (1) Year of Eligibility Service.

c. Notification - The Plan Administrator shall notify each Employee who becomes 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 RETURN AS A PARTICIPANT AFTER SEVERANCE FROM EMPLOYMENT. If a Participant has a Severance from Employment after satisfying the Plan's eligibility requirements for

2.4 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.

2.5 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.

2.6 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.

2.7 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 MANDATORY EMPLOYEE CONTRIBUTIONS. Each Participant must contribute Mandatory Employee Contributions to the Plan. Mandatory Employee Contributions are required to be made as a condition of employment and will be made on a tax-deferred basis in accordance with the requirements of Code Section 403(b) and the regulations thereunder. The Participant's salary is reduced and the amount of the reduction is applied as premiums to the Funding Vehicles available under this Plan. The University shall establish uniform and nondiscriminatory rules and procedures for Mandatory Employee Contributions as it deems necessary and advisable to properly administer the Plan. A separate account will be maintained by the Plan Administrator for the Mandatory Employee Contributions of each Participant.

3.2 CONTRIBUTIONS BY UNIVERSITY. The University shall make contributions under this Plan as follows:

a. Matching Contributions - The University shall make Matching Contributions under the Plan as follows:

#### **Plan Contributions as a Percentage of Compensation**

<b><u>Class of Participant</u></b>	<b><u>University Plan Contribution</u></b>	<b><u>Participant Plan Contribution</u></b>
i. Exempt Employees	8%	5%
ii. Non-Exempt Employees	8%	3% or 5%, as elected by the Participant



The University may make Matching Contributions at the same time as it contributes Mandatory Employee Contributions or at any other time as permitted by law and regulation. The proper Matching Contribution amount may be determined by the University at any time during a Plan Year, including, but not limited to, the period during which the Matching Contributions are funded or at the end of the Plan Year, so long as the amount of Matching Contributions is determined in a uniform and nondiscriminatory manner.

For Plan Years beginning on or after 2006 (or such earlier date on which the final regulations under Treasury Regulation 1.401(m) became effective), Matching Contributions with respect to a non-Highly Compensated Employee taken into account under the Actual Contribution Percentage (ACP) test cannot exceed the greatest of (i) 5 percent of Compensation, (ii) the amount of the Qualifying Contributing Participant's Elective Deferrals, if any, and (iii) the product of two times the plan's representative matching rate for a year. The "representative matching rate," for this purpose, is the lowest matching rate for any eligible non-Highly Compensated Employee among a group of eligible non-Highly Compensated Employees that consists of one half of all non-Highly Compensated Employees for the Plan Year who make Elective Deferrals for the Plan Year (or if greater, the lowest matching rate for all eligible non-Highly Compensated Employees in the Plan who are employed by the University on the last day of the Plan Year and who make Elective Deferrals for the Plan Year). The "matching rate" is generally the Matching Contribution made for a Qualifying Contributing Participant, divided by their Elective Deferrals for the year. If the matching rate is not the same for all levels of Elective Deferrals, the matching rate is determined assuming that a Qualifying Contributing Participant's Elective Deferrals are equal to six percent of Compensation.

b. Discretionary University Plan Contributions - The University may make discretionary Employer Contributions as the University, from time to time, deems advisable, subject to the terms, limitations, and conditions of the Plan and applicable provisions of the Code.

### 3.3 PLAN CONTRIBUTIONS AND ALLOCATION

a. Obligation to Contribute - The University will make Plan Contributions as set forth in Plan Sections 3.1 and 3.2.

b. Allocation Formula and the Right to Share in the Employer Contribution

i. General - The Employer Contributions for any Plan Year will be deemed allocated to each Participant's Individual Account as of the last day of that Plan Year. Any Employer Contribution for a Plan Year must satisfy Code Section 401(a)(4) and the Treasury Regulations thereunder for such Plan Year.

Employer Contributions may be allocated to the Plan on behalf of a Participant who is a former Employee. The amount, the allocation formula, and the class of former Employees eligible to receive Employer Contributions shall be determined by the University, in its sole discretion, from year to year. Such contributions will be based upon the former Employee's Includible Compensation for a period of up to five years.

ii. Minimum Coverage Test - This paragraph shall apply to the Plan if, for any Plan Year, the Plan fails to satisfy the ratio percentage test described in Code Section 410(b)(1) as of the last day of any such Plan Year. The ratio percentage test is satisfied if, on the last day of the Plan Year, taking into account all Employees, or former Employees who were employed by the University on any day during the Plan Year, either the Plan

benefits at least 70 percent of Employees who are not Highly Compensated Employees or the Plan benefits a percentage of Employees who are not Highly Compensated Employees which is at least 70 percent of the percentage of Highly Compensated Employees benefiting under the Plan. A Participant is treated as benefiting under the Plan for any Plan Year during which the Participant received or is deemed to receive an allocation in accordance with Treasury Regulation 1.410(b)-3(a). If the Plan fails the ratio percentage test, the Plan Contribution for the Plan Year will be allocated to Participants in the first class of Participants set forth below. If the Plan still fails, then the Plan Contribution will also be allocated to Participants in the next class and each succeeding class until the Plan satisfies the minimum coverage requirements. A class shall be covered only if necessary to satisfy those requirements. The classes, in order of priority, are as follows.

(a) Participants who are still employed on the last day of the Plan Year who have completed 90 percent of the number of Hours of Service to otherwise be a Qualifying Participant or Qualifying Contributing Participant, if applicable;

(b) Participants who are still employed on the last day of the Plan Year who have completed 80 percent of the number of Hours of Service to otherwise be a Qualifying Participant or Qualifying Contributing Participant, if applicable;

(c) Participants who are still employed on the last day of the Plan Year who have completed 70 percent of the number of Hours of Service to otherwise be a Qualifying Participant or Qualifying Contributing Participant, if applicable;

(d) Participants who are still employed on the last day of the Plan Year who have completed 60 percent of the number of Hours of Service to otherwise be a Qualifying Participant or Qualifying Contributing Participant, if applicable;

(e) Participants who are still employed on the last day of the Plan Year who have completed 50 percent of the number of Hours of Service to otherwise be a Qualifying Participant or Qualifying Contributing Participant, if applicable;

(f) Any Participant still employed on the last day of the Plan Year;

(g) Participants who are not employed on the last day of the Plan Year because the Participant has died, incurred a Disability, or attained Normal Retirement Age;

(h) Participants who are not employed on the last day of the Plan Year who have completed at least 1,000 Hours of Service during the Plan Year;

(i) Participants who are not employed on the last day of the Plan Year who have completed at least 750 Hours of Service for the Plan Year;

(j) Participants who are not employed on the last day of the Plan Year who have completed at least 500 Hours of Service for the Plan Year.

If the minimum coverage test is performed after any Plan Contribution has been allocated and the Plan fails the minimum coverage test, the University shall make an additional contribution to the Plan on behalf of those Participants that are entitled thereto pursuant to items (a) through (j) above. The amount of the contribution for such Participants shall be determined pursuant to the Plan's allocation formula.

Notwithstanding the foregoing, the University may utilize the average benefits test in lieu of the ratio percentage test and the correction option described above, to satisfy minimum coverage.

iii. Inclusion of Ineligible Employees - If any Employee who is not a Qualifying Participant is erroneously treated as a Qualifying Participant during a Plan Year, then the University must correct the inclusion of ineligible Employees using any method to the extent permitted under the Employee Plans Compliance Resolution System (EPCRS) or allowed by the IRS or DOL under regulations or other guidance. The EPCRS is currently described in IRS Revenue Procedure 2006-27.

iv. Exclusion of Eligible Participant - If in any Plan Year, any Participant is erroneously excluded and discovery of such exclusion is not made until after the Plan Contribution has been made and allocated, then the University must correct the exclusion of eligible Employees using any method to the extent permitted under the Employee Plans Compliance Resolution System (EPCRS) or allowed by the IRS or DOL under regulations or other guidance. The EPCRS is currently described in IRS Revenue Procedure 2006-27.

c. Allocation of Forfeitures - Forfeitures may be, at the University's discretion, applied first to the payment of the Plan's administrative expenses in accordance with Plan Section 7.4 or applied to the restoration of Participant's Individual Accounts pursuant to Plan Section 4.1 b.iv. Any remaining Forfeitures shall be used to reduce Plan Contributions.

Forfeitures must be applied as of the last day of the Plan Year in which the Forfeitures arose or, if necessary, any subsequent Plan Year. Notwithstanding the foregoing, Forfeitures must be applied in a uniform and nondiscriminatory manner if applied either to the payment of the Plan's administrative expenses or to the restoration of a Participants Individual Accounts pursuant to Plan Section 4.1 b.iv. Forfeitures that are reallocated to Participants' Individual Accounts need not be reallocated to the same contribution source from which they were forfeited. Forfeitures of Excess Aggregate Contributions will not be allocated to the Account of a Highly Compensated Employee.

d. Timing of Plan Contributions - The Plan Contributions made by the University for each Plan Year shall be deposited into the Plan within the time period permitted by law or regulation for such contributions. Notwithstanding the foregoing, Plan Contributions may be deposited during the Plan Year for which they are being made.

e. Return of the Plan Contribution to the University Under Special Circumstances - Any contribution made by the University because of a mistake of fact must be returned to the University within one year of the contribution.

3.4 **QUALIFIED NONELECTIVE CONTRIBUTIONS.** The University may elect to make Qualified Nonelective Contributions under the Plan. The amount of such contribution, if any, to the Plan for each Plan Year, shall be determined by the University. Qualified Nonelective Contributions will be allocated to the Individual Accounts of non-Highly Compensated Employees who are eligible Participants following any allocation formula permitted under the law or regulation for purposes of satisfying the Actual Contribution Percentage test. Notwithstanding the foregoing, no allocation shall be required in excess of the amount required to satisfy the Actual Contribution Percentage test. Qualified Nonelective Contributions may be made during the Plan Year for which they are being made; however, the University must adhere to the eligibility requirements applicable to Matching Contributions, including a forfeiture of allocations where such eligibility requirements are not satisfied.

If the current year testing rules apply to the Plan, in lieu of distributing Excess Aggregate Contributions as provided in Plan Section 5.11, the University may use all or any portion of the Qualified Nonelective Contributions to satisfy the Actual Contribution Percentage test. In addition, if the prior year testing rules apply to the Plan, any QNECs that are allocated to the non-Highly Compensated Employees for the prior Plan Year for purposes of satisfying the Actual Contribution Percentage test must be contributed before the last day of the current Plan Year.

3.5 **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.

3.6 **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.

3.7 ACTUAL CONTRIBUTION PERCENTAGE TEST (ACP). Limits on Highly Compensated Employees - The Actual Contribution Percentage (ACP) for Participants who are Highly Compensated Employees for each Plan Year and the ACP for Participants who are non-Highly Compensated Employees for the same Plan Year must satisfy the requirements under Code Section 401(m) and the regulations thereunder.

## **SECTION 4 VESTING AND FORFEITURES**

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.
- c. Separate accounts for Mandatory Employee Contributions, Matching Contributions, and Employer Contributions will be maintained for each Participant. Each account will be credited with the applicable contributions and earnings thereon.

4.2 FORFEITURES AND VESTING OF MATCHING CONTRIBUTIONS. Matching Contributions shall be fully Vested as set forth in Plan Section 4.1 a.iii. Notwithstanding any other provisions of the Plan, Matching Contributions must be forfeited if the contributions to which they relate are Excess Elective Deferrals (unless the Excess Elective Deferrals are for non-Highly Compensated Employees, in which event the Plan Administrator shall have discretion as to whether such amounts will be forfeited), Excess Aggregate Contributions, Excess Annual Additions which are distributed pursuant to Plan Section 3.10 a.iv. or permissible withdrawals which are distributed pursuant to Plan Section 5.1 a.iv. Such Forfeitures shall be allocated in accordance with Plan Section 3.5 c.

## **SECTION 5 DISTRIBUTIONS**

### 5.1 DISTRIBUTIONS

a. Eligibility for Distributions. The Participant's Individual Account attributable to Plan Contributions (including ACP Safe Harbor Matching Contributions and Mandatory Employee 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. Distribution Exceptions. None of the prior provisions of this Plan Section 5.1 shall prevent distribution in the case of plan termination as permitted by Treasury Regulation 1.403(b)-10(a).

c. 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.

d. Miscellaneous Distribution Issues.

i. 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.

ii. 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 a Spouse 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 nevertheless remain in full force and effect

subsequent to becoming an ex-Spouse, unless the Participant has revoked the designation and/or has designated a different Beneficiary in accordance with this Plan Section 5.3.

b. Spousal 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 or unless the Retirement Equity Act safe harbor rules of Plan Section 5.10 e. apply. 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

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 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 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 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, if forfeitable, or if not forfeitable, distributed no later than 12 months after a Plan Year to



Participants to whose accounts such Excess Aggregate Contributions were allocated for the such Plan Year. Excess Aggregate Contributions are allocated to the Highly Compensated Employee with the largest Contribution Percentage Amounts taken into account in calculating the ACP test for the year in which the excess arose, beginning with the Highly Compensated Employee with the largest amount of such Contribution Percentage Amounts and continuing in descending order until all the Excess Aggregate Contributions have been allocated. If such Excess Aggregate Contributions are distributed more than two and one-half (2½) months (six months in the case of Excess Aggregate Contributions under an EACA described in Plan Section 3.6 e.) after the last day of the Plan Year in which such Excess Aggregate Contributions were made, a 10 percent excise tax will be imposed on the University with respect to those amounts. Excess Aggregate Contributions shall be treated as Annual Additions under the Plan even if distributed.

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 Mandatory 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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