

**CASE WESTERN RESERVE UNIVERSITY
EMPLOYEES' RETIREMENT PLAN (PLAN B)
(Amended and Restated Effective July 1, 2012)**

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CASE WESTERN RESERVE UNIVERSITY
EMPLOYEES' RETIREMENT PLAN (PLAN B)
(Amended and Restated Effective July 1, 2012)

THIS AGREEMENT, made by Case Western Reserve University (the “University”),

WITNESSETH THAT:

WHEREAS, the University previously has adopted a retirement plan document entitled “Case Western Reserve University Employees’ Retirement Plan B” (the “Plan”) for the benefit of its eligible employees. The Plan is a defined benefit pension plan which is intended to qualify as such under Code Section 401(a), and which has received several determination letters from the Internal Revenue Service to that effect;

WHEREAS, the Plan has been amended from time to time;

WHEREAS, the Plan has been amended and restated, effective July 1, 1989, to comply with the Tax Reform Act of 1986 and certain other legislative changes;

WHEREAS, the Plan has been amended and restated, effective July 1, 1992, to qualify the Plan as a so-called cash balance pension plan, and to update the Plan to comply with certain other legislation enacted after the Tax Reform Act of 1986, including the Uniform Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997 and related legislative changes and administrative and regulatory developments;

WHEREAS, the Plan has been amended and restated, effective July 1, 2007, to update the Plan to comply with applicable provisions of the Economic Growth and Tax Relief and Reconciliation Act of 2001, as amended, and subsequent legislative and regulatory changes, including the Pension Funding Equity Act of 2004 and appropriate provisions of the Pension Protection Act of 2006 (“PPA”); and

WHEREAS, the University again desires to amend and restate the Plan to update the Plan to comply with certain additional applicable provisions of the PPA, the Heroes Earnings Assistance and Relief Tax Act of 2008 (“HEART Act”), the Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”), the Small Business Jobs Act of 2010 (“SBJA”), and subsequent legislative and regulatory changes in the tax qualification requirements as set forth in the 2011 Cumulative List of Changes in Plan Requirements, Internal Revenue Service Notice 2011-97 (I.R.B. 2011-52, December 12, 2011); and

WHEREAS, the Board of Trustees of the University has duly authorized the above actions and the execution of this Agreement;

NOW, THEREFOR, effective as of July 1, 2012, the University hereby declares and agrees as follows:

1. Effective as of July 1, 2012, the Plan be, and hereby is, amended, restated and superseded by this document to be identified and known as “Case Western Reserve University Employees’ Retirement Plan B (Amended and Restated Effective July 1, 2012).” Notwithstanding the foregoing effective date, certain changes to the Plan shall be effective as of a date prior to July 1, 2012, as specifically provided herein.

2. The Plan provided for under this Agreement shall provide benefits for Participants who retire hereunder (or whose employment with the University otherwise

terminates) after June 30, 2012, and to the extent applicable, the rights and benefits of any person who becomes a Participant in the Plan after June 30, 2012 shall be determined under the terms of this Plan.

3. Anything in this Agreement to the contrary notwithstanding, the rights of any former employee whose employment with the University or active participation in the Plan ceased prior to July 1, 2012, except as specifically provided herein, shall be determined under, and shall be governed by, the terms of the Plan in effect prior to July 1, 2012.

ARTICLE 1

DEFINITIONS

The following words and phrases when used in the Plan shall have the following respective meanings, unless a different meaning is clearly required by the context. Where used herein, the masculine gender shall include the feminine and neuter genders, the singular shall include the plural, and the plural shall include the singular, unless the context clearly indicates a different meaning.

- 1.1 Account Balance Account.** A notional account equal to the sum of the Annual Account Balance Contributions and the Interest Credits. Upon reemployment, the Account Balance Account is determined pursuant to Article 6. Upon the conversion of a Participant's Account Balance Account to a Pension, or payment of such account as a lump sum, such Account Balance Account shall cease to exist. However, a Participant may have a new Account Balance Account established after reemployment.
- 1.2 Accrued Benefit.** The benefit payable at Normal Retirement Date determined as provided in Article 5. Notwithstanding any provision of the Plan to the contrary, in no event shall the Accrued Benefit of any Participant be less than such Participant's Accrued Benefit, as determined under the terms of the Plan in effect on June 30, 1992 and fully frozen as of that date.
- 1.3 Act.** The Employee Retirement Income Security Act of 1974, as amended.
- 1.4 Actuarial Equivalent or Actuarially Equivalent.** Except as otherwise provided in various sections of this Plan, a benefit of equivalent actuarial value when computed on the basis of the actuarial factors and assumptions set forth in Appendix A of the Plan which is attached hereto and incorporated by reference.

- 1.5 Actuary.** An individual actuary or firm of actuaries appointed by, but independent of, the University, who is, or in the case of a firm, at least one (1) of whose members is, an enrolled actuary under the provisions of Section 3042 of the Act.
- 1.6 Administrator.** The University.
- 1.7 Affiliate or Affiliated Employer.** For purposes of Code Sections 401, 408(k), 410, 411, 415, 416 and other applicable Sections of the Code, all employees of: (i) all corporations that are members of a controlled group of corporations (as defined in Section 414(b) of the Code), (ii) all trades or businesses (whether or not incorporated) that are under common control (as defined in Section 414(c) of the Code), (iii) affiliated service groups (as defined in Section 414(m) of the Code), and (iv) any other entity required to be aggregated with an employer pursuant to Code Section 414(o) and regulations thereunder shall be treated as employed by a single employer and known as an Affiliated Employer.
- 1.8 Annual Account Balance Contribution.** For each Plan Year commencing on or after July 1, 1992, the notional amounts credited to the Account Balance Account of each Participant who completes an Hour of Service or is Disabled during such Plan Year. The annual contribution hereunder shall be equal to seven percent (7%) of the Participant's Compensation for such Plan Year to be credited as of the last day of such Plan Year or the Participant's Annuity Starting Date, if earlier. For a Disabled Participant, the annual contribution hereunder shall be equal to seven percent (7%) of the Participant's Compensation determined by annualizing his Compensation earned during the Plan Year which includes the date of Disability.

- 1.9 Annuity Starting Date.** The first day on which an amount is payable under a Pension, by election of the Participant or by regulation, in the form of an annuity or in any other form, regardless of whether such amount is in fact paid on such day.
- 1.10 Beneficiary.** The person or persons designated by a Participant, on a form prescribed by the Retirement Committee (or its designee) and filed with the Retirement Committee (or its designee), to receive benefits under the Plan after the death of the Participant. For a married Participant, the Beneficiary is the Participant's Spouse unless the Spouse has consented to such designated Beneficiary. If there is no Spouse and no other Beneficiary has been designated by the Participant, the Participant's estate shall be the Participant's Beneficiary. Such designation will not be effective unless the Spouse of the Participant, if any, consents in writing to such designation. Such spousal consent must be witnessed by a Plan representative or notary public. Any spousal consent obtained under this paragraph will be effective only with respect to the Spouse and such consent will be irrevocable with respect to the Spouse. A consent that permits subsequent designations by the Participant without the need for further spousal consent must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary and that the Spouse voluntarily elects to relinquish such right. A Participant may revoke a prior Beneficiary designation without spousal consent at any time and any number of times prior to the commencement of benefits. A Participant may change or revoke a designation at any time by filing a new designation or notice of revocation with the Retirement Committee (or its designee).
- 1.11 Co-Annuitant.** The person specified by the Employee as entitled to receive benefits pursuant to Section 6.4b.

1.12 Code. The Internal Revenue Code of 1986, as it may be amended and in effect from time to time.

1.13 Compensation. Cash compensation paid as base salary, exclusive of overtime, with respect to an Employee's service to the University while a Plan Participant.

Compensation shall not include cash payments in lieu of an election of benefits under a Code Section 125 plan maintained by the University. Compensation shall also include any amount which is contributed by the University pursuant to a salary reduction agreement and which is not includible in gross income of the Employee under Sections 125, 402(e)(3), 402(h)(1)(B) or 403(b) of the Code, and effective for Plan Years beginning on and after July 1, 2001, any elective amounts not includible in the gross income of the Employee by reason of Section 132(f)(4) of the Code. Compensation also includes amounts under Code Section 125 that are not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage.

“Annual Compensation” is Compensation paid during a given Plan Year for services as an Employee performed during such Plan Year. Notwithstanding the foregoing or any other provision of the Plan to the contrary, the Annual Compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001, shall not exceed \$200,000. If Annual Compensation for any prior Plan Year is taken into account in determining a Participant's benefits for the current Plan Year, the Annual Compensation for such prior Plan Year is subject to the applicable Annual Compensation limit in effect for that Plan Year. For this purpose, in determining benefits in Plan Years beginning on or after July 1, 2002, the Annual

Compensation limit in effect for Plan Years beginning before January 1, 2002 is \$200,000. The foregoing \$200,000 limit on Annual Compensation shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to Annual Compensation for the determination period that begins with or within such calendar year. If the Plan determines Compensation on a period of time that contains fewer than twelve (12) calendar months, then the applicable Annual Compensation limit is an amount equal to the Annual Compensation limit for the calendar year in which the Compensation period begins, multiplied by the ratio obtained by dividing the number of full months in the period by twelve (12).

1.14 Contributory Participant. A Participant who made contributions to the Plan prior to July 1, 1992. All contributions made by Contributory Participants are fully and immediately vested and shall be allocated only to the respective interest of each Contributory Participant. A separate account shall be maintained for each such Contributory Participant's interest in such contributions.

1.15 Covered Employee. A Covered Employee is any Employee, except for term Employees (as described in the University's term employment human resources policy ("Term Employee")) or temporary Employees (as described in the University's temporary employment human resources policy ("Temporary Employees")), who is scheduled to work 20 Hours of Service or greater per week (or such lesser number of Hours of Service per week as determined for the Employee's employment classification or position in accordance with the University's human resources policies for determining benefits for eligible employees) who is not eligible to participate in the University's Retirement Plan

A as of the first day of the Plan Year. Notwithstanding the foregoing provisions of this Section 1.15, if an Employee other than a Temporary Employee or a Term Employee has been excluded as a Covered Employee in accordance with the preceding sentence of this Section 1.15 on the basis of hours worked completes 1,000 Hours of Service in the 12-continuous month period that begins on such Employee's commencement of employment with the University (or anniversary thereof), such Employee shall be deemed to be a Covered Employee on the last day of such 12-continuous month period. An Employee who is a Term Employee or a Temporary Employee of the University shall not be a Covered Employee. An Employee who has not been a Participant in the Plan and who is not eligible for the University's Retirement Plan A by reason of not having attained the minimum age or service requirements of Plan A shall not be a Covered Employee. An Employee who was a Participant in this Plan and who became eligible for Retirement Plan A but refused to participate in Retirement Plan A for any Plan Year in which participation was voluntary shall not be a Covered Employee for such Plan Year. An Employee who is a student performing services as described in Code Section 3121(b)(10) in the employ of the University shall not be a Covered Employee.

- 1.16 Deferred Account Balance Annuity.** The projected amount of annual retirement income that would be payable under the life annuity form described in Section 6.1 beginning on a Participant's Normal Retirement Date to a Participant who has not yet reached his Normal Retirement Date and whose Annuity Starting Date has not occurred--
- a. Calculated as of any given determination date prior to July 1, 2000, the Participant's current Account Balance Account projected at a rate of interest equal to the one (1) year Treasury Bill rate in effect as of the last auction in June of the

preceding Plan Year but not less than five percent (5%), compounded annually, for the number of full years to the Participant's Normal Retirement Date and with simple interest at the rate of one-twelfth of such rate per month for any remaining full months to the Participant's Normal Retirement Date, converted to the Actuarial Equivalent life annuity payable at the Participant's Normal Retirement Date using the applicable actuarial assumptions set forth in Appendix A, Section E. Effective for Plan Years beginning on and after July 1, 2000, the rate of interest referred to in the immediately preceding sentence shall be replaced with the five (5) year Treasury Bill rate in effect as of the last auction in June of the preceding Plan Year, but not less than six percent (6%), compounded annually, for the number of full years to the Participant's Normal Retirement Date and with simple interest at the rate of one-twelfth of such rate per month for any remaining full months to the Participant's Normal Retirement Date.

- b. Each Plan Year following a Participant's termination of employment but prior to his Annuity Starting Date, the calculation in Section 1.16a will be revised as the actual Interest Credits are added to the Account Balance Account.

1.17 Disability or Disabled. Disability shall mean the Employee is eligible for long-term disability benefits from the Long-Term Disability Plan made available to Covered Employees by the University.

1.18 Earliest Retirement Age. The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

1.19 Effective Date. January 1, 1969.

1.20 Employee. A person employed by the University.

- 1.21 Employment Commencement Date.** The date on which an Employee first performs an Hour of Service for the University.
- 1.22 Entry Dates.** Each July 1 or January 1.
- 1.23 Fund.** The Trust Fund established by the Trust Agreement.
- 1.24 Highly Compensated Employee.** Effective for Plan Years beginning on and after July 1, 1997 (except that in determining whether an Employee is a Highly Compensated Employee for the Plan Year beginning July 1, 1997, the following definition of the term “Highly Compensated Employee” shall be treated as having been in effect for the Plan Year beginning July 1, 1996), any Employee who for the preceding Plan Year (i) had Compensation from the University in excess of \$80,000 (as adjusted by the Secretary pursuant to Section 415(d) of the Code, except that the base period shall be the calendar quarter ending September 30, 1996), and (ii) was in the top-paid group of Employees for such preceding Plan Year. An Employee is in the top-paid group of Employees for any Plan Year if such Employee is in the group consisting of the top twenty percent (20%) of the Employees when ranked on the basis of Compensation paid during such Plan Year.

For purposes of this Section 1.24, “Compensation” shall be determined in accordance with Section 415(c)(3) of the Code and by taking into account all Compensation from all employers required to be aggregated with the University under Code Sections 414(b), (c), (m), and (o). For Plan Years beginning after July 1, 1998, for purposes of this Section, the term Compensation means compensation within the meaning of Section 415(c)(3) of the Code, as amended, but shall include compensation that is otherwise excludible according to Sections 125, 402(e)(3), 402(h)(1)(B) and 403(b) of the Code, and, for Plan Years beginning on or after July 1, 2001, compensation within the

meaning of Code Section 132(f)(4) of the Code. Part-time, newly hired, seasonal and union (other than those, if any, who are covered by this Plan) Employees shall be excluded for such purposes, as permitted or required by Code Section 414(q) and related Treasury Regulations.

A former Employee will be treated as a Highly Compensated Employee if such Employee separated from service (or was deemed to have separated) prior to the Plan Year, performs no service for the University during the Plan Year, and was a Highly Compensated Employee for either the separation year or any Plan Year ending on or after the employee's fifty-fifth (55th) birthday.

The determination of who is a Highly Compensated Employee will be made in accordance with Code Section 414(q) and the regulations thereunder, which shall override any aspect of this Section inconsistent therewith.

1.25 Hour of Service.

- a. Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the University or an Affiliate. These hours shall be credited to the Employee for the computation period in which the duties are performed.
- b. Each hour for which an Employee is paid, or entitled to payment, by the University or an Affiliate 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, absence for maternity or paternity reasons as described in Section 1.35c, or approved leave of absence. No more than 501

Hours of Service shall 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 section 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference.

- c. Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the University or an Affiliate. These hours shall 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. The same Hours of Service shall not be credited both under this paragraph (c) and under paragraph (a) or paragraph (b), as applicable.
- d. Hours of Service shall also be credited for any individual considered a Leased Employee under Section 414(n) of the Code or an Employee for purposes of Section 414(o) of the Code and the regulations thereunder.
- e. Crediting of Hours of Service shall begin with the first Hour of Service credited to the Employee upon being employed by the University or an Affiliate.

1.26 Immediate Account Balance Annuity. The amount of annual retirement income payable with respect to a Participant's Account Balance Account on any Annuity Starting Date is equal to the Immediate Account Balance Annuity. The Immediate Account Balance Annuity is the annual amount of retirement income payable under the life annuity form as described in Section 6.4 as of the Participant's Annuity Starting Date. The annual amount of retirement income is determined by converting the Participant's

Account Balance Account to an Actuarial Equivalent life annuity with payments starting on the Participant's Annuity Starting Date using the applicable actuarial assumptions set forth in Appendix A, Section E.

1.27 Interest Credits.

- a. Based on the amount of the Participant's Account Balance Account as of the first day of each Plan Year, interest shall be added to each Participant's Account Balance Account as of the last day of the Plan Year, prior to the crediting of any Annual Account Balance Contribution for such Plan Year. For any Plan Year in which a benefit payment commences from the Plan during the Plan Year on behalf of a Participant, interest shall be credited on the amount of the Participant's Account Balance Account as of the first day of the Plan Year for the period from the first day of the Plan Year to the Annuity Starting Date. In no event will Interest Credits continue after benefits have commenced.
- b. The rate of interest used to determine the Interest Credit for Plan Years commencing on and after July 1, 1992 and prior to July 1, 2000, shall be the one (1) year Treasury Bill rate in effect as of the last auction in June of the preceding Plan Year, but not less than five percent (5%). The rate of interest used to determine the Interest Credit for Plan Years commencing on and after July 1, 2000 shall be the five (5) year Treasury Bill rate in effect as of the last auction in June of the preceding Plan Year, but not less than six percent (6%).
- c. A former Participant who terminated employment prior to July 1, 1992, or who otherwise has no Account Balance Account, is not eligible for Interest Credits hereunder. However, if such a Participant returns to work as an Employee

eligible to participate in the Plan, an Account Balance Account will be established. Such account will be eligible for the Interest Credits hereunder until the Participant's Annuity Starting Date.

1.28 Leased Employee. Effective for Plan Years beginning on and after July 1, 1997, the term "leased employee" means any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and the leasing organization, has performed services for the recipient (or for the recipient and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one (1) year, and such services are performed under the primary direction or control of the recipient employer. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A leased employee shall not be considered an employee of the recipient if: (i) such employee is covered by a money purchase pension plan providing: (A) a nonintegrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed by the employer pursuant to a salary reduction agreement which are excludible from the employee's gross income under Sections 125, 402(e)(3), 402(h)(1)(B) or 403(b) of the Code, and, effective for Plan Years beginning on or after July 1, 2001, are excludible under Section 132(f)(4) of the Code, (B) immediate participation, and (C) full and immediate vesting; and (ii) leased employees do not constitute more than twenty percent (20%) of the recipient's nonhighly compensated workforce.

A person who is a Leased Employee shall be considered an Employee solely for the purpose of determining his eligibility to become a Participant (in the event he should thereafter qualify as an Employee without regard to this section) and for the purpose of determining his eligibility for a Deferred Vested Pension (in the event he should thereafter become a Participant). However, such Leased Employee shall not otherwise be an Employee hereunder, shall not be a Participant and shall not otherwise be eligible to be covered by this Plan during any period in which he is a Leased Employee, nor shall service during such period be credited toward the calculation of the amount of any Pension or other benefit under this Plan, if he should thereafter become a Participant. Notwithstanding the foregoing, the sole purpose of this section is to define and apply the term “Leased Employee” only to the extent necessary to satisfy the minimum requirements of Code Section 414(n), relating to “leased employees.”

1.29 Limitation Year. A calendar year.

1.30 Normal Retirement Age.

- a. The later of (i) the Participant’s attainment of age sixty-five (65) or (ii) the earlier of the Participant’s completion of five (5) years of Credited Service or the fifth anniversary of the Participant’s commencement of participation in the Plan.
- b. Notwithstanding Section 1.30(a), effective for Plan Years beginning on and after July 1, 2008, for those Participants who complete one Hour of Service on or after July 1, 2008, Normal Retirement Age means the later of (i) the Participant’s attainment of age sixty-five (65) or (ii) the earlier of the Participant’s completion of three (3) years of Credited Service or the third anniversary of the Participant’s commencement of participation in the Plan.

1.31 Normal Retirement Date.

- a. The first day of the month coincident with or following the later of (i) the Participant's attainment of age sixty-five (65) or (ii) the earlier of the Participant's completion of five (5) years of Credited Service or the fifth anniversary of the Participant's commencement of participation in the Plan.
- b. Notwithstanding Section 1.31(a), effective for Plan Years beginning on and after July 1, 2008, for those Participants who complete one Hour of Service on or after July 1, 2008, Normal Retirement Date means the first day of the month coincident with or following the later of (i) the Participant's attainment of age sixty-five (65) or (ii) the earlier of the Participant's completion of three (3) years of Credited Service or the third anniversary of the Participant's commencement of participation in the Plan.

1.32 Participant. A Covered Employee who fulfills the requirements for participation as provided in Article 2 and whose participation has not terminated under the terms of Article 2.

1.33 Pension. The Normal Retirement Pension defined in Section 4.1, the Early Retirement Pension defined in Section 4.2, the Deferred Vested Pension defined in Section 4.3, the Late Retirement Pension defined in Section 4.4, or the Disability Pension defined in Section 4.5.

1.34 Period of Service. The period of time that begins on an Employee's Employment Commencement Date (or, where applicable, his Reemployment Commencement Date) and ends on his Severance from Service Date. An Employee's Period of Service will include all full and fractional Periods of Service. For purposes of this Plan, a "One-Year

Period of Service” will consist of any twelve (12) month Period of Service (regardless of whether it is a single, continuous period or a combination of fractional periods). A Period of Service shall include a period of Disability. An Employee’s Period of Service shall be determined in a manner consistent with the requirements for crediting service under the “elapsed time” method in accordance with Section 1.410(a)-7 of the Treasury Regulations.

1.35 Period of Severance. The period of time that begins on an Employee’s Severance from Service Date and ends on such Employee’s Reemployment Commencement Date. A one (1) year Period of Severance will consist of any consecutive twelve (12) month Period of Severance. However, notwithstanding the foregoing, certain periods of time which would otherwise count as Periods of Severance either will count as Periods of Service, or at least will not count against an Employee as a Period of Severance. The following special rules describe these special circumstances:

- a. If an Employee quits, is discharged or retires, but within twelve (12) months thereafter performs another Hour of Service, the Plan will count the period between the quit/discharge/retirement and the subsequent Hour of Service as part of such Employee’s Period(s) of Service.
- b. If an Employee quits, is discharged or retires during an absence from service of twelve (12) months or less, but within twelve (12) months from the date of such absence such Employee performs another Hour of Service, the Plan will count the period between the quit/discharge/retirement and the subsequent Hour of Service as part of such Employee’s Period(s) of Service.

- c. If an Employee is continuously absent from work for at least one (1) year, but is absent on a “maternity or paternity leave” of absence, as further described in Code Sections 410(a)(5)(E) and 411(a)(6)(E) and applicable Treasury Regulations, such Employee’s Severance from Service Date (otherwise used to determine whether such Employee has a Period of Severance) will be postponed for one (1) year. As a result of such postponement, such Employee’s Severance from Service Date will be moved from the first anniversary to the second anniversary of the date such Employee last performed an Hour of Service; at the same time, however, the one (1) year period between the first and second anniversaries of such Employee’s continuous absence shall not count as part of such Employee’s Period(s) of Service.

1.36 Plan Year. The twelve (12) month period commencing on July 1 and ending on the following June 30.

1.37 Prior Plan. The Case Western Reserve University Employees’ Retirement Plan B as in effect June 30, 1992.

1.38 Prior Plan Accrued Benefit. The benefit accrued under the Basic and Supplemental Pension provisions of the Prior Plan as of June 30, 1992, as specified below:

- a. Basic Pension: The accrued monthly Basic Pension of a Participant whose employment with the University is terminated after June 30, 1992 shall be the sum of (i) a Pre-1986 Basic Pension Amount, and (ii) a Post-1986 Basic Pension Amount, where (i) and (ii) are as follows:

- (i) Pre-1986 Basic Pension Amount: For periods of employment prior to July 1, 1986, Twenty-Five Dollars (\$25) per month for each year (or a fraction

thereof) of his credited service (as determined under the Prior Plan [“Prior Plan Credited Service”]) prior to July 1, 1986 for a Participant who terminates employment after June 30, 2001 (see Appendix B Section A for the Pre-1986 Basic Pension Amounts effective for Participants who terminated employment prior to July 1, 2001); and

- (ii) Post-1986 Basic Pension: For periods of employment beginning after June 30, 1986, an amount per month equal to one-twelfth (1/12) of the sum of the Participant’s Pension Accruals (determined in accordance with Section 5.1b(2)) for each Plan Year during all or part of which the Employee is a Covered Employee.

b. Supplemental Pension: The monthly Supplemental Pension of a Participant who is eligible for a normal retirement pension shall be the sum of:

- (i) 0.03125 multiplied by the aggregate of his own contributions (if any) to the Plan associated with Compensation as a Covered Employee earned on or before June 30, 1986; and
- (ii) One-twelfth (1/12) of .625 multiplied by the aggregate of his own contributions (if any) to the Plan associated with Compensation as a Covered Employee earned on or after July 1, 1986. In the event a Participant works beyond Normal Retirement Age, the Supplemental Pension will be increased on an Actuarially Equivalent basis to reflect delayed commencement.

- 1.39 Reemployment Commencement Date.** The first day, following the date an Employee commences a Period of Severance, on which such Employee next performs an Hour of Service.
- 1.40 Retired Participant.** A former Participant who has ceased to be employed by the University and who qualifies to receive benefits (whether currently or commencing as of a future date) under Section 4.1, 4.2, 4.4 or 4.5 hereof.
- 1.41 Retirement Committee.** The committee established in accordance with the provisions of Article 10.
- 1.42 Retirement Plan A.** The Case Western Reserve University Faculty and Key Administrative Employees' Retirement Plan (Plan A) (403(b) Funding Method) (Amended and Separately Stated Effective as of July 1, 1989).
- 1.43 Severance from Service Date.** The date an Employee ceases to be an employee of the University (and any Affiliated Employer) because he either quit, died, retired or was discharged. An Employee will not incur a Severance from Service Date due to Disability; provided, however, that a Participant who becomes Disabled, and later ceases to be Disabled, shall nevertheless be subject to these Severance from Service Date rules in the event he fails to return to active employment with the University within thirty (30) days of ceasing to be Disabled; and further provided, that a Disabled Participant will be deemed to incur a Severance from Service Date upon attainment of Normal Retirement Age.

In addition to the foregoing, if an Employee is continuously absent from work for three hundred sixty-five (365) days or longer, such Employee's Severance from Service Date shall be the first anniversary of the date such Employee was continuously absent

from work (with or without pay). For this purpose, the actual reason, other than Disability, that an Employee is absent from work (e.g., vacation, holiday, sickness, layoff, leave of absence, etc.) is irrelevant, except as specifically provided for “maternity or paternity leave.”

1.44 Spouse (Surviving Spouse). The Spouse or the Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse to the extent provided under a “qualified domestic relations order” as described in Code Section 414(p). Notwithstanding the foregoing sentence, a person shall not be considered a Spouse unless the Participant and the Spouse have been married throughout the one (1) year period ending on the earlier of (i) the Participant’s Annuity Starting Date, or (ii) the date of the Participant’s death. If, however, the Participant marries within one (1) year before the Annuity Starting Date and the Participant and the Participant’s Spouse have been married for at least a one (1) year period ending on or before the date of the Participant’s death, the Participant and such Spouse shall be treated as having been married throughout the one (1) year period ending on the Participant’s Annuity Starting Date.

1.45 Terminated Vested Participant. A former Participant who has ceased to be employed by the University and who qualifies to receive benefits (whether currently or commencing as of a future date) under Section 4.3 hereof.

1.46 University. Case Western Reserve University.

ARTICLE 2

ELIGIBILITY FOR PARTICIPATION

2.1 Initial Eligibility.

- a. Each Covered Employee on July 1, 2007 who was a Participant in the Plan on June 30, 2007, and who is not eligible as of July 1, 2007 to participate in the University's Retirement Plan A, will continue to be a Participant of this Plan as of July 1, 2007.
- b. Except as otherwise provided in Section 2.1a, each other Covered Employee will become a Participant in this Plan on the first Entry Date following completion of a One-Year Period of Service. For purposes of determining eligibility for participation only, employment with other accredited colleges and universities, or a related research experience will be applied to meet this Period of Service requirement.

2.2 Ongoing Eligibility. If a Participant in this Plan is eligible to participate in the University's Retirement Plan A, he will not be eligible for any further Annual Account Balance Contribution, but will continue to be eligible for Interest Credits on his Account Balance Account.

2.3 Retirement Committee's Determination of Eligibility for Participation. Any question as to the eligibility of a person to be covered by the Plan shall be determined by the Retirement Committee (or its designee) in a nondiscriminatory manner. Such determination shall be final and conclusive for all purposes, except as otherwise provided herein or by law.

2.4 Termination of Participation. A Participant will cease to participate in the Plan when his employment with the University terminates and he is not eligible for any benefits under the Plan.

ARTICLE 3

CREDITING OF SERVICE

- 3.1 Credited Service.** For the purpose of determining eligibility for vesting for Plan Years beginning on and after July 1, 1992, a Participant shall be credited with one year of Credited Service for each One-Year Period of Service. For purposes of vesting, “Years of Eligibility Service” under the Prior Plan shall be counted.
- 3.2 Benefit Service.** For the purpose of calculating benefits for the Basic Pension earned after June 30, 1992, a Participant shall be credited with one (1) year of Benefit Service for each One-Year Period of Service completed while a Participant.
- 3.3 Loss and Reinstatement of Service.**
- a. A Covered Employee shall lose his Benefit Service if he incurs a Severance from Service without being eligible for benefits under the Plan.
 - b. A Covered Employee who incurs a Severance from Service Date and who has Credited Service to be eligible for a Pension under Article 4 shall become a Participant immediately upon his Reemployment Commencement Date and Credited Service and Benefit Service shall be reinstated as of his date of reemployment.
 - c. A Covered Employee who incurs a Severance from Service Date but is not eligible for a Pension under Article 4 shall become a Participant immediately upon his Reemployment Commencement Date, and his Credited Service and Benefit Service shall be reinstated as of his date of reemployment only if the number of consecutive One-Year Periods of Severance was less than the greater of (i) five (5), or (ii) the aggregate number of years of Credited Service before such Severance from Service Date.

3.4 Credited Service When Job Functions Are Transferred to University Hospitals. For purposes of determining eligibility for vesting, a Participant whose job function is transferred to University Hospitals of Cleveland shall be credited with one (1) Year of Credited Service under this Plan for each one (1) Year Period of Service at University Hospitals of Cleveland subsequent to the job transfer. In the event that such a Participant either becomes re-employed by the University, or has his job functions transferred back to the University, he shall be eligible to participate in this Plan as of the Entry Date next following such event.

ARTICLE 4

ELIGIBILITY FOR PENSIONS

4.1 Normal Retirement Pension. A Participant whose employment with the University is terminated when or after he reaches his Normal Retirement Age shall be eligible for a Normal Retirement Pension in an amount as provided in Section 5.1.

4.2 Early Retirement Pension. A Participant with fifteen (15) or more years of Credited Service under Section 3.1 whose employment with the University is terminated when or after he reaches age fifty-five (55) (but prior to his Normal Retirement Age) shall be eligible for an Early Retirement Pension in an amount as provided in Section 5.2 hereof.

4.3 Deferred Vested Pension.

- a. (1) Except as otherwise provided in Section 4.3(b), a Participant with three (3) or more years of Credited Service under Section 3.1, who completes one Hour of Service on or after July 1, 2008, and whose employment with the University is terminated at a time when he is ineligible for any other Pension under the Plan, shall be eligible for a Deferred Vested Pension in an amount as provided in Section 5.3 hereof.

(2) Except as otherwise provided in Section 4.3(b), a Participant with five (5) or more years of Credited Service under Section 3.1, who does not complete one Hour of Service on or after July 1, 2008, and whose employment with the University is terminated at a time when he is ineligible for any other Pension under the Plan, shall be eligible for a Deferred Vested Pension in an amount as provided in Section 5.3 hereof.

b. Effective January 1, 2007, a Participant who has been a Participant in the Plan for three or more years as of January 1, 2007 and who has at least three (3) but less than five (5) years of Credited Service under Section 3.1, whose employment with the University is terminated in connection with the consolidation of clinical activity of certain clinical departments into University Hospitals Medical Group at a time when he is ineligible for any other Pension under the Plan shall be eligible for a Deferred Vested Pension in an amount as provided in Section 5.3 hereof.

4.4 Late Retirement Pension. Subject to the provisions requiring minimum distributions, a Participant who elects not to retire on his Normal Retirement Date and whose employment with the University is subsequently terminated shall be entitled to a Late Retirement Pension in an amount as provided in Section 5.4.

4.5 Disability Pension. A Participant who is Disabled must designate a Severance from Service Date, on or after his Earliest Retirement Age but no later than his Normal Retirement Age, in order to qualify for a Disability Pension. A Participant ceasing to be Disabled shall return to active employment or incur a Severance from Service Date as set forth in Section 1.43.

ARTICLE 5

AMOUNT OF PENSIONS

5.1 Normal Retirement Pension.

a. Effective July 1, 1992, a Participant's Accrued Benefit payable at or after his Normal Retirement Date shall consist of the greater of (1) or (2), below where --

(1) is the sum of the Participant's:

(A) One-twelfth (1/12) of the Deferred Account Balance Annuity, plus

(B) Prior Plan Accrued Benefit.

(2) is the sum of the Participant's:

(A) Basic Pension earned after June 30, 1992 through his Annuity Starting Date, plus

(B) Prior Plan Accrued Benefit;

provided, however, that this subparagraph (2) shall not apply to a Participant who has an Entry Date after June 30, 1992.

b. These terms are defined as follows:

(1) **Basic Pension.** The monthly Basic Pension of a Participant who is eligible for a Normal Retirement Pension shall be an amount per month equal to one-twelfth (1/12) of the Participant's Pension Accruals for each Plan Year during all or part of which the Employee is a Covered Employee or a Disabled Participant.

(2) **Pension Accrual.**

(A) For each Plan Year for which a Participant is to receive a Pension Accrual, the Participant shall accrue an annual

benefit equal to the greater of \$300 or the Annual Pension Accrual for the Plan Year. For a Plan Year in which the Participant receives Benefit Service under Section 3.2, the Annual Pension Accrual equals the product of one and five-tenths percent (1.5%) multiplied by the lesser of (i) the Participant's Compensation as a Covered Employee for the year, or (ii) fifty percent (50%) of the maximum amount of the Participant's Compensation as a Covered Employee considered as wages under Code Section 3121(a)(1) ("Social Security Wage Base") for the calendar year in which the Plan Year commences. If a Participant accrues less than one (1) year of Benefit Service in a Plan Year, the \$300 amount and the Social Security Wage Base previously referenced in this subparagraph (2)(A) shall both be prorated by dividing the number of months of the Participant's Benefit Service by twelve (12).

- (B) Notwithstanding the foregoing, for Participants who terminated employment from the University or an Affiliate after June 30, 1992 and prior to July 1, 1999, and for Participants who terminated employment from the University or an Affiliate after June 30, 1999 and prior to July 1, 2001, all references to \$300 described in Section

5.1b(2)(A) above are replaced with the applicable pension accrual factor described in Appendix B, Section B.

- c. Notwithstanding any other provisions contained in this Plan, certain Participants are entitled to minimum Pension benefit amounts or offsets from prior plans maintained by the University to the Pension otherwise payable hereunder, as set forth in Appendix C.

5.2 Early Retirement Pension.

- a. The monthly Pension, commencing at Normal Retirement Date, of a Participant who is eligible for an Early Retirement Pension shall be the Participant's Accrued Benefit.
- b. A Participant who is eligible for an Early Retirement Pension may elect to have benefit payments in a reduced amount commence immediately at retirement, in which case the monthly amount as determined above shall be the Actuarial Equivalent of the monthly amount the Participant would have received at his Normal Retirement Date. The Actuarially Equivalent Deferred Account Balance Annuity shall not be less than the Immediate Account Balance Annuity.

5.3 Deferred Vested Pension.

- a. The monthly pension, commencing at Normal Retirement Date, of a Participant who is eligible for a Deferred Vested Pension shall be the Participant's Accrued Benefit, with Interest Credits accruing from the Participant's Severance from Service Date through his Annuity Starting Date.
- b. A Terminated Vested Participant with fifteen (15) or more years of Credited Service may elect to commence his Deferred Vested Pension in a reduced amount

at any time between the ages of fifty-five (55) and sixty-five (65), in which case the monthly amount as determined above shall be the Actuarial Equivalent of the monthly amount the Employee would have received at his Normal Retirement Date. The Actuarially Equivalent Deferred Account Balance Annuity shall not be less than the Immediate Account Balance Annuity.

5.4 Late Retirement Pension. In the event a Participant works beyond his Normal Retirement Date, the portion of his Prior Plan Accrued Benefit designated as Supplemental Pension earned through June 30, 1992 will be increased on an Actuarially Equivalent basis to reflect delayed commencement. Annual Account Balance Contributions and Interest Credits will continue to be credited to the Participant's Account Balance Account until the Participant's Severance from Service Date, with Interest Credits accruing from the Participant's Severance from Service Date through his Annuity Starting Date. The Basic Pension described in Section 5.1 will also continue to be earned.

5.5 Disability Pension. In the event a Participant is Disabled, Annual Account Balance Contributions and Interest Credits will continue to be credited to the Participant's Account Balance Account and the Basic Pension will continue to be earned. The monthly pension, commencing at or after the Earliest Retirement Age of a Participant who is eligible for a Disability Pension, shall be the Participant's Accrued Benefit. The Participant may elect to commence benefit payments pursuant to Section 5.2.

5.6 Maximum Limitation on Benefits.

- a. Notwithstanding any provision of the Plan to the contrary, and effective for all Limitation Years commencing on or after July 1, 1992, the limitations and other

provisions of Code Section 415 with respect to benefits and annual additions, including any permissible grandfather and transition rules under the Code and other tax statutes, hereby are incorporated by reference. The Annual Benefit otherwise payable to a Participant at any time under this and all other defined benefit plans maintained by the University will not exceed the Maximum Annual Benefit. The Maximum Annual Benefit is the lesser of the Defined Benefit Dollar Limitation or the Defined Benefit Compensation Limitation, as adjusted where required as provided in this Section 5.6. "Annual Benefit" means for purposes of the Maximum Annual Benefit limitations, a benefit payable annually in the form of a straight life annuity. With respect to the operation of such provisions, the following special rules shall apply:

- (1) All benefit limitations shall increase, as and to the extent permitted under Code Section 415(d) and related regulations and rulings. Benefit increases resulting from the increase in the limitations of Code Section 415(b) effective as of the first Limitation Year beginning after December 31, 2001, shall be provided to all Covered Employees participating in the Plan who have One (1) Hour of Service on or after the first day of the first Limitation Year ending after December 31, 2001.
- (2) If, in any Limitation Year, the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction will exceed 1.0, the rate of benefit accruals under the defined benefit plan will be reduced so that the sum of the fractions equals 1.0. This

subsection (2) shall not apply to Covered Employees participating in the Plan who have One (1) Hour of Service on or after the first day of the first Limitation Year ending after December 31, 2001.

- (3) For any Plan Year the Plan is a Top-Heavy Plan or a “Super Top-Heavy Plan” (as defined herein), the denominator of the Defined Benefit Plan Fraction and of the Defined Contribution Plan Fraction shall be calculated, substituting 1.00 for 1.25. A Top-Heavy Plan need not make this substitution if the University contribution to provide minimum benefits under Section 12.2b is three percent (3%) in Section 12.2b (1) and the twenty percent (20%) in Section 12.2b (2) is increased by one (1) percentage point for each year (not exceeding ten (10)) the Plan is subject to this adjustment. The Plan is “Super Top-Heavy” if the Plan would be Top-Heavy, as defined in Section 12.1d, substituting ninety percent (90%) for sixty percent (60%) in Section 12.1d and Section 12.1e. This subsection (3) shall not apply to Covered Employees participating in the Plan who have One Hour of Service on or after the first day of the first Limitation Year ending after December 31, 2001.
- (4) In the case of an individual who was a Participant in one or more defined benefit plans of the University as of the first day of the first Limitation Year beginning after December 31, 1986, the application of the limitations of Section 5.6 hereof shall not cause

the Code Section 415(b) limitation for such individual under all such defined benefit plans to be less than the individual's Tax Reform Act of 1986 (TRA '86) Accrued Benefit. The preceding sentence applies only if such defined benefit plans met the requirements of Code Section 415, for all Limitation Years beginning before January 1, 1987.

- (5) In the case of an individual who was a participant in one or more defined benefit plans of the University as of the first day of the first Limitation Year beginning after December 31, 1994, the application of the limitations of Section 5.6 hereof shall not cause the Code Section 415(b) limitation for such individual under all such defined benefit plans to be less than the individual's Retirement Protection Act of 1994 (RPA '94) Old Law Benefit. The preceding sentence applies only if such defined benefit plans met the requirements of Code Section 415 on December 7, 1994.
- (6) Determinations under Code Section 415(b)(2)(e) that are made before the date that is the first day of the first Limitation Year beginning after December 31, 1999, shall be made with respect to a Participant's RPA '94 Old Law Benefit on the basis of Code Section 415(b)(2)(e) as in effect on December 7, 1994, and the provisions of the Plan as in effect on December 7, 1994, but only if such provisions of the Plan meet the requirements of Code Section 415(b)(2)(e) as so in effect.

(7) “Compensation,” for purposes of the maximum benefit limitations under this Section 5.6, means a Participant’s earned income, wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the University to the extent that the amounts are includible in gross income. Compensation also will include (i) amounts paid or reimbursed by the University for moving expenses incurred by the Employee, but only to the extent that these amounts are not deductible by the Employee under Section 217 of the Code, (ii) amounts described in Sections 104(a)(3), 105(a) and 105(h) of the Code, but only to the extent that these amounts are includible in the Employee’s gross income, (iii) amounts described in Section 105(d) of the Code whether or not includible in the Employee’s gross income, and (iv) amounts includible in the gross income of the Employee as a result of the grant of a non-qualified stock option to the Employee or as a result of the Employee making an election described in Section 83(b) of the Code. Compensation will not include: (A) University contributions (other than elective contributions described in Sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b) of the Code) to a plan of deferred compensation (including a simplified employee pension described in Section 408(k) of the Code or a simple retirement

account described in Section 408(p) of the Code, and whether or not qualified) to the extent such contributions are not includible in the Employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified), other than amounts received during the year by an employee pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income; (B) amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in Treas. Reg. § 1.421-1(b)), or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (C) amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option; (D) for Limitation Years beginning before July 1, 2007, an annuity contract described in Section 403(b) of the Code, whether or not under a salary reduction agreement and whether or not the amounts actually are excludible from the gross income of the Employee; (E) for Limitation Years beginning on or after July 1, 2007, other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not

salary reduction amounts that are described in Section 125 of the Code); (F) other items of remuneration that are similar to any of the items listed in (A) through (E), above.

Effective for Limitation Years beginning after December 31, 1991, Compensation for a Limitation Year includes only the Compensation that is actually paid to the Participant during the Limitation Year and Compensation that is includible in the Participant's gross income during the Limitation Year.

Notwithstanding the foregoing to the contrary, effective for Limitation Years beginning after December 31, 1997,

Compensation that is actually paid to the Participant shall include compensation paid or made available during such Limitation Year shall include amounts that would otherwise be included in compensation but for an election under Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code. Effective for

Limitation Years beginning after December 31, 2000,

Compensation paid or made available shall also include elective amounts that are not includible in the gross income of the Participant by reason of Section 132(f)(4) of the Code. For

Limitation Years beginning after December 31, 2001,

Compensation shall also include deemed Section 125 compensation. Deemed Section 125 compensation is an amount that is excludible under Section 106 of the Code that is not

available to a Participant in cash in lieu of group health coverage under a Section 125 arrangement solely because the Participant is unable to certify that he or she has other health coverage.

Amounts are deemed Section 125 compensation only if the University does not request or otherwise collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan. In addition, for Limitation Years beginning on or after July 1, 2007, Compensation for a Limitation Year shall include Compensation paid to a Participant by the later of two and one-half (2-1/2) months after a Participant's Severance from Employment with the University, or the end of the Limitation Year that includes the date of the Participant's Severance from Employment with the University, if absent a Severance from Employment, such payments would have been paid to the Participant while the Participant continued in employment with the University, and is regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar compensation. In addition, effective for Limitation Years beginning on or after July 1, 2007, Compensation shall include compensation for all employers required to be aggregated according to the maximum benefit

limitation rules, regardless of whether any such aggregated employers maintain a qualified plan.

(8) “University,” for purposes of this Section 5.6, means the University, and all members of a controlled group of corporations (as defined in Section 414(b) of the Code as modified by Section 415(h) of the Code), all commonly controlled trades or businesses (as defined in Section 414(c) of the Code, as modified, except in the case of a brother-sister group of trades or businesses under common control, by Section 415(h) of the Code), or affiliated service groups (as defined in Section 414(m) of the Code), of the University, and any other entity required to be aggregated with the University pursuant to Section 414(o) of the Code and the final regulations thereunder.

(9) To adjust a form of benefit that is not a straight life annuity for purposes of complying with the applicable maximum benefit limitations under Code Section 415(b), the following rules shall apply:

(i) Adjustments for Years After 2000 and Before 2004.

Effective for Limitation Years ending after December 31, 2000, except as provided in subsection (ii), below, the Actuarial Equivalent straight life annuity is equal to the greater of the annuity benefit computed using the interest rate and mortality table (or other tabular factor) specified in

Appendix A of the Plan for adjusting benefits in the same form, and the annuity benefit computed using a five (5%) percent interest rate assumption and the applicable mortality table defined in Appendix A of the Plan. In addition to the foregoing, in determining the Actuarially Equivalent straight life annuity for a benefit form other than a nondecreasing annuity payable for a period of not less than the life of the Participant (or, in the case of a qualified preretirement survivor annuity, the life of the Surviving Spouse), or payments that decrease during the life of the Participant merely because of (A) the death of the survivor annuitant (but only if the reduction is not below fifty percent (50%) of the annual benefit payable before the death of the survivor annuitant), or (B) the cessation or reduction of Social Security supplements of qualified disability payments (as defined in Section 401(a)(11) of the Code), the applicable interest rate specified in Appendix A of the Plan will be substituted for “a five percent (5%) interest rate assumption” in the preceding sentence.

- (ii) Adjustments for Years After 2003. Notwithstanding the foregoing subsection (i), effective for distributions in years beginning after December 31, 2003, the determination of

Actuarial Equivalence of forms of benefit other than a straight life annuity shall be made in accordance with the following subsections (ii)(A) or (ii)(B), as appropriate.

(A) Benefit Forms Not Subject to Section 417(e)(3) of the Code. The straight life annuity that is the Actuarial Equivalent to the Participant's form of benefit shall be determined under this subsection (ii)(A) if the form of the Participant's benefit is either: a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the Surviving Spouse); or an annuity that decreases during the life of the Participant merely because of the death of the survivor annuitant (but only if the reduction is not below fifty percent (50%) of the benefit payable before the death of the survivor annuitant), or the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 401(a)(11) of the Code). The following rules shall apply:

(I) Limitation Years Beginning After 2003 and Before July 1, 2007. For Limitation Years beginning before July 1, 2007, the Actuarial Equivalent straight life annuity is equal to the

annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (1) the Plan interest rate and the mortality table (or other tabular factor) specified in Appendix A of the Plan for adjusting benefits in the same form; and (2) a five percent (5%) interest rate assumption and the applicable mortality table specified in Appendix A of the Plan for that Annuity Starting Date.

(II) Limitation Years Beginning on or After July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the Actuarial Equivalent straight life annuity is equal to the greater of (1) the annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same Annuity Starting Date as the Participant's form of benefit; and (2) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a five percent (5%) interest rate assumption and the applicable mortality table specified in Appendix A of the Plan for that Annuity Starting Date.

(B) Benefit Forms Subject to Section 417(e)(3) of the Code. The straight life annuity that is the Actuarial Equivalent to the Participant's form of benefit shall be determined under this subsection (B) if the form of the Participant's benefit is other than a benefit form described in subsection (A), above. In this case, the Actuarial Equivalent straight life annuity shall be determined according the following subsections (I) and (II), as appropriate.

(I) Annuity Starting Date in Plan Years Beginning After December 31, 2005 (“PPA Adjustment”). If the Annuity Starting Date of the Participant’s form of benefit is in a Plan Year beginning after December 31, 2005, the Actuarial Equivalent straight life annuity is equal to the greatest of (1) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant’s form of benefit, computed using the Plan interest rate and mortality table (or other tabular factor) specified in Appendix A of the Plan for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant’s form of benefit, computed using a five and five-tenths percent (5.5%) interest rate assumption and the applicable mortality table specified in Appendix A of the Plan; and (3) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant’s form of benefit, computed using the applicable interest rate and the applicable mortality table specified in Appendix A of the Plan, divided by one and five-hundredths (1.05).

(II) Annuity Starting Date in Plan Years Beginning After December 31, 2003 and Before January 1, 2006 (“PFEA Adjustment”). If the Annuity Starting Date of the Participant’s form of benefit is in a Plan Year beginning after December 31, 2003 and before January 1, 2006, the Actuarial Equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant’s form of benefit, computed using whichever of the following produces the greater annual amount: (1) the Plan’s interest rate and mortality table (or other tabular factor) specified in Appendix A of the Plan for adjusting benefits in the same form; and (2) a five and five-tenths percent (5.5%) interest rate assumption and the applicable mortality table specified in Appendix A of the Plan. Notwithstanding the foregoing, if the Annuity

Starting Date of the Participant's benefit is on or after the first day of the first plan year beginning after December 31, 2003, and before December 31, 2004, the application of this subsection (B)(II) shall not cause the amount payable under the Participant's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this Section 5.6, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greatest annual amount: (1) the Plan interest rate and mortality table (or other tabular factor) specified in Appendix A of the Plan for adjusting benefits in the same form; (2) the applicable interest rate and the applicable mortality table specified in Appendix A of the Plan; and (3) the applicable interest rate specified in Appendix A of the Plan (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and the applicable mortality table specified in Appendix A of the Plan.

(10) Adjustment of Defined Benefit Dollar Limitation for Benefit

Commencement Before Age Sixty-Two (62). Effective for

benefits commencing in Limitation Years ending after December

31, 2000, the Defined Benefit Dollar Limitation shall be adjusted if

the Annuity Starting Date of the Participant's benefit is before age

sixty-two (62). If the Annuity Starting Date is before age sixty-

two (62), the Defined Benefit Dollar Limitation shall be adjusted

under this subsection (10), as modified by subsection (11), below,

as appropriate.

(i) Limitation Years Beginning Before July 1, 2007. If the

Annuity Starting Date for the Participant's benefit is prior

to age sixty-two (62) and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the Actuarial Equivalent of the Defined Benefit Dollar Limitation (adjusted under Code Section 415(b), above for years of participation less than ten (10), if required) with Actuarial Equivalence computed using whichever of the following produces the smaller annual amount: (A) the Plan interest rate and mortality table (or other tabular factor) specified in Appendix A of the Plan; or (B) a five percent (5%) interest rate assumption and the applicable mortality table as specified in Appendix A of the Plan.

(ii) Limitation Years Beginning On or After July 1, 2007.

(A) If the Annuity Starting Date for the Participant's benefit is prior to age sixty-two (62) and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the Defined Benefit Dollar

Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the Actuarial Equivalent of the Defined Benefit Dollar Limitation (adjusted under Code Section 415(b) for years of participation less than ten (10), if required) with the Actuarial Equivalent computed using a five percent (5%) interest rate assumption and the applicable mortality table for the Annuity Starting Date as specified in Appendix A of the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

- (B) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age Sixty-two (62) and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age sixty-two (62) and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting

Date is the lesser of the limitation determined under subsection (10)(ii)(A), above, and the Defined Benefit Dollar Limitation (adjusted under Code Section 415(b) for years of participation less than ten (10), if required) multiplied by the ratio of (I) the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date, to (II) the annual amount of the immediately commencing straight life annuity under the plan at age sixty-two (62), both determined without applying the maximum benefit limitations of this Section 5.6.

- (11) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age Sixty-Five (65). Effective for benefits commencing in Limitation Years ending after December 31, 2000, the Defined Benefit Dollar Limitation shall be adjusted if the Annuity Starting Date of the Participant's benefit is after age sixty-five (65). If the Annuity Starting Date is after age sixty-five (65), the Defined Benefit Dollar Limitation shall be adjusted under this subsection (11), as modified by subsection (12), as appropriate.
- (i) Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the Participant's benefit is after age sixty-five (65) and occurs in a Limitation Year

beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the Actuarial Equivalent of the Defined Benefit Dollar Limitation (adjusted under Code Section 415(b) for years of participation less than ten (10), if required) with Actuarial Equivalence computed using whichever of the following produces the smaller annual amount: (A) the Plan interest rate and mortality table (or other tabular factor) specified in Appendix A of the Plan; or (B) a five percent (5%) interest rate assumption and the applicable mortality table as defined in Appendix A of the Plan.

(ii) Limitation Years Beginning On or After July 1, 2007.

(A) If the Annuity Starting Date for the Participant's benefit is after age sixty-five (65) and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age sixty-five (65) and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting

Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the Actuarial Equivalent of the Defined Benefit Dollar Limitation (adjusted under Code Section 415(b) for years of Participation less than ten (10), if required), with Actuarial Equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for that Annuity Starting Date as specified in Appendix A of the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

- (B) If the Annuity Starting Date for the Participant's benefit is after age sixty-five (65) and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age sixty-five (65) and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the lesser of the limitation determined under subsection (11)(ii)(A), above, and the Defined Benefit Dollar Limitation (adjusted under Code Section 415(b) for

years of Participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age sixty-five (65), both determined without applying the maximum benefit limitations of this Section 5.6. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age sixty-five (65) but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age sixty-five (65) is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age sixty-five (65) and has the same accrued benefit as the Participant.

(12) Mortality Adjustments. Notwithstanding the other requirements of this Section 5.6, no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Participant's death between the Annuity Starting Date and age sixty-two (62), or between age sixty-five (65), as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. Effective for Limitation Years beginning on or after July 1, 2007, to the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Section 417(c) of the Code upon the Participant's death.

(13) Grandfather Protections, Other Rules and Incorporation by Reference.

(A) Special Rule for Pre-2000 Annuity Starting Dates. With respect to a Participant who has an Annuity Starting Date prior to the first Limitation Year commencing on or after January 1, 2000, the Participant's benefit shall continue to be subject to the Maximum Annual Benefit limits and the provisions of the Plan that were in effect on the

Participant's Annuity Starting Date and shall not be increased due to the repeal of Section 415(e) of the Code.

(B) Special Rule for New Benefit Limits Under EGTRRA.

Any benefit increases resulting from the increase in the limitations of Section 415(b) of the Code effective for Limitation Years ending after December 31, 2001 shall be provided to all Covered Employees participating in the Plan who have one Hour of Service on or after the first day of the first Limitation Year ending after December 31, 2001.

(C) 2007 Grandfather Provisions. The application of the provisions of this Section 5.6 effective for Limitation Years in effect as of the first Limitation Year on or after July 1, 2007, shall not cause the Maximum Annual Benefit for any Participant to be less than the Participant's Accrued Benefit under all the defined benefit plans of the University or a predecessor employer as of the end of the last Limitation Year beginning before July 1, 2007, under provisions of the Plan that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to

Section 415 of the Code in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in Treasury Regulation Section 1.415(a)-1(g)(4). In addition, the Plan will not be treated as failing to satisfy the limitations of Section 415 of the Code merely because the definition of Compensation for a Limitation Year as used for purposes of the limitations of this Section reflects compensation for a Plan Year that is in excess of the annual compensation limits of Section 401(a)(17) of the Code that applies to that Plan Year. If any Participant accrues Plan benefits in Limitation Years that begin on or after July 1, 2007, the sum of the benefits grandfathered under the first sentence of this subsection and the benefits accrued in Limitation Years that begin on or after July 1, 2007 must satisfy the requirements of Section 415 of the Code, taking into account the requirements of Treasury Regulation Sections 1.415(a)-1, 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1, as appropriate.

- (D) Aggregation Rules. The rules under Section 415(j) of the Code shall apply as appropriate for purposes of this Section for Limitation Years that begin on or after July 1, 2007. In no event shall a Participant's benefit be double-counted in

the application of these aggregation rules. The limitations of this Section shall be determined and applied taking into account the aggregation rules provided herein, and the aggregation rules not otherwise provided in this Section, as incorporated by reference from Treasury Regulation Section 1.415(f)-1. However, any increase in benefits resulting from the application of such rules in effect as of the Limitation Year beginning on or after July 1, 2007, shall apply only to Participants who have completed at least one (1) hour of service with the University after the last day of the Limitation Year that ends just before the Limitation Year that begins on or after July 1, 2007.

- (E) Incorporation by Reference The Maximum Benefit Limitations, adjustments and other requirements prescribed in this Article shall at all times comply with the provisions of Section 415 of the Code and, prior to Limitation Years and Plan Years, as appropriate, beginning before July 1, 2007, the final regulations published January 7, 1981 (46 Fed. Reg. 1687), as amended subsequently by published regulations, notices and rulings, and for Limitation Years and Plan Years, as appropriate, beginning on or after July 1, 2007, the final regulations published April 5, 2007 (72 Fed. Reg. 16878), as may be subsequently revised, the

terms of which are specifically incorporated herein by reference except as otherwise provided herein.

b. For purposes of this Section 5.6, the following definitions shall apply:

- (1) “Defined Benefit Compensation Limitation” means one hundred percent (100%) of a Participant’s High Three (3) Year Average Compensation, payable in the form of a straight life annuity. In the case of a Participant who has a Severance from Employment, the Participant’s High Three (3) Year Average Compensation will be automatically adjusted by multiplying such compensation by the cost-of-living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code in such manner as the Secretary shall prescribe. Any adjusted compensation amount will apply to Limitation Years ending within the calendar year of the date of the adjustment.
- (2) “Defined Benefit Dollar Limitation” means, effective for Limitation Years ending after December 31, 2001, \$160,000, as automatically adjusted under Section 415(d) of the Code, effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The Defined Benefit Dollar Limitation provided herein shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment; but, effective for Limitation Years beginning on or after July 1, 2007, a Participant’s benefits shall not

reflect the adjusted limit prior to January 1 of that calendar year. In any event, the automatic annual adjustment of the Defined Benefit Dollar Limitation under Section 415(d) of the Code shall apply to Participants following a Severance from Employment. However, the new Defined Benefit Dollar Limitation provided herein and the automatic adjustments thereto shall apply only to the benefits of Participants who earn one (1) Hour of Service in Limitation Years ending after December 31, 2001.

- (3) “High Three-Year Average Compensation” means, for purposes of applying the applicable maximum benefit limitations of Code Section 415(b), the average of a Participant’s Compensation (as defined in herein) for the three (3) consecutive years of Service (or, if the Participant has less than three (3) consecutive years of Service, the Participant’s longest consecutive period of Service, including fractions of years, but not less than one year) with the University that produces the highest average. In addition to the foregoing, effective for Limitation Years beginning on or after July 1, 2007, in the case of a Participant who is rehired by the University after a Severance from Employment, the Participant’s High Three (3) Year Average Compensation shall be calculated by excluding all years for which the Participant performs no services for and receives no compensation from the University (the break period) and by treating the years immediately preceding and

following the break period as consecutive. In the case of a Participant who is rehired after a Severance from Employment, the Defined Benefit Compensation Limitation is the greater of one hundred percent (100%) of the Participant's High Three (3) Year Average Compensation, as determined prior to the Severance from Employment, as adjusted, if applicable; or one hundred percent (100%) of the Participant's High Three (3) Year Average Compensation, as determined after the Severance from Employment according to this definition. In addition, effective for Limitation Years beginning on or after July 1, 2007, a Participant's compensation for a year of Service shall not include compensation in excess of the limitation under Section 401(a)(17) of the Code that is in effect for the calendar year in which such year of Service begins. The adjusted annual compensation limit under Section 401(a)(17) of the Code shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

- (4) "Severance from Employment" means, effective for Limitation Years beginning on or after July 1, 2007, for purposes of the maximum benefit limitations under this Article, a Participant's termination from employment from the University or any Affiliate. A Participant does not have a Severance from Employment if, in

connection with a change in employment, the Participant's new employer maintains the Plan with respect to that Participant.

- (5) The "Defined Benefit Plan Fraction" is a fraction, the numerator of which is the sum of the Participant's Projected Annual Benefit (as hereinafter defined) under all defined benefit plans (whether or not terminated) maintained by the University, and the denominator of which is the lesser of (A) 1.25 times the dollar limitation of Section 415(b)(1)(A) of the Code in effect for the Limitation Year, or (B) 1.4 times the Participant's average Compensation for the three (3) consecutive years that produces the highest average Compensation, including any adjustments under Code Section 415(b). Notwithstanding the immediately preceding sentence, if a Participant was a participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined benefit plans maintained by the University which were in existence on May 6, 1986, the denominator of this fraction will not be less than one hundred twenty-five percent (125%) of the sum of the annual benefits under such plans which the Participant had accrued as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and

in the aggregate satisfied the requirements of Code Section 415 for all Limitation Years beginning before January 1, 1987.

- (6) The “Defined Contribution Plan Fraction” is a fraction, the numerator of which is the sum of the Annual Additions to the Participant’s account under all defined contribution plans maintained by the University (whether or not terminated) for the current and all prior Limitation Years (including the annual additions attributable to the Participant’s nondeductible employee contributions to all defined benefit plans, whether or not terminated, maintained by the University, and the annual additions attributable to all welfare benefit funds, as defined in Code Section 419(e) and individual medical accounts, as defined in Code Section 415(l)(2), maintained by the University), and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior Limitation Year of service with the University (regardless of whether a defined contribution plan was maintained by the University): (A) 1.25 times the dollar limitation in effect under Code Section 415(c)(1)(A) for such Limitation Year, or (B) thirty-five percent (35%) of the Participant’s Compensation for such Limitation Year. Notwithstanding the immediately preceding sentence, if a Participant was a participant as of the end of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined contribution

plans maintained by the University which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (X) the excess of the sum of the fractions over 1.0 times (4) the denominator of this fraction will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the Plan made after May 5, 1986, but using the Code Section 415 limitation applicable to the first Limitation Year beginning on or after January 1, 1987. The annual addition for any Limitation Year beginning before January 1, 1987 shall not be recomputed to treat all Employee contributions as annual additions.

- (7) TRA '86 Accrued Benefit is a Participant's Accrued Benefit under the Plan, determined as if the Participant had terminated employment as of the close of the last Limitation Year beginning before January 1, 1987, when expressed as an Annual Benefit within the meaning of Code Section 415(b)(2). In determining the amount of a Participant's TRA '86 Accrued Benefit, the following shall be disregarded:

- (A) any change in the terms and conditions of the Plan after May 5, 1986; and
 - (B) any cost-of-living adjustment occurring after May 5, 1986.
- (8) RPA '94 Old Law Benefits is the Participant's Accrued Benefit under the terms of the Plan as of June 30, 2000 (the "RPA '94 Freeze Date"), for the Annuity Starting Date and optional form and taking into account the limitations of Code Section 415, as in effect on December 7, 1994, including the participation requirements under Code Section 415(b)(5). In determining the amount of a Participant's RPA '94 Old Law Benefit, the following shall be disregarded:

- (A) any Plan amendment increasing benefits adopted after the RPA '94 Freeze Date; and
- (B) any cost-of-living adjustments that become effective after such date.

A Participant's RPA '94 Old Law Benefit is not increased after the RPA '94 Freeze Date, but if the limitations of Code Section 415, as in effect on December 7, 1994, are less than the limitations that were applied to determine the Participant's RPA '94 Old Law Benefit on the RPA '94 Freeze Date, then the Participant's RPA '94 Old Law Benefit will be reduced in accordance with such reduced limitation. If, at any date after the RPA '94 Freeze Date,

the Participant's total Plan benefit, before the application of Code Section 415, is less than the Participant's RPA '94 Old Law Benefit, the RPA '94 Old Law Benefit will be reduced to the Participant's total plan benefit.

5.7 Refund of Contributions. With respect to contributions made prior to July 1, 1992, the following rules shall apply:

a. Non-vested Participants.

- (1) If a Participant terminates employment or dies prior to becoming vested pursuant to Section 4.3, he (in the case of termination) or his Beneficiary (in the event of death) shall receive a refund of his contributions, if any, with credited interest before the end of the Plan Year following the Plan Year in which his Severance from Service Date occurs.
- (2) Credited interest shall be the greater of:
 - (A) Plan interest at the rate of three percent (3%) compounded annually for the period from the Effective Date to April 1, 1976; five percent (5%) compounded annually for the period from April 1, 1976 to June 30, 1989, and seven percent (7%) compounded annually for all periods of time after June 30, 1989; and
 - (B) Statutory interest which shall equal Plan interest through June 30, 1988 and be a rate of 10.77% on and after July 1, 1988 through June 30, 1989; 10.54% on and after July 1,

1989 through June 30, 1990; and one hundred twenty percent (120%) of the federal mid-term rate in effect under Code section 1274 for each year beginning on or after each July 1 thereafter (as further determined by applicable regulations as promulgated by the Secretary of the Treasury).

Credited interest shall be computed from the anniversary date following the date the Participant contributions were made to the Plan, up to the first of the month in which payment of such credited interest is due.

- b. Vested Participants. If a Participant terminates employment or dies after having become vested pursuant to Section 4.3, he (in the case of termination) or his Beneficiary (in the event of death) may elect to receive a refund of his contributions together with credited interest (as defined in Section 5.7a(2)(A)) in a lump sum. The Actuarial Equivalent of the Participant's Contributions with credited interest shall be deducted from the Prior Plan Supplemental Pension. The remainder residual benefit shall be payable in accordance with Article 6 for all of the Participant's pre-July 1, 1992 benefit amounts. Payments must commence when the Pension described in Article 6 commences.

5.8 Repayment of Refund of Contributions. A Participant who receives a full refund of contributions may repay to the Fund within five (5) years of reemployment the amount of his refund together with credited interest (at the rate specified in Section 5.7) from the date of refund to the time of repayment. Upon such repayment, his benefits previously

forfeited due to his prior refund shall be restored. A Participant who receives a refund of contributions may repay to the Fund within two (2) years of reemployment the amount of his refund together with credited interest (at the rate specified in Section 5.7) from the date of refund to the time of repayment. Upon such repayment, his benefits previously forfeited due to his prior refund shall be restored.

- 5.9 Retirement or Termination Prior to July 1, 2007.** A Participant (or his Beneficiary) who retired or terminated employment with deferred benefit rights, under the provisions of the Plan as in effect prior to July 1, 2007, shall receive or continue to receive benefits in accordance with the provisions of the Plan as in effect at the date of his retirement or termination of employment, except to the extent that modifications may be required by the Act or other applicable laws.

ARTICLE 6

FORM, COMMENCEMENT AND DURATION OF PENSIONS

- 6.1 Normal, Late and Early Retirement Pensions.** Except as provided in Section 6.4, any Normal, Late or Early Retirement Pension shall be payable to a Retired Participant who has applied therefor in accordance with the rules established by the Retirement Committee (or its designee), commencing with the first day of the month coincident with or next following the date as of which he becomes eligible for such Pension and his application for such Pension is approved by the Retirement Committee (or its designee) (or commencing at Normal Retirement Date in the case of a delayed Early Retirement Pension) and shall be payable monthly thereafter during the life of such Retired Participant (life annuity pension).
- 6.2 Deferred Vested Pensions.** Except as provided in Section 6.4, a Deferred Vested Pension shall be payable to an eligible Terminated Vested Participant who has applied

therefor in accordance with the rules established by the Retirement Committee (or its designee), commencing as specified in Section 5.3, and shall be payable for each month thereafter during the life of such Terminated Vested Participant.

6.3 Reemployment of a Retired or Deferred Vested Participant.

- a. If a Retired Participant who qualified for a Normal Retirement Pension (in accordance with Section 4.1), or who qualified for an Early Retirement Pension (in accordance with Section 4.2), or who qualified for a Late Retirement Pension (in accordance with Section 4.4), or who qualified for a Disability Retirement Pension (in accordance with Section 4.5), or a Terminated Vested Participant who qualified for a Deferred Vested Pension (in accordance with Section 4.3) is receiving such Pension benefit and is re-employed by the University for more than forty (40) Hours of Service in a calendar month, the Retired Participant's Pension or Terminated Vested Participant's Pension shall cease to be paid and the Retired Participant or Terminated Vested Participant shall participate in this Plan as of the date of reemployment. No repayment of any lump sum election pursuant to Section 6.4b(3) shall be required. Upon the Participant's subsequent retirement, the Participant shall receive a benefit as determined as provided in Article 5 on the basis of Years of Credited Service or Years of Benefit Service, if applicable, and Compensation as an Employee during the Employee's period of reemployment.
- b. If a Participant who qualified for an Early Retirement Pension (in accordance with Section 4.2) or a Deferred Vested Pension (in accordance with Section 4.3) is not yet receiving such benefit and is reemployed by the University prior to Normal

Retirement Date, then the Participant's prior Credited Service shall be reinstated in lieu of the Early Retirement Pension or the Deferred Vested Pension. Any pension payable upon such subsequent retirement shall be determined as provided in Article 5 on the basis of the Participant's Years of Credited Service or Years of Benefit Service, as applicable, at the time of his previous termination of employment, plus Years of Credited Service or Years of Benefit Service, as applicable, as a Participant during his period of reemployment, if any.

6.4 Form of Retirement Pension.

- a. Automatic Form of Payment. Notwithstanding the above provisions of this Article 6, a Participant who has a Spouse on his Annuity Starting Date and who retires pursuant to the normal, early, late or disability retirement provisions of the Plan, or who terminates employment and is eligible for a Deferred Vested Pension pursuant to the provisions of the Plan, shall automatically be deemed to have elected a Qualified Joint and Survivor Annuity. In the case of a Participant who is not married on his Annuity Starting Date, the Participant shall automatically be deemed to have elected an immediate annuity for his life (straight life annuity) otherwise determined in accordance with Article 5. The automatic election provided in this Section 6.4a shall become effective on the Participant's Annuity Starting Date. Notwithstanding the foregoing provisions of this paragraph, a Participant may prevent the automatic election provided in this Section 6.4a at any time within the one-hundred eighty (180) day period (prior to March 1, 2009, within the ninety (90) day period) ending on the Annuity Starting Date by filing a Qualified Election with the Retirement Committee (or its designee).

b. Optional Form of Payment. A Participant may make a Qualified Election during the one-hundred eighty (180) day period (prior to March 1, 2009, during the ninety (90) day period) ending on his Annuity Starting Date to receive such benefits in either of the following forms in lieu of a Qualified Joint and Survivor Annuity or straight life annuity.

(1) Option A – Joint and Survivor Annuity. A Participant may name a Co-Annuitant and may elect, by written application filed with the Retirement Committee (or its designee), a joint life and survivorship benefit (hereinafter called “Option A”) that shall be Actuarially Equivalent to the benefit otherwise available to him. Such joint life and survivorship benefit shall be on the basis of a Pension to the Retired Participant or Terminated Vested Participant with one hundred percent (100%), seventy-five (75%), sixty-six and two-thirds percent (66-2/3%) or fifty percent (50%) of the Pension (as elected by the Participant in his application for Option A) being continued to his Co-Annuitant if such Co-Annuitant survives him. The amount so determined shall be payable so long as either lives under the one hundred percent (100%) basis, or if so elected in the application for Option A, as long as the Retired Participant or Terminated Vested Participant lives with seventy-five percent (75%), sixty-six and two-thirds percent (66-2/3%) or fifty percent (50%) thereof continued for as long as the Co-Annuitant lives after the death of the Retired

Participant or Terminated Vested Participant. If the Co-Annuitant dies before the Participant's Annuity Starting Date, the election shall be void and the Participant shall be treated as though he had made no election. The election shall remain in effect, however, if the Co-Annuitant dies subsequent to the Participant's Annuity Starting Date. Once an election has been made and accepted by the Retirement Committee (or its designee) and the Pension has commenced, it cannot be changed or rescinded without the consent of the Retirement Committee (or its designee) in accordance with rules of uniform application to all Participants similarly situated. Notwithstanding anything herein, if a Participant selects any individual other than his Spouse as the Co-Annuitant under this Option A, the election of this Option A will be effective only to the extent that the present value of the payments to be made to the Participant is more than fifty percent (50%) of the present value of the total payments to be made to the Participant and to the Co-Annuitant.

- (2) Option B – Five (5) or Ten (10) Years Certain Annuity. A Participant may name a Co-Annuitant and may elect, by written application filed with the Retirement Committee, a Pension to continue for the period of five (5) or ten (10) years following his Early or Normal Retirement Date, whichever is applicable, and for the period of his lifetime thereafter (hereinafter called “Option B”)

that shall be Actuarially Equivalent to the benefit otherwise available to him. If the Participant dies prior to the end of such five (5) or ten (10) year period, the benefit that the Retired Participant or Terminated Vested Participant had been receiving shall then be paid to the Co-Annuitant named under this Option B until the end of such five (5) or ten (10) year period, but if such Co-Annuitant predeceases the Retired Participant or Terminated Vested Participant and no substitute Co-Annuitant is nominated, then the commuted value of such benefit shall be payable to the Participant's Beneficiary. In the absence of specific directions to the contrary, if the Participant dies prior to the end of such five (5) or ten (10) year period and is survived by a Co-Annuitant, and if such Co-Annuitant also dies prior to the end of such five (5) or ten (10) year period, then the commuted value of such benefit shall be payable to the personal representative of the estate of such Co-Annuitant.

(3) Option C – Post-June 30, 1992 Benefit in a Lump Sum.

(A) A Participant receiving a benefit under Section 5.1a(1), 5.2, 5.3 or 5.4 may elect to receive the greater of (i) his Account Balance, or (ii) the Actuarial Equivalent of his Deferred Account Balance Annuity, in the form of a lump sum. Notwithstanding any provision of the Plan to the contrary, the lump sum payment provided under this Section

6.4b(3)(A) shall not be less than the present value, determined in accordance with Code Section 417(e) and the applicable factors provided in Appendix A, Section A of the Plan, of the balance of the Participant's Account Balance Account as of the date of determination projected at a rate of interest equal to the one (1) year Treasury Bill rate in effect as of the last auction in June of the preceding Plan Year but not less than five percent (5%), compounded annually, for the number of full years to the Participant's Normal Retirement Date and with simple interest at the rate of one-twelfth of such rate per month for any remaining full months to the Participant's Normal Retirement Date.

Effective for Plan Years beginning on and after July 1, 2000, the rate of interest referred to in the immediately preceding sentence shall be replaced with the five (5) year Treasury Bill rate in effect as of the last auction in June of the preceding Plan Year, but not less than six percent (6%), compounded annually, for the number of full years to the Participant's Normal Retirement Date and with simple interest at the rate of one-twelfth of such rate per month for any remaining full months to the Participant's Normal Retirement Date.

(B) A Participant receiving a benefit under Section 5.1a(2) may elect to receive the Basic Pension earned after June 30, 1992 through the Participant's Annuity Starting Date in the form of a lump sum.

If this option is elected, the Prior Plan Accrued Benefit will be available in whichever form the Participant elects under Section 6.4a or 6.4b(1) or 6.4b(2).

(4) Options for Contributory Participants. In the case of a retired Contributory Participant, whether he shall have elected to receive the payment of his benefits as a pension for his lifetime only or under Options A, B or C, or if he is receiving the Qualified Joint and Survivor Annuity if pursuant to any such election there shall not be paid as Supplemental Pension benefits an amount equal to the total contributions made by such Contributory Participant under Section 1.14, together with interest on such contributions as specified in Section 5.7 to the Annuity Starting Date, the difference between such total contributions plus interest and the total Supplemental Pension benefits paid under the Plan shall be paid in a cash lump sum.

(5) Changes in Elections.

(A) A re-employed Retired Participant or Terminated Vested Participant, pursuant to Section 6.3a, may make a new

election of the form of benefit payment to apply to the accrual of benefits related to the period of reemployment.

- (B) An active Participant whose Pension was required to commence under Section 13.3 shall maintain the election made at the benefit commencement date until his actual termination of employment. Except that, if a Beneficiary or Co-Annuitant predeceases him, he shall have the option to change the elections as set forth in 6.4b.

6.5 Definitions. For purposes of this Article 6, the following terms shall have the indicated meaning unless a different meaning is clearly required by the context:

- a. “Qualified Election” shall mean a waiver of a Qualified Joint and Survivor Annuity. Any waiver shall be made on the form provided by the Retirement Committee (or its designee) and in accordance with procedures established by the Retirement Committee (or its designee). Such waiver shall designate a specific Beneficiary and an alternate form of benefits. The waiver must be in writing and must be consented to by the Participant’s Spouse. The Spouse’s consent to a waiver shall acknowledge the effect of such election and shall be witnessed by a Retirement Committee member or notary public. Once spousal consent has been given, it cannot be revoked unless the Participant consents in writing to the revocation. Notwithstanding this consent requirement, if the Participant establishes to the satisfaction of the Retirement Committee (or its designee) that such written consent may not be obtained because there is no Spouse or the Spouse cannot be located, a waiver will be deemed a Qualified Election. Any

consent necessary under this provision will be valid only with respect to the Spouse who signs the consent, or in the event of a deemed Qualified Election, the designated Spouse. Additionally, a revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time and any number of times before the commencement of benefits. The number of revocations shall not be limited. A consent that permits subsequent designations by a Participant without the need for further spousal consent must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary and a specific form of benefit, if applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 6.6.

- b. “Qualified Joint and Survivor Annuity” shall mean an immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the Actuarial Equivalent of the normal form of benefit payable to the Participant.

6.6 Notice Requirements. In the case of a Qualified Joint and Survivor Annuity, the Retirement Committee (or its designee) shall provide to each Participant, no less than thirty (30) and no more than one-hundred eighty (180) days (prior to March 1, 2009, no less than thirty (30) days) and no more than ninety (90) days) prior to his Annuity Starting Date, a written explanation of (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant’s right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a

Participant's Spouse; (iv) the right to make and the effect of a revocation of a previous election to waive the Qualified Joint and Survivor Annuity; and (v) the material features and relative values of the various optional forms of benefit under the Plan in a manner that would satisfy the notice requirements of Code Section 417(a)(3) and Treasury Regulation Section 1.417(a)-3. For notices given in Plan Years beginning after December 31, 2006, such notification shall also include a description of how much larger benefits will be if the commencement of distributions is deferred.

The Annuity Starting Date for a distribution in a form other than a Qualified Joint and Survivor Annuity may be less than thirty (30) days after receipt of the written explanation described in the preceding paragraph provided: (i) the Participant has been provided with information that clearly indicates that the Participant has at least thirty (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; (ii) the Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and (iii) the Annuity Starting Date is a date after the date that the written explanation was provided to the Participant.

6.7 Consent to Certain Distributions of Benefits. Notwithstanding any provision of the Plan to the contrary, effective March 28, 2005, if the Actuarial Equivalent present value of a Participant's vested Accrued Benefit exceeds (or at the time of any prior distribution exceeded) \$1,000, and the Participant's vested Accrued Benefit is immediately distributable, the Participant and the Participant's Surviving Spouse must consent to any

distribution of such accrued benefit. The consent of the Participant and the Participant's Surviving Spouse must be obtained in writing within the one-hundred eighty (180) day period (prior to March 1, 2009, within the ninety (90) day period) ending on the Annuity Starting Date. The Retirement Committee (or its designee) will notify the Participant and the Participant's Surviving Spouse of the right to defer any distribution until the Participant's Normal Retirement Age. Such notification will include a general description of the material features and an explanation of the relative value of the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of Code Section 417(a)(3) and will be provided no fewer than thirty (30) days nor more than one-hundred eighty (180) days (prior to March 1, 2009, no fewer than thirty (30) days nor more than ninety (90) days) prior to the Participant's Annuity Starting Date.

Notwithstanding the foregoing paragraph, only the Participant is required to consent to the commencement of a distribution in the form of a Qualified Joint and Survivor Annuity. Neither the consent of the Participant nor the Participant's Surviving Spouse is required to the extent that a distribution is required to satisfy Code Section 401(a)(9) or 415.

An Accrued Benefit is immediately distributable if any part of the Accrued Benefit could be distributed to the Participant or the Participant's Surviving Spouse before the Participant attains (or would have attained, if the Participant had not died) his Normal Retirement Age.

6.8 Continued Employment Beyond Normal Retirement Age. A Participant continuing employment with the University after Normal Retirement Age will be provided with a

notice which states that the Participant will not receive any Pension benefits until retirement or, if earlier, the Required Beginning Date, as defined in Section 13.2.

- 6.9 Payment of Small Pensions.** Effective March 28, 2005, if a Participant terminates employment with an Early, Normal, Late, Disability or Deferred Vested Retirement Pension and if the Actuarial Equivalent of his Accrued Benefit in the form of a lump sum is \$1,000 or less, a single sum payment shall be made to the Participant. A Participant who receives less than the present value of the Accrued Benefit and who is then re-employed shall have the right to have his Accrued Benefit restored in full (unadjusted for subsequent income, gains or losses) upon the repayment to the Plan of the full amount of the distribution before the Participant has five (5) consecutive one (1) year Periods of Severance commencing after the date of his distribution.
- 6.10 Deemed Cash-Outs of Benefits.** If the Actuarial Equivalent present value of the vested portion of a Participant's Accrued Benefit under the Plan is zero as of the date his employment with the University terminates or is terminated, the Participant shall be deemed to have received a distribution of the vested portion of the Actuarial Equivalent present value of his Accrued Benefit as of the date his employment terminates.
- 6.11 Commencement of Pensions.** In no event shall payment of a Pension commence later than sixty (60) days after the close of the Plan Year during which a Participant reaches his Normal Retirement Date or terminates service with the University, if later.
- 6.12 Payments Pursuant to Qualified Domestic Relations Order.**
- a. The benefits payable to a Participant shall be subject to the terms of a "qualified domestic relations order," as defined in Section 414(p) of the Code. The benefits payable to an Alternate Payee (as defined in Code Section 414(p)) may not

commence earlier than the Participant's Earliest Retirement Age. The Actuarial Equivalent of the benefit payable under the qualified domestic relations order plus the Actuarial Equivalent of the remaining benefit for the Participant shall not exceed the Actuarial Equivalent of the Participant's Accrued Benefit as of the date the benefit payments are to commence.

b. The Retirement Committee (or its designee) will establish reasonable procedures for determining the qualification status of a domestic relations order. Such procedures will:

- (1) Be in writing;
- (2) Provide to each person specified in a domestic relations order as entitled to payment of Plan benefits notification of such procedures promptly upon receipt of the order by the Plan; and
- (3) Permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee.

Within a reasonable period of time after receipt of such order, the Retirement Committee will determine if such order is a qualified domestic relations order and will notify the Participant and each alternate payee of such determination. During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined, the Retirement Committee will separately account for and hold in the Plan the amounts that would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order. If, within eighteen (18) months, the order is determined not to be a qualified domestic relations order or the issue as to

whether such order is a qualified domestic relations order is not resolved, the segregated amounts will be paid according to the terms of the Plan to the person or persons who would have been entitled to such amounts if there had been no order. If a Plan fiduciary acts in accordance with the fiduciary responsibility provisions of the Act, then the Plan's obligation to the Participant and each alternate payee will be discharged to the extent of any payment made.

6.13 Direct Rollovers. This Section applies to distributions made on or after January 1, 1993.

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under the Plan, a distributee may elect, at the time and in the manner prescribed by the Retirement Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. The Retirement Committee (or its designee) shall notify a distributee of his right to elect a direct rollover; that notice shall be provided to the distributee between thirty (30) days and one-hundred and eighty days (180) days (before March 1, 2009, between thirty (30) days and ninety (90) days) prior to the distributee's Annuity Starting Date. A distributee's affirmative election to make or not make a direct rollover may be implemented by the Retirement Committee less than thirty (30) days after the distributee receives such notice of his direct rollover rights, but only if the Retirement Committee (or its designee) notifies the distributee that he has the right to consider the decision of whether or not to elect a direct rollover for up to thirty (30) days. A distributee who has been given a timely notice and explanation of his rights under this Section yet fails to make an affirmative election to have his eligible rollover distribution paid to an eligible retirement plan, will be presumed to have elected to have his benefit

paid directly to him. Notwithstanding the foregoing provisions of this Section, in the event the provisions of this Section should not be required as a condition for plan qualification under Code Section 401(a), it shall automatically be deemed null, void, and of no force or effect.

- a. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- b. Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution. However, prior to January 1, 2002, in the case of an eligible rollover distribution to a Surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. Effective January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective January 1, 2002, the definition of eligible retirement plan shall also apply in the case of a distribution to a Surviving Spouse, or to a spouse or former Spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).
- c. Distributee: A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's Surviving Spouse and the Employee's or former Employee's spouse or former Spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Code Section 414(p), are distributees with regard to the interest of the Spouse or former Spouse.
- d. Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

- e. Rollover to Roth IRA. In addition to the foregoing, effective for distributions made after December 31, 2007, as permitted by Code Section 408A(d)(3), an eligible rollover distribution may be rolled over into a Roth IRA as long as the distribution is a direct rollover, the distributee includes in gross income the taxable portion of the amounts transferred and the distribution otherwise satisfies Code Section 408A(c) and (d), as applicable.
- f. Rollover by Non-Spouse Beneficiary. Notwithstanding the foregoing provisions of this Section, or any other provision of the Plan to the contrary, effective for distributions occurring after December 31, 2009, a distributee of an eligible rollover distribution may include the Participant's non-spouse designated beneficiary (within the meaning of Code Section 401(a)(9)(E) and the regulations thereunder). In the case of a non-spouse designated beneficiary, the eligible rollover deduction may be made only to an individual retirement account or annuity described in Code Section 408(a) or 408(b) (an "IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11).

ARTICLE 7

PRE-RETIREMENT DEATH BENEFITS

- 7.1 **Return of Contributions.** A non-vested Contributory Participant's Beneficiary shall be entitled to the return of his contributions no later than the Plan Year following the Plan Year in which his Severance from Service Date occurs, under the terms as noted in Section 5.7a.

7.2 Pre-Retirement Death Benefit.

- a. If a Participant dies after his Earliest Retirement Age, the amount a Participant's Beneficiary will receive shall be calculated as follows:
 - (1) Actuarial Equivalent of his Accrued Benefit minus the Actuarial Equivalent of the Participant's Prior Plan Accrued Benefit, in the form of a lump sum, plus
 - (2) If the Participant's Beneficiary is his Spouse, the Actuarial Equivalent of the immediate Qualified Joint and Survivor Annuity that would have been payable based on the Participant's Prior Plan Accrued Benefit, assuming the Participant had retired on the day before the Participant's date of death. This amount shall be payable in the form of a lump sum and the Actuarial Equivalent shall be based on the Spouse's age at the date of the Participant's death.

- b. If a Participant who is eligible for a Deferred Vested Retirement Pension dies on or before Earliest Retirement Age, the amount a Participant's Beneficiary will receive shall be calculated as follows:
 - (1) Actuarial Equivalent of his Accrued Benefit minus the Actuarial Equivalent of the Participant's Prior Plan Accrued Benefit, in the form of a lump sum, plus
 - (2) If the Participant's Beneficiary is the Spouse, the Actuarial Equivalent of the immediate Qualified Joint and Survivor Annuity that would have been payable based on the Participant's Prior Plan

Accrued Benefit assuming the Participant had (i) separated from service on the date of death (or actual date of separation, if earlier), (ii) survived to the Earliest Retirement Age, (iii) retired with an immediate Qualified Joint and Survivor Annuity at the Earliest Retirement Age, and (iv) died on the day after the Earliest Retirement Age. This amount shall be payable in the form of a lump sum and the Actuarial Equivalent shall be based on the Spouse's age at the date of the Participant's death.

- c. The benefit calculated in Section 7.2a or b will be payable as a lump sum, but will also be available as a life annuity upon the Beneficiary's election. If the Beneficiary is the estate of the Participant, a lump sum payable immediately upon death is the only form of payment available.
- d. A Beneficiary will begin to receive payments beginning with the month following the Participant's death unless the Beneficiary elects a later date.
- e. The provisions of this Section 7.2e shall supersede any contrary provision of the Plan.
 - (1) Unless an optional form of preretirement death benefit is selected within the Election Period pursuant to a Qualified Election, if a Participant dies after the Earliest Retirement Age, in no event shall the preretirement death benefit payable to the Participant's Surviving Spouse (if any) be less than the Actuarial Equivalent of the benefit that would be payable if the Participant had retired with an immediate Qualified Joint and Survivor Annuity on the day

before the Participant's date of death. The Surviving Spouse may elect to commence payment under such annuity within a reasonable period after the Participant's death. The actuarial value of benefits which commence later than the date on which payments would have been made to the Surviving Spouse under a Qualified Joint and Survivor Annuity in accordance with this provision shall be adjusted to reflect the delayed payment.

- (2) Unless an optional form of preretirement death benefit is selected within the Election Period pursuant to a Qualified Election, if a Participant who is eligible for a deferred vested benefit dies on or before the Earliest Retirement Age, in no event shall the preretirement death benefit payable to the Participant's Surviving Spouse (if any) be less than the Actuarial Equivalent of the benefit that would be payable if the Participant had: (a) separated from service on the date of death (or actual date of separation, if earlier); (b) survived to the Earliest Retirement Age; (c) retired with an immediate Qualified Joint and Survivor Annuity at the Earliest Retirement Age; and (d) died on the day after the Earliest Retirement Age. For purposes of this paragraph, a Surviving Spouse will begin to receive payments at the Earliest Retirement Age unless such Surviving Spouse elects a later date. Benefits commencing after the Earliest Retirement Age will be the Actuarial Equivalent of the benefit to which the Surviving Spouse

would have been entitled if benefits had commenced at the Earliest Retirement Age under an immediate Qualified Joint and Survivor Annuity.

For purposes of this Section 7.2e, the following terms shall have the indicated meaning unless a different meaning is clearly required by the context:

- (A) “Election Period” shall mean the period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant’s death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to benefits accrued prior to separation, the Election Period shall begin on the date of separation.
- (B) “Qualified Election” shall mean a waiver of a qualified preretirement survivor annuity. Any waiver shall be made on the form provided by the Retirement Committee (or its designee) and in accordance with procedures established by the Retirement Committee (or its designee). Such waiver shall designate a specific Beneficiary and an alternate form of benefits. The waiver must be in writing and must be consented to by the Participant’s Spouse. The Spouse’s consent to a waiver shall acknowledge the effect of such

election and shall be witnessed by a Retirement Committee member or notary public. Once spousal consent has been given, it cannot be revoked unless the Participant consents in writing to the revocation. Notwithstanding this consent requirement, if the Participant establishes to the satisfaction of the Retirement Committee such written consent may not be obtained because there is no Spouse or the Spouse cannot be located, a waiver will be deemed a Qualified Election. Any consent necessary under this provision will be valid only with respect to the Spouse who signs the consent, or in the event of a deemed Qualified Election, the designated Spouse. Additionally, a revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time and any number of times before the commencement of benefits. The number of revocations shall not be limited. A consent that permits subsequent designations by a Participant without the need for further spousal consent must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary and a specific form of benefit, if applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights.

- (C) “Qualified Joint and Survivor Annuity” shall mean an immediate annuity for the life of the Participant with a

survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity (based on the Basic Pension amount plus before the Supplemental Pension unless refunded pursuant to Section 5.7) which is payable during the joint lives of the Participant and the Spouse and which is the Actuarial Equivalent of the normal form of benefit.

In the case of a qualified preretirement survivor annuity, the Retirement Committee (or its designee) shall provide to each Participant a written explanation 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 Section 6.6 applicable to a Qualified Joint and survivor annuity. The explanation of the qualified preretirement survivor annuity shall be provided within the period ending on the later of (i) the period of beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending the last day of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35); (ii) a reasonable period of time after the individual becomes a Participant; (iii) a reasonable period of time after the preretirement survivor annuity ceases to be a fully subsidized benefit; or (iv) a reasonable period of time after the joint and survivor rules become effective as to the

Participant. Notwithstanding the foregoing provisions, such notice must be provided within a reasonable period of time after the Participant separates from service in the case of a Participant who separates from service before attaining age thirty-five (35). For purposes of applying this paragraph, a reasonable period ending after the events described in (ii) through (iv) above is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which the Participant attains age thirty-five (35), notice will be provided within the two (2) year period beginning one (1) year prior to separation from service and ending one year after separation from service. If such a Participant subsequently returns to employment with the University, the applicable notice period for the Participant will be redetermined.

Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if the Plan “fully subsidizes” the costs of a qualified preretirement survivor annuity. For purposes of this Section, a Plan fully subsidizes the costs of a benefit if, under the Plan, the failure to waive such benefit by a Participant would not result in a decrease in any Plan benefits with respect to such Participant and would not result in increased contributions from the Participant.

- f. Notwithstanding anything in this Section 7.2 to the contrary, effective July 1, 1999, in no event shall the benefit calculated pursuant to paragraphs a., b., or e of this Section 7.2 be less than the deceased Participant's Account Balance Account, with respect to notional amounts credited to such account on or after July 1, 1992, determined as of the date of the Participant's death.

ARTICLE 8

TRUST AGREEMENT, TRUST FUND AND CONTRIBUTIONS

- 8.1 Trust Agreement and Trust Fund.** The University has executed a Trust Agreement under the terms of which a Trust Fund has been established for the purpose of receiving and holding contributions made by the University and Contributory Participants, as well as interest and other income on investments of such funds, and for the purpose of paying the Pensions and other benefits provided by the Plan. The University may modify the Trust Agreement from time to time to accomplish the purpose of the Plan, may remove any Trustee, and may select any successor Trustee.

The Trust Fund shall be held by the Trustee and administered in accordance with the provisions of the Trust Agreement, and all payments of benefits provided for by the Plan shall be made out of the Trust Fund in accordance with the provisions of the Trust Agreement under which such Trustee is acting, and except as required by federal statute, neither the University nor the Trustee shall be otherwise liable for any benefits payable under the Plan.

All expenses of administration of the Plan and the Trust Fund shall be paid as determined by the University, either directly by the University or from the Trust Fund.

- 8.2 Irrevocability.** The Trust Fund shall be used to pay Pensions as provided in the Plan. No part of the principal or income of the Fund shall be used for, or diverted to, purposes

other than for the exclusive benefit of Participants, Retired Participants, Terminated Vested Participants, or their Beneficiaries, and no part of the Trust Fund shall revert to the University except that, after the application of the provisions of Article 11, such remaining part of the Trust Fund, if any, as may result from any variation between actual requirements and actuarially expected requirements may revert to the University.

8.3 University Contributions. The University will make such contributions to the Trust Fund to maintain the Plan on a sound actuarial basis and to pay the expenses incident to the operation and management of the Plan; provided that as a minimum contribution, the University intends to pay to the Trustee such amounts as may be necessary to meet the minimum funding standards established under the Act. Any forfeitures arising from the Severance from Service or death of an Employee, or for any other reason, shall be used to reduce the University contributions under the Plan and shall not be applied to increase the Pension any Employee would otherwise receive under the Plan at any time prior to the termination of the Plan or prior to the complete discontinuance of University contributions under the Plan.

8.4 Employee Contributions. Effective July 1, 1992, no Employee contributions to the Plan will be permitted. Contributory Participants will retain rights hereunder as set forth in Section 1.14.

8.5 Pensions Payable only from Trust Fund. The Pensions under the Plan shall be such as can be provided only by the assets of the Trust Fund. Except as may be provided by law, no liability for the payment of Pensions to Participants, Retired Participants and Terminated Vested Participants, their Surviving Spouses, Co-Annuitants or designated

Beneficiaries hereunder shall be imposed upon the University to make any further contributions in the event of termination of the Plan.

- 8.6 Optional Provision of Pensions.** The University reserves the right to change at any time the means through which the Pensions under the Plan shall be provided, including the substitution of a contract or contracts with an insurance company or companies, and may thereupon make suitable provision for the use of assets of the Trust Fund to provide for the payment of Pensions under such insurance contract or contracts. No such change shall constitute a termination of the Plan or result in the diversion to the University of any funds previously contributed hereunder.

ARTICLE 9

MISCELLANEOUS PROVISIONS

- 9.1 No Right of Continued Employment.** Nothing herein contained shall be deemed to give any Participant the right to be retained in the service of the University or to interfere with the right of the University to discharge the Participant at any time, nor shall it be deemed to give the University the right to require the Participant to remain in its service, nor shall it interfere with the Participant's right to terminate his service at any time.
- 9.2 Non-Alienation of Retirement Rights or Pensions.** No right or interest of any kind under the Plan or Trust Fund shall be transferable or assignable by a Participant or by his Beneficiary or his Surviving Spouse, if any, except as expressly provided in the Plan or in the Trust Agreement; nor shall any such right or interest be subject to alienation, anticipation, encumbrance, garnishment, attachment, execution or levy of any kind, voluntary or involuntary. The preceding sentence shall also 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 by the Retirement

Committee (or its designee) to be a “qualified domestic relations order,” as defined in Section 414(p) of the Code, or is a domestic relations order entered before January 1, 1985 which satisfies the requirements of Internal Revenue Service Revenue Ruling 80-27.

Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order will not fail to be a qualified domestic relations order: (i) solely because the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or (ii) solely because of the time at which the order is issued, including issuance after the Annuity Starting Date or after a Participant’s death. A domestic relations order described in this paragraph is subject to the same requirements and protections that apply to qualified domestic relations orders.

9.3 Payment of Pensions to Others. In the event that it shall be found that any Retired Participant or Terminated Vested Participant to whom a Pension is payable is unable to care for his affairs because of illness or accident, any payment due may be paid, at the discretion of the Retirement Committee, first to the Spouse, or child, brother or sister of such Retired Participant or Terminated Vested Participant, Surviving Spouse, Co-Annuitant or designated Beneficiary, or to any other person deemed by the Retirement Committee to be maintaining or responsible for the maintenance of such Retired Participant, Terminated Vested Participant, Surviving Spouse, Co-Annuitant or designated Beneficiary (unless prior claim therefor shall have been made by a duly qualified guardian or other legal representative). Any such payment shall be a payment for the account of the Retired Participant, Terminated Vested Participant, Surviving

Spouse, Co-Annuitant or designated Beneficiary and shall be a complete discharge of any liability of the Plan therefor.

9.4 Merger, Transfer of Assets or Liabilities. This Plan may not be merged or consolidated with any other Plan, nor may any assets or liabilities of this Plan be transferred to any other Plan, unless the terms of the merger, consolidation or transfer are such that each Participant, Retired Participant and Terminated Vested Participant in the Plan would, if the Plan was terminated immediately after such merger, consolidation or transfer, receive a Pension having a value equal to or greater than the Pension he would have been entitled to receive if this Plan had terminated immediately prior to the merger, consolidation or transfer.

9.5 Rights of Employees. No Covered Employee, Participant or any other person shall have any rights in, to or under the Trust Fund or any part thereof, except as and to the extent expressly provided in the Plan and Trust Agreement. However, the right of any Covered Employee, Participant, Retired Participant, Terminated Vested Participant, Beneficiary, Surviving Spouse or other party to Plan benefits shall be limited to what is or can be provided under or from the Trust Agreement, without recourse against the University.

9.6 Governing Law. The Plan shall be construed according to the laws of the State of Ohio, and all provisions hereof shall be administered according to the laws of that State. In case any provision of the Plan shall be or become invalid, such fact shall not affect the validity of any other provision.

9.7 Special Rules Relating to Veterans' Reemployment Rights. Notwithstanding any provisions of this Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service shall be provided

under the Plan in accordance with Section 414(u) of the Code. In the case of a Participant who dies on or after January 1, 2007, while performing “qualified military service” (as defined in Code Section 414(u), the survivors of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service as provided by Code Section 414(u)) that are provided under the Plan as if the Participant had resumed and then terminated employment with the University on account of death. However, the foregoing sentence shall not provide any additional benefit accruals, and the deemed resumption of employment of the Participant shall be applied only to determine eligibility of a Spouse for any pre-retirement death benefits, and only to the extent required by published guidance, as incorporated herein.

Also, notwithstanding any provision of the Plan to the contrary, effective January 1, 2009, a Participant in the Plan who is receiving military “differential wage payments,” as defined in Code Section 3401(h)(2), from the University shall be treated as an Employee of the University. Such military differential wage payments shall be treated as Compensation under Section 1.13 and Section 5.6 of the Plan during the period of “qualified military service,” as defined in Code Section 414(u), for purposes of providing benefits and service credit under the Plan and for purposes of determining the maximum limitation on benefits under Code Section 415(b).

9.8 Amendment of Vesting Schedule. If the Plan’s vesting schedule is amended or the Plan is amended in any way that directly or indirectly affects the computation of a Participant’s nonforfeitable benefit, each Participant with at least three (3) years of Credited Service with the University may elect, within a reasonable period after the

adoption of the amendment or change, to have his nonforfeitable benefit computed under the Plan without regard to such amendment or change,

The period during which the election may be made shall commence at the date the amendment is adopted or deemed to be made, and shall end on the latest of:

- (i) Sixty (60) days after the amendment is adopted,
- (ii) Sixty (60) days after the amendment becomes effective, or
- (iii) Sixty (60) days after the Participant is issued written notice of amendment by the University.

9.9 Payment of Contributions. Payments for a particular Plan Year shall be paid to the Trust Fund no later than two and one-half (2-1/2) months after the close of the Plan Year, or within such longer period as may be permitted under regulations of the Secretary of the Treasury. However, if under regulations of the Secretary of the Treasury, a waiver of a particular year's contributions shall have been granted for substantial business hardship, the time limits of this Section shall be disregarded.

Subject to the following provisions of this Section, any contribution of the University hereunder which is made by mistake of fact, with the consent of the University, may be returned to the University not later than one (1) year after the date such contribution was made by mistake of fact. No amount shall be returned to the University under this Section unless the contribution is attributable to a good faith mistake of fact, and any amount returned to the University shall be limited to the excess of the amount contributed over the amount which would have been contributed had there not occurred a mistake of fact. Earnings attributable to the excess contribution may not be returned, and losses attributable thereto must reduce the amount returned.

9.10 Paperless Transactions. In relation to any requirement that the Administrator, Retirement Committee, Trustee or other fiduciary is to provide written or appropriate notice or other communication to an Employee, Participant, Beneficiary or alternate payee (or vice versa), the terms of this Plan shall be interpreted as permitting (unless the context clearly indicates otherwise) such communication be provided by electronic or paperless methods in a manner consistent with the Electronic Signature Act, or any related or subsequent federal statute, and in a manner consistent with regulations or other guidance published by the Internal Revenue Service and the Department of Labor. Any such paperless or electronic communication shall be according to uniform and nondiscriminatory procedures developed by the Retirement Committee.

ARTICLE 10

ADMINISTRATION OF THE PLAN AND RETIREMENT COMMITTEE

- 10.1 Administration of Plan.** The general administration of the Plan, the responsibility for carrying out the provisions of the Plan, and the responsibility for dealings with the Trustee shall be placed in the Retirement Committee. The Retirement Committee shall be a “named fiduciary” within the meaning attached to such designation under the Act.
- 10.2 Retirement Committee.** The Retirement Committee shall be composed of not less than three (3) persons appointed at any time and from time to time by the Board of Trustees of the University to serve at its pleasure. Any member of the Retirement Committee may resign by delivering his written resignation to the Board of Trustees and to the Secretary of the Retirement Committee.
- a. The members of the Retirement Committee shall elect a Chairman from their number and a Secretary who may, but need not, be one of the members of the Retirement Committee; may appoint from their number such subcommittees with

such powers as they shall determine; may authorize one or more of their number or any agent to issue directives or to execute and/or deliver any instrument in writing or make any payment on their behalf; and may retain counsel, employ agents and provide for such clerical, investment, accounting and actuarial services as they may require in carrying out the provisions of the Plan.

- b. The Retirement Committee shall hold meetings upon such notice, at such place or places, and at such time or times as it or the Chairman may from time to time determine.
- c. Any act which the Plan authorizes or requires the Retirement Committee to do may be done by a majority expressed from time to time by a vote at a meeting or in writing without a meeting and shall constitute the action of the Retirement Committee and shall have the same effect for all purposes as if assented to by all members of the Retirement Committee at the time in office. No member of the Retirement Committee shall vote or act upon any action involving his own participation under the Plan.
- d. No member of the Retirement Committee shall receive any compensation for his services as such, and no bond or other security shall be required of him in such capacity in any jurisdiction, except as may be required by the Act.
- e. Subject to the limitations of the Plan and the Trust Agreement, the Retirement Committee from time to time shall establish rules for the administration of the Plan and the transaction of its business. The determination of the Retirement Committee made in good faith as to any disputed question shall be conclusive. The Retirement Committee shall also have power to construe the Plan and to

resolve doubts and to reconcile or eliminate ambiguities or conflicts as to the construction thereof, and any such construction of the Plan adopted in good faith by the Retirement Committee shall be valid and binding upon the University, each Participant and upon all other interested parties and upon persons claiming through, under or against them, or any of them, including any and all primary and contingent beneficiaries. The University shall be advised in writing of any such construction.

- f. The Retirement Committee shall see that accounts are maintained showing the fiscal transactions of the Plan and shall keep in convenient form such data as may be necessary for valuations of the Plan. The Retirement Committee (or its designee) shall submit a report each year to the Board of Trustees of the University giving a brief account of the operation of the Plan during the past year.
- g. The members of the Retirement Committee shall use ordinary care and diligence in the performance of their duties, but, to the full extent provided by law, no member shall be personally liable by virtue of contract, agreement, bond or other instrument made or executed by him or on his behalf as a member of the Retirement Committee, or for any loss unless resulting from his own negligence or willful misconduct.
- h. Claim Review Procedure. Effective January 1, 2002, all claims and applications for benefits under the Plan shall be directed to the attention of the Retirement Committee (or its designee). If the Retirement Committee determines that an individual who has claimed a right to receive a benefit under the Plan is not entitled to receive all or part of the benefit claimed, the Retirement Committee

shall inform the claimant by certified mail of its determination within ninety (90) days after receipt of such claim, unless special circumstances require an extension of time for processing the claim. In no event may the extension exceed ninety (90) days from the end of the initial period. If such extension is necessary, the claimant will be given an appropriate notice to this effect prior to the expiration of the initial ninety (90) day period. The Retirement Committee will provide to every claimant an appropriate notice of an adverse benefit determination that sets forth, in a manner reasonably calculated to be understood by the claimant, the following:

- (1) The specific reason or reasons for the denial;
- (2) Specific reference to pertinent Plan provisions (or rules promulgated pursuant thereto) on which the adverse benefit determination is based;
- (3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material is necessary;
- (4) An explanation of the Plan's claim review procedure, and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review; and
- (5) An explanation of the steps to be taken if the claimant wishes to resubmit his or her claim for review. Within sixty (60) days after receipt by the claimant of appropriate notification of the adverse

benefit determination, the claimant or the claimant's duly authorized representative, by certified or registered mail, may request a review of the adverse benefits determination, may review pertinent documents, may provide any further information that, in the claimant's opinion, will establish the claimant's right to the benefits under the Plan, and may submit issues and comments in writing. The Retirement Committee may, but is not required to, grant the claimant a hearing. On review, whether or not there is a hearing, the claimant may have representation examine pertinent documents and submit issues and comments in writing. A claimant shall be given, upon request and without charge, reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits. The Retirement Committee will make a decision on the review as soon as practicable or reasonable. The Retirement Committee shall take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, regardless of whether this information was submitted or considered in the initial benefit determination. The decision on review will be appropriate in a manner reasonably calculated to be understood by the claimant, and will include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based in a manner consistent with the initial adverse

benefit determination. All decisions on review shall be final and binding on all parties concerned.

The decision on review will be made not later than sixty (60) days after the Retirement Committee's receipt of request for a review, unless special circumstances require an extension of time for processing, in which case a decision will be rendered not later than one hundred twenty (120) days after receipt of a request for review. If such extension is necessary, the claimant will be given an appropriate notice of the extension prior to the expiration of the initial sixty (60) day period. If notice of the decision on the review is not furnished in accordance with this paragraph, the claim will be deemed wholly denied or review.

- i. Notice to Participants Eligible for Benefits. Within a reasonable period following the termination of employment of a Participant who is eligible for any benefit under the provisions of the Plan, the Retirement Committee (or its designee) shall notify the Participant of the amount or nature of the benefit for which he is eligible and of the Plan procedure for making application therefor. The Retirement Committee (or its designee) shall send a similar notice to the Co-Annuitant or Beneficiary of any Participant who becomes eligible for any benefit payable under the provisions of this Plan as a result of the Participant's death. Notwithstanding the foregoing, the filing by any Participant, Co-Annuitant or Beneficiary of an application for a benefit prior to the time when he has received such notice shall be deemed a waiver of the notice.

- j. The Retirement Committee shall have the power to designate a person or persons to carry out its administrative functions or responsibilities and the act of such person or persons shall be deemed to be the act of the Retirement Committee.

ARTICLE 11

AMENDMENT AND TERMINATION

11.1 Amendment and Termination of the Plan. The University expressly reserves the right, at any time and from time to time, without the consent of any other party:

- a. To terminate the Plan;
- b. To amend the Plan, retroactively or otherwise, in such manner as it may deem necessary or advisable in order to qualify the Plan and any trust established in conjunction therewith under the provisions of Code Sections 401(a) and 501(a);
- c. To amend the Plan in any other respect; provided, however, that no such amendment shall forfeit or diminish the interest of any Participant, Retired Participant, Terminated Vested Participant, Participant Co-Annuitant or Beneficiary in the Trust Fund to the extent that such interest has become fully vested in such person.

No amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent that it has the effect of decreasing a Participant's Accrued Benefit. Notwithstanding the preceding sentence, a Participant's Accrued Benefit may be reduced to the extent permitted under Code Section 412(c)(8) (for Plan Years beginning on or before December 31, 2007) or Code Section 412(d)(2) (for Plan Years beginning after December 31, 2007), or to the extent permitted under Sections 1.411(d)-3 and 1.411(d)(4) of the Treasury Regulations. For the purposes of this paragraph, a plan amendment that

has the effect of (i) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (ii) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. Furthermore, no amendment to the Plan shall have the effect of decreasing a Participant's vested interest determined without regard to such amendment as of the later of the date such amendment is adopted, or becomes effective.

Any such termination or amendment shall be evidenced by an instrument executed by the Board of Trustees of the University, and such termination or amendment shall become effective, in accordance with its terms, upon such execution. No such termination or amendment shall increase the duties or responsibilities of a Trustee without its consent thereto in writing.

Promptly after an amendment of this Plan shall have become effective, the University shall cause a copy of such amendment to be filed with the Retirement Committee and it shall cause notice of such amendment to be posted in such manner in such places as would reasonably be expected to bring such notice to the attention of Participants. Such notice need not contain the text of the amendment but shall contain information as to the location of a copy thereof that shall be open to inspection by any Participant or interested party.

11.2 Procedure upon Termination. If the Plan is terminated pursuant to Section 11.1, then, in the absence of a subsequent amendment to this Article, no contributions shall

thereafter be made to the Fund and the assets remaining in the Fund (available to provide Pensions) shall be allocated in accordance with applicable law for the purpose of paying Pensions provided for in the Plan. Upon termination of the Plan, the assets held under the Plan, if any, as may remain after satisfaction of all liabilities of the Plan and arising out of actuarial error, shall be distributed to the University. In the event of the termination or partial termination of the Plan, the rights of all Participants accrued to the date of such termination or partial termination to the extent funded shall be fully vested and nonforfeitable.

ARTICLE 12

TOP-HEAVY RULES

The provisions of this Article 12 will apply for purposes of determining whether the Plan is a top-heavy plan under Section 416(g) of the Code for Plan Years beginning after December 31, 2001, and whether the Plan satisfies the minimum benefits requirements of Section 416(c) for such Plan Years.

12.1 Definitions. For the purposes of Article 12, the following words and phrases shall have the indicated meanings set forth below, unless the context clearly indicates to the contrary:

- a. “Determination Date” means for any Plan Year subsequent to the first Plan Year, the last day of the immediately preceding Plan Year.
- b. “Key Employee” means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the Determination Date was an officer of the University having annual compensation greater than \$130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002). For the purpose of identifying a Key

Employee, annual compensation means compensation within the meaning of Code Section 415(c)(3). The determination of who is a Key Employee or a Non-Key Employee shall be made in accordance with Code Section 416(i)(1) and the applicable Treasury Regulations and other guidance of general applicability issued thereunder.

- c. “Non-Key Employee” means any Employee or former Employee who is not a Key Employee.
- d. “Top-Heavy Group” means two (2) or more plans of the University in which, as of the Determination Date, the sum of (i) the present value of the cumulative accrued benefits for Key Employees under all defined benefit plans of the University in the Aggregation Group and (ii) the aggregate of account balances of all Key Employees under all defined contribution plans (including any simplified employee pension, as defined in Code Section 408(k)) of the University in the Aggregation Group, exceeds sixty percent (60%) of the same sum for all participants in such plans of the University in the Aggregation Group. For purposes of this paragraph, Aggregation Group shall mean Required Aggregation Group or Permissive Aggregation Group. Required Aggregation Group shall mean (i) each qualified plan of the University in which a Key Employee is a participant or participated at any time during the Plan Year containing the Determination Date or any of the four preceding Plan Years (regardless of whether the plan has terminated), and (ii) each other qualified plan of any Affiliate which enables a plan described in (i) to meet the nondiscrimination requirements of Sections 401(a)(4) or 410 of the Code. Permissive Aggregation

Group shall mean each plan of the University which is not part of a Required Aggregation Group but is, at the option of the University, treated as a part, provided it continues to meet the requirements of Sections 401(a)(4) and 410 of the Code.

- e. “Top-Heavy Plan” shall mean a plan in which, as of the Determination Date, (i) the present value of the cumulative accrued benefits of Key Employees exceeds sixty percent (60%) of the present value of the cumulative accrued benefits of all Employees, or (ii) the Plan is part of a Top-Heavy Group. For Plan Years beginning after December 31, 2001, the present values of accrued benefits and the amounts of account balances of an Employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Code Section 416(g)(2) during the one (1) year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated Plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting “five (5) year period” for the phrase “one (1) year period.”

For purposes of determining if a plan is a Top-Heavy Plan, in the case of a defined benefit plan, the accrued benefit of a participant other than a Key Employee will be determined under (i) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the University, or (ii) if there is no such method, as if such benefit accrued not more rapidly than

the slowest accrual rate permitted under the fractional rule of Code Section 411(b)(1)(C).

For Plan Years beginning after December 31, 2001, the present value of accrued benefits shall be determined as provided in Appendix A but shall not include: (i) the accrued benefit or account balances of an Employee who is a Non-Key Employee on the Determination Date but who was a Key Employee for any prior Plan Year, and (ii) the accrued benefits and accounts of any individual who has not performed services for the University during the one (1) year period ending on the Determination Date.

For purposes of establishing the present value of accrued benefits in any defined benefit plan maintained or ever maintained by the University being tested for Top-Heavy status under Code Section 416, the actuarial assumptions will be identical and will be based on the interest rate and mortality assumptions described in Appendix A of this Plan.

For purposes of determining if a plan is a Top-Heavy Plan, non-proportional subsidies are considered and proportional subsidies are disregarded in determining the present value of accrued benefits in a defined benefit plan, as further provided in the Treasury Regulations under Code Section 416.

- f. "Valuation Date" means June 30.

12.2 University Contribution to Provide Minimum Benefit.

- a. For any Plan Year in which the Plan is determined to be a Top-Heavy Plan, each Participant who is not a Key Employee and who has completed a year of Eligibility Service will accrue a minimum annual benefit (derived from University

contributions and expressed as a life annuity beginning at Normal Retirement Age and determined without regard to any Social Security benefit).

- b. Such accrual of a minimum annual benefit will be the lesser of:
 - (1) Two percent (2%) of the Employee's highest average compensation (as defined in (c)(2) below) for the five (5) consecutive years during which the Employee had the greatest compensation from the University, multiplied by the Employee's Years of Service (as defined in (c)(1) below), or
 - (2) Twenty percent (20%) of the Employee's highest average compensation (as defined in (c)(2) below) for the five (5) consecutive years during which the Employee had the greatest compensation from the University.

- c. (1) For the purposes of the accrual of the minimum annual benefit, Year of Service shall mean a year of Credited Service, but will exclude years when the plan was not a Top-Heavy Plan for any Plan Year ending during such Year of Service, as well as years of service in a Plan Year beginning before July 1, 1984. Notwithstanding the foregoing to the contrary, effective for Plan Years on or after July 1, 2002, for purposes of satisfying the top-heavy minimum accrued benefit requirements of Section 416(c)(1) of the Code and the provisions of this Plan, in determining years of top-heavy service with the University, any year of Credited Service with the University shall be disregarded to the extent that such Credited Service occurs during a Plan Year when the Plan benefits (within the meaning of Section 410(b) of the Code) no Key Employee or former Key Employee.

(2) The compensation required to be taken into account is the compensation described in Section 415 of the Code and subject to the maximum dollar limitation of Code Section 401(a)(17). However, compensation received in years before January 1, 1984 and compensation in years after the close of the last Plan Year in which the Plan is a Top-Heavy Plan may be disregarded.

d. Notwithstanding any other provision of the Plan, a Non-Key Employee shall be a Participant for the purposes of this Section 12.2, and a Participant shall be entitled to an accrual under this Section 12.2, even if he would not otherwise be entitled to receive an accrual or would have received a lesser accrual for the year because of one of the following:

(1) the Non-Key Employee's compensation is less than a stated amount;

(2) the Non-Key Employee is not employed on a specified date.

e. Adjustment for benefit form other than a single life annuity at Normal Retirement Age. If the form of the annual retirement benefit is other than a single life annuity, the Employee shall receive an amount that is the actuarial equivalent of the minimum single life annuity benefit. For any benefit that commences at a date other than at Normal Retirement Age, the Employee shall receive at least an amount that is the actuarial equivalent of the minimum single life annuity benefit commencing at Normal Retirement Age.

f. The provisions of this Section 12.2 shall not apply to any Participant to the extent that the Participant is covered under any other plan or plans of the University,

where provision has been made in such other plan for the minimum allocation or benefit otherwise required hereunder, if it is determined to be a Top-Heavy Plan.

12.3 Minimum Vesting Requirements. For any Plan Year the Plan is a Top-Heavy Plan, a Participant's vested interest in his Accrued Benefit, if any, shall be determined as follows:

<u>Years of Credited Service</u>	<u>Vested Percentage</u>
Less than 3	0%
3 or more	100%

This vesting schedule shall not apply to a Participant who does not receive credit for an Hour of Service during the Plan Year the Plan is a Top-Heavy Plan.

In the event the Plan ceases to be Top-Heavy Plan for any Plan Year, a Participant's vested interest in the Plan shall be determined in accordance with Article 4 hereof. If any change in the Plan's vesting schedule that occurs when the Plan becomes or ceases to be Top-Heavy Plan directly or indirectly affects the computation of a Participant's vested interest in the Plan, such change shall be treated as an amendment of the Plan's vesting schedule and the election provided for in Section 9.8 of the Plan shall apply.

ARTICLE 13

DISTRIBUTION LIMITATIONS

13.1 Distribution Requirements. The distribution rules and limitations contained in this Article 13 shall take precedence over any contrary Plan provision. All distributions required under Section 13.2 or Section 13.3 shall be determined and made in accordance with Code Section 401(a)(9) and the regulations thereunder (including Section

1.401(a)(9)-2 of the Treasury Regulations). In addition, except as provided in Section 13.3 of the Plan, with respect to required distributions made for calendar years beginning on or after January 1, 2001, and before January 1, 2003, the Plan shall apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the regulations under Code Section 401(a)(9) that were proposed on January 17, 2001.

13.2 Required Beginning Date. Distribution to a Participant must commence no later than the first day of April following the calendar year in which the Participant attains age seventy and one-half (70-1/2); provided, however, that, effective July 1, 1998, distribution to a Participant must commence no later than the first day of April following the calendar year in which the Participant attains age seventy and one-half (70-1/2) and has incurred a Severance from Service Date. A Participant's Accrued Benefit is actuarially increased to take into account the period after age seventy and one-half (70-1/2) in which the Participant does not receive any benefits under the Plan due to the application of the preceding paragraph. The actuarial increase begins on the April 1 following the calendar year in which the Participant attains age seventy and one-half (70-1/2) and ends on the date on which benefits commence after a Severance from Service Date in an amount sufficient to satisfy Code Section 401(a)(9).

The amount of actuarial increase payable as of the end of the period for actuarial increases described above must be no less than the Actuarial Equivalent of the Participant's retirement benefits that would have been payable as of the date the actuarial increase must commence plus the Actuarial Equivalent of any additional benefits accrued after that date, reduced by the Actuarial Equivalent of any distributions made after that date. The actuarial increase is generally the same as, and not in addition to, the actuarial

increase required for that same period under Code Section 411 to reflect the delay in payments after normal retirement, except that the actuarial increase required under Code Section 401(a)(9)(C) must be provided even during the period during which an Participant is in service described in Section 203(a)(3)(b) of the Act due to continued employment or reemployment.

For purposes of Code Section 411(b)(1)(H), the actuarial increase will be treated as an adjustment attributable to the delay in distribution of benefits after the attainment of Normal Retirement Age. Accordingly, to the extent permitted under Code Section 411(b)(1)(H), the actuarial increase required under Code Section 401(a)(9)(C)(iii) may reduce the benefit accrual otherwise required under Code Section 411(b)(1)(H)(i), except that the rules on the suspension of benefits are not applicable.

13.3 Time, Manner and Amount of Required Minimum Distributions Effective for Distribution Years Beginning On or After January 1, 2003.

a. Effective Date.

- (i) The provisions of this Section 13.3 will apply for purposes of determining required minimum distributions for Distribution Calendar Years beginning on or after January 1, 2003, as well as required minimum distributions for the 2002 Distribution Calendar Year that are made on or after January 1, 2003. However, if required minimum distributions for the 2002 Distribution Calendar Year are made to a distributee prior to January 1, 2003, and the total amount of such distributions equals or exceeds the required minimum distributions as determined by applying this Section 13.3, then no additional distributions will be required to be made to a distributee with respect to the 2002 Distribution Calendar Year on or after

January 1, 2003. Further, if required minimum distributions for the 2002 Distribution Calendar Year are made to a distributee prior to January 1, 2003, and the total amount of such distributions is less than the amount determined by applying this Section 13.3, the required minimum distributions for the 2002 Distribution Calendar Year that are made on and after January 1, 2003 will be determined so that the total amount of required minimum distributions made to a distributee for the entire 2002 Distribution Calendar Year will be the amount determined by applying this Section 13.3. In addition, as permitted by Notice 2003-2, if any required minimum distribution made for the 2003, 2004, or 2005 Distribution Calendar Years fails to satisfy the final Treasury Regulations under Section 401(a)(9) of the Code published on April 17, 2002 or June 15, 2004 (incorporated herein), such required minimum distributions will be deemed to satisfy Section 401(a)(9) of the Code to the extent they satisfy the proposed Treasury Regulations published on January 17, 2001.

- (ii) Subject to the Qualified Joint and Survivor Annuity requirements of Section 6.4, the requirements of this Section 13.3 will take precedence over any inconsistent provisions of the Plan. Further, all distributions required under this Section 13.3 will be determined and made in accordance with the temporary and final Treasury Regulations published on April 17, 2002 (T.D. 8987), and the final amended Treasury Regulations published on June 15, 2004 (T.D. 9103) under Section 401(a)(9) of the Code, which are hereby incorporated into this Plan.

- (iii) In addition to the foregoing, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and any provisions of the Plan that relate to Section 242(b)(2) of TEFRA.
- b. Time and Manner of Distribution. The time and manner by which the Participant's interest must begin as required by this Section 13.3 shall be determined according to the following provisions.
- (i) The Participant's entire interest under the Plan will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
 - (ii) If the Participant dies before distributions of his interest under the Plan begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, 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, if later, by December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70½), unless the Surviving Spouse has made an election to apply the "Five (5) Year Rule." An election to apply the Five (5) Year Rule must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under the Life Expectancy

Rule, or by September 30 of the calendar year that contains the fifth (5th) anniversary of the Participant's (or, if applicable, the Surviving Spouse's) death. Notwithstanding the foregoing, 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 either the Participant or the Surviving Spouse begin, the Five (5) Year Rule shall apply as if the Surviving Spouse were the Participant.

- (2) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, distributions will commence in accordance with the Five (5) Year Rule unless the Participant had made, or Designated Beneficiary has made, an election to apply the Life Expectancy Rule. An election to apply the Life Expectancy Rule must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under the Life Expectancy Rule, or by September 30 of the calendar year that contains the fifth (5th) anniversary of the Participant's (or, if applicable, the Surviving Spouse's) death.
- (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed according to the Five (5) Year Rule.

For purposes of this subsection (b)(ii)(3) and subsection (f) of this Section 13.3, distributions are considered to begin on the Participant's Required Beginning Date (or the date distributions are required to begin to the Surviving Spouse under subsection (b)(ii)(1) when treating the Surviving Spouse the same as the Participant). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's Surviving Spouse before the date distributions are required to begin to the Surviving Spouse under subsection (b)(ii)(1) when treating the Surviving Spouse the same as the Participant), the date distributions are considered to begin is the date distributions actually commence.

Notwithstanding the foregoing to the contrary, a Designated Beneficiary who is already receiving payments under the Five (5) Year Rule at the time this Section 13.3 becomes effective may make a new election by December 31, 2003, to receive payments under the Life Expectancy Rule, 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 fifth (5th) anniversary of the Participant's death.

- c. Limits on Distribution Periods and Form of Distribution. 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: (i) the life of the Participant, (ii) the joint lives of the Participant and a Designated Beneficiary,

(iii) a period certain not extending beyond the Life Expectancy of the Participant, or (iv) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a Designated Beneficiary. In addition, unless the Participant's interest is distributed in the form of an annuity purchased from an insurance university 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 subsections (d), (e) and (f) of this Section 13.3. If the Participant's interest is distributed in the form of an annuity purchased from an insurance university, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury Regulations that apply to individual accounts.

d. Determination of Amount to Be Distributed Each Year. The amount to be distributed each year shall be determined according to the following provisions, as appropriate.

(i) If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(1) the annuity distributions will be paid in periodic payments made at intervals not longer than one (1) year;

- (2) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsection (e) or (f) of this Section 13.3;
- (3) once payments have begun over a period certain, the period certain will not be changed in accordance with subsection (g) of this Section 13.3;
- (4) payments will either be non-increasing or increase only as follows:
 - (A) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a twelve (12) month period ending in the year during which the increase occurs or a prior year;
 - (B) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the Annuity Starting Date, or if later, the date of the most recent percentage increase;
 - (C) by a constant percentage of less than five percent (5%) per year, applied not less frequently than annually;
 - (D) as a result of dividend or other payments that result from Actuarial Gains, provided: Actuarial Gain is measured not less frequently than annually, the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is

- measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured), the actuarial gain taken into account is limited to actuarial gain from investment experience, the assumed interest rate used to calculate such actuarial gains is not less than three percent (3%), and the annuity payments are not increased by a constant percentage as described in subsection (d)(i)(4)(C), above;
- (E) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection (e) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;
- (F) to provide a final payment upon the Participant's death not greater than the excess of the actuarial present value of the Participant's Accrued Benefit (within the meaning of Section 411(a)(7) of the Code) calculated as of the Annuity Starting Date using the applicable interest rate and the applicable mortality table defined in Appendix A of the Plan (or, if greater, the total amount of employee

contributions) over the total of payments before the Participant's death;

(G) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death; or

(H) to pay increased benefits that result from a Plan amendment.

- (ii) The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under subsections (b)(ii)(A) or (B) of this Section 13.3) is the payment that is required for one (1) payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bimonthly, monthly, semiannually, or annually. All of the Participant's benefit accruals as of the last day of the first Distribution Calendar Year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.
- (iii) Any additional benefits accruing to the Participant in a calendar year after the first Distribution Calendar Year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

e. Requirements for Annuity Distributions that Commence During Participant's Lifetime.

- (i) If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the Designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Treasury Regulation Section 1.401(a)(9)-6, Q&A-2(c)(2), in the manner described in Q&A-2(c)(1) to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Designated Beneficiary after the expiration of the period certain.
- (ii) Unless the Participant's Spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-2, for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age seventy (70), the applicable

distribution period for the Participant is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-2, plus the excess of seventy (70) over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's Spouse is the Participant's sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this subsection (e)(ii), or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in Treasury Regulation Section 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 calendar year that contains the Annuity Starting Date.

f. Requirements for Minimum Distributions After Participant's Death.

- (i) If the Participant dies after distribution of his interest begins in the form of an annuity meeting the requirements of this Section 13.3, the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced.
- (ii) If the Participant dies before the date distribution of his interest begins and there is a Designated Beneficiary, distribution of the Participant's entire interest will be begin no later than the time described in subsection (b)(ii)(A) or (B). If the Designated Beneficiary elects to apply the Life

Expectancy Rule (as permitted under subsection (b)(ii)(B)) the Participant's entire interest will be distributed over the life of the Designated Beneficiary or over a period certain not exceeding:

- (1) unless the Annuity Starting Date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the Designated Beneficiary's age as of the Designated Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death;
or
 - (2) if the Annuity Starting Date is before the first Distribution Calendar Year, the life expectancy of the Designated Beneficiary determined using the beneficiary's age as of the Designated Beneficiary's birthday in the calendar year that contains the Annuity Starting Date.
- (iii) 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 (5th) anniversary of the Participant's death.
- (iv) If the Participant dies before the date distribution of his interest begins, the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, and the Surviving Spouse dies before distributions to the Surviving Spouse begin, this subsection (f) will apply as if the Surviving

Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to subsection (b)(ii)(A) of this Section 13.3.

g. Changes to Annuity Payment Period.

- (i) An annuity payment period may be changed only in association with an annuity payment increase described in subsection (d)(i)(4) of this Section 13.3 in accordance with subsection (g)(ii), below.
- (ii) An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in subsection (g)(iii), below, are satisfied and:
 - (1) the modification occurs when the Participant retires or in connection with a Plan termination;
 - (2) the payment period prior to modification is a period certain without life contingencies; or
 - (3) the annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the Participant and a Designated Beneficiary, the Participant's Spouse is the sole designated beneficiary, and the modification occurs in connection with the Participant's becoming married to such Spouse.
- (iii) The conditions in this subsection (g) are satisfied if:
 - (1) the future payments after the modification satisfy the requirements of Section 401(a)(9) of the Code, Treasury Regulation Section 1.401(a)(9), and this Section 13.3 (determined by treating the date

of the change as a new Annuity Starting Date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);

- (2) for purposes of Sections 415 and 417 of the Code, the modification is treated as a new Annuity Starting Date;
- (3) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Section 415 of the Code (determined at the original Annuity Starting Date, using the interest rates and mortality tables applicable to such date); and
- (4) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the employee at the original Annuity Starting Date under Section 401(a)(9) of the Code and this Section 13.3.

h. Definitions. The following definitions shall apply for purposes of this Section 13.3.

- (i) “Actuarial Gain,” for purposes of this Section 13.3, is the difference between an amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial Gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or

commenced and such amount determined using actuarial assumptions used in calculating payments at the time the Actuarial Gain is determined.

- (ii) A “Designated Beneficiary” is the individual who is designated as the Beneficiary under Section 1.10 of the Plan and is the Designated Beneficiary under Section 401(a)(9) of the Code and Treasury Regulation Section 1.401(a)(9)-4.
- (iii) A “Distribution Calendar Year” is a calendar year for which a minimum required 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 that 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 subsection (b)(ii) of this Section 13.3.
- (iv) “Eligible cost-of-living index” is an index described in subsections (b)(2), (b)(3) or (b)(4) of Treasury Regulation Section 1.401(a)(9)-6, Q&A-14.
- (v) The “Five (5) Year Rule” refers to the requirement that a Participant’s entire interest be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant’s death.
- (vi) “Life expectancy” shall be as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9, Q&A-1.

(vii) The “Life Expectancy Rule” refers to the requirement that any portion of a Participant’s interest payable to a Designated Beneficiary begin to be distributed within one year of the Participant’s death, and paid over the life (or Life Expectancy) of the Beneficiary.

(viii) The “Required Beginning Date” is the date specified in Section 13.2 of the Plan.

i. Payments to a Surviving Child. Notwithstanding the foregoing to the contrary, for purposes of this Section 13.3, payments made to a Participant’s surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the Surviving Spouse to the extent the payments become payable to the Surviving Spouse upon cessation of the payments to the child. For purposes of this subsection (i), a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of twenty-six (26). In addition, a child who is disabled within the meaning of Section 72(m)(7) of the Code when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

13.4 Funding Benefit Limitations. Effective for Plan Years beginning after December 31, 2007, funding based limits on the accrual of benefits under the Plan and distributions from the Plan with respect to any individual Participant shall be determined in accordance with Code Section 436, as amended, and the regulations thereunder, the applicable provisions of which are hereby incorporated by reference. Without limiting

the generality of the foregoing, the provisions of this Section 13.4 apply with respect to, and are in furtherance of, the foregoing incorporation.

a. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than Eighty Percent (80%), But Not Less Than Sixty Percent (60%).

Notwithstanding any other provision of the Plan to the contrary, if the Plan's adjusted funding target attainment percentage for a Plan Year is less than eighty percent (80%) (or would be less than eighty percent (80%) to the extent described in Section 13.4a.(ii) below) but is not less than sixty percent (60%), then the limitations set forth in this Section 13.4a. apply.

(i) Fifty Percent (50%) Limitation on Single Sum Payments, Other Accelerated Forms of Distribution, and Other Prohibited Payments. A Participant or Beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable section 436 measurement date, and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, unless the present value of the portion of the benefit that is being paid in a prohibited payment does not exceed the lesser of:

- (1) Fifty percent (50%) of the present value of the benefit payable in the optional form of benefit that includes the prohibited payment;
- or

- (2) One hundred percent (100%) of the PBGC maximum benefit guarantee amount (as defined in Treasury Regulation Section 1.436-1(d)(3)(iii)(C)).

The limitation set forth in this Section 13.4a(i) does not apply to any payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant. If an optional form of benefit that is otherwise available under the terms of the Plan is not available to a Participant or Beneficiary as of the annuity starting date because of the application of the requirements of this Section 13.4a(i), the Participant or Beneficiary is permitted to elect to bifurcate the benefit into unrestricted and restricted portions (as described in Treasury Regulation Section 1.436-1(d)(3)(iii)(D)). The Participant or Beneficiary may also elect any other optional form of benefit otherwise available under the Plan at that annuity starting date that would satisfy the fifty percent (50%)/PBGC maximum benefit guarantee amount limitation described in this Section 13.4a(i), or may elect to defer the benefit in accordance with any general right to defer commencement of benefits under the Plan. During a period when Section 13.4a(i) applies to the Plan, Participants and Beneficiaries are permitted to elect payment in any optional form of benefit otherwise available under the Plan that provides for the current payment of the unrestricted portion of the benefit (as described in Treasury Regulation Section 1.436-1(d)(3)(iii)(D)), with a delayed commencement for the restricted portion of the benefit (subject to

other applicable qualification requirements, such as Code Sections 411(a)(11) and 401(a)(9).

(ii) Plan Amendments Increasing Liability for Benefits. No amendment to the Plan that has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable shall take effect in a Plan Year if the adjusted funding target attainment percentage for the Plan Year is:

- (1) Less than eighty percent (80%); or
- (2) Eighty percent (80%) or more, but would be less than eighty percent (80%) if the benefits attributable to the amendment were taken into account in determining the adjusted funding target attainment percentage.

The limitation set forth in this Section 13.4a(ii) does not apply to any amendment to the Plan that provides a benefit increase under a Plan formula that is not based on compensation, provided that the rate of such increase does not exceed the contemporaneous rate of increase in the average wages of Participants covered by the amendment.

b. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than Sixty Percent (60%). Notwithstanding any other provision of the Plan to the contrary, if the Plan's adjusted funding target attainment percentage for a Plan Year is less than sixty percent (60%) (or would

be less than sixty percent (60%) to the extent described in Section 13.4b(ii) below), then the limitations in this Section 13.4b apply.

- (i) Single Sums, Other Accelerated Forms of Distribution, and Other Prohibited Payments Not Permitted. A Participant or Beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable section 436 measurement date, and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment. The limitation set forth in this Section 13.4b(i) does not apply to any payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant.
- (ii) Shutdown Benefits and Other Unpredictable Contingent Event Benefits Not Permitted to Be Paid. An unpredictable contingent event benefit with respect to an unpredictable contingent event occurring during a Plan Year shall not be paid if the adjusted funding target attainment percentage for the Plan Year is:
 - (1) Less than sixty percent (60%); or
 - (2) Sixty percent (60%) or more, but would be less than sixty percent (60%) if the adjusted funding target attainment percentage were redetermined applying an actuarial assumption that the likelihood

of occurrence of the unpredictable contingent event during the Plan Year is one hundred percent (100%).

(iii) Benefit Accruals Frozen. Benefit accruals under the Plan shall cease as of the applicable section 436 measurement date. In addition, if the Plan is required to cease benefit accruals under this Section 13.4b(iii), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits.

c. Limitations Applicable If the University Is In Bankruptcy. Notwithstanding any other provision of the Plan to the contrary, a Participant or Beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date that occurs during any period in which the University is a debtor in a case under title 11, United States Code, or similar federal or state law, except for payments made within a Plan Year with an annuity starting date that occurs on or after the date on which the Plan's enrolled actuary certifies that the Plan's adjusted funding target attainment percentage for that Plan Year is not less than one hundred percent (100%). In addition, during such period in which the University is a debtor, the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, except for payments that occur on a date within a Plan Year that is on or after the date on which the Plan's enrolled actuary certifies that the Plan's adjusted funding target attainment percentage for that Plan

Year is not less than one hundred percent (100%). The limitation set forth in this Section 13.4c does not apply to any payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant.

d. Provisions Applicable After Limitations Cease to Apply.

(i) Resumption of Prohibited Payments. If a limitation on prohibited payments under Section 13.4a(i), Section 13.4b(i), or Section 13.4c applied to the Plan as of a section 436 measurement date, but that limit no longer applies to the Plan as of a later section 436 measurement date, then that limitation does not apply to benefits with annuity starting dates that are on or after that later section 436 measurement date.

In addition, after the section 436 measurement date on which the limitation on prohibited payments under Section 13.4a(i) ceases to apply to the Plan, any Participant or Beneficiary who had an annuity starting date within the period during which that limitation applied to the Plan is permitted to make a new election (within 90 days after the section 436 measurement date on which the limit ceases to apply or, if later, 30 days after receiving notice of the right to make such election) under which the form of benefit previously elected is modified at a new annuity starting date to be changed to a single sum payment for the remaining value of the Participant or Beneficiary's benefit under the Plan, provided that the single sum payment option would have been available to such Participant or Beneficiary pursuant to Section 6.4b at the time the previous election

was made under Section 13.4a, and subject to the other rules in this Section 13.4 of the Plan and applicable requirements of Code Section 401(a), including spousal consent.

In addition, after the section 436 measurement date on which the limitation on prohibited payments under Section 13.4b(i) ceases to apply to the Plan, any Participant or Beneficiary who had an annuity starting date within the period during which that limitation applied to the Plan is permitted to make a new election (within 90 days after the section 436 measurement date on which the limit ceases to apply or, if later, 30 days after receiving notice of the right to make such election) under which the form of benefit previously elected is modified at a new annuity starting date to be changed to a single sum payment for the remaining value of the Participant's or Beneficiary's benefit under the Plan, provided that the single sum payment option would have been available to such Participant or Beneficiary pursuant to Section 6.4b at the time the previous election was made under Section 13.4b, and subject to the other rules in this Section 13.4 of the Plan (including Section 13.4a(i)) and applicable requirements of Code Section 401(a), including spousal consent.

- (ii) Resumption of Benefit Accruals. If a limitation on benefit accruals under Section 13.4b(iii) applied to the Plan as of a section 436 measurement date, but that limitation no longer applies to the Plan as of a later section 436 measurement date, then benefit accruals shall resume prospectively and that limitation does not apply to benefit accruals that are based on

service on or after that later section 436 measurement date, unless the Plan has been amended to provide otherwise, subject to the requirements of Code Section 436. The Plan shall comply with the rules relating to partial years of participation and the prohibition on double proration under the Department of Labor Regulation found at 29 C.F.R. Section 2530.204-2(c) and (d).

- (iii) Shutdown and Other Unpredictable Contingent Event Benefits. If an unpredictable contingent event benefit with respect to an unpredictable contingent event that occurs during the Plan Year is not permitted to be paid after the occurrence of the event because of the limitation of Section 13.4b(ii), but is permitted to be paid later in the same Plan Year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the Plan Year that meets the requirements of Treasury Regulation Section 1.436-1(g)(5)(ii)(B)), then that unpredictable contingent event benefit shall be paid, retroactive to the period that benefit would have been payable under the terms of the Plan (determined without regard to Section 13.4b(ii)). If the unpredictable contingent event benefit does not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for that benefit.
- (iv) Treatment of Plan Amendments That Do Not Take Effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitation of Section 13.4a(ii) or Section 13.4b(iii), but is

permitted to take effect later in the same Plan Year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the Plan Year that meets the requirements of Treasury Regulation Section 1.436-1(g)(5)(ii)(C)), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the same Plan Year, then it shall be treated as if it were never adopted, unless the Plan amendment provides otherwise.

e. Special Rules.

(i) Rules of Operation for Periods Prior to and After Certification of Plan's Adjusted Funding Target Attainment Percentage.

(1) In General. Code Section 436(h) and Treasury Regulation Section 1.436-1(h) set forth a series of presumptions that apply (A) before the Plan's enrolled actuary issues a certification of the Plan's adjusted funding target attainment percentage for the Plan Year and (B) if the Plan's enrolled actuary does not issue a certification of the Plan's adjusted funding target attainment percentage for the Plan Year before the first day of the tenth (10th) month of the Plan Year (or if the Plan's enrolled actuary issues a range certification for the Plan Year pursuant to Treasury Regulation Section 1.436-1(h)(4)(ii) but does not issue a certification of the specific adjusted funding target attainment percentage for the Plan by the last day of

the Plan Year). For any period during which a presumption under Code Section 436(h) and Treasury Regulation Section 1.436-1(h) applies to the Plan, the limitations under Sections 13.4a through 13.4c are applied to the Plan as if the adjusted funding target attainment percentage for the Plan Year were the presumed adjusted funding target attainment percentage determined under the rules of Code Section 436(h) and Treasury Regulation Sections 1.436-1(h)(1), (2), or (3). These presumptions are set forth in Section 13.4e(i)(2) through 13.4e(i)(4).

- (2) Presumption of Continued Underfunding Beginning First Day of Plan Year. If a limitation under Section 13.4a, 13.4b, or 13.4c applied to the Plan on the last day of the preceding Plan Year, then, commencing on the first day of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the Plan for the current Plan Year, or, if earlier, the date Section 13.4e(i)(3) or Section 13.4e(i)(4) applies to the Plan:
- (A) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be the adjusted funding target attainment percentage in effect on the last day of the preceding Plan Year; and
 - (B) The first day of the current Plan Year is a section 436 measurement date.

- (3) Presumption of Underfunding Beginning First Day of Fourth (4th) Month. If the Plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the Plan Year before the first day of the fourth (4th) month of the Plan Year and the Plan's adjusted funding target attainment percentage for the preceding Plan Year was either at least sixty percent (60%) but less than seventy percent (70%) or at least eighty percent (80%) but less than ninety percent (90%), or is described in Treasury Regulation Section 1.436-1(h)(2)(ii), then, commencing on the first day of the fourth (4th) month of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the Plan for the current Plan Year, or, if earlier, the date Section 13.4e(i)(4) applies to the Plan:
- (A) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be the Plan's adjusted funding target attainment percentage for the preceding Plan Year reduced by ten (10) percentage points; and
- (B) The first day of the fourth (4th) month of the current Plan Year is a section 436 measurement date.
- (4) Presumption of Underfunding On and After First Day of Tenth (10th) Month. If the Plan's enrolled actuary has not issued a

certification of the adjusted funding target attainment percentage for the Plan Year before the first day of the tenth (10th) month of the Plan Year (or if the Plan's enrolled actuary has issued a range certification for the Plan Year pursuant to Treasury Regulation Section 1.436-1(h)(4)(ii) but has not issued a certification of the specific adjusted funding target attainment percentage for the Plan by the last day of the Plan Year), then, commencing on the first day of the tenth (10th) month of the current Plan Year and continuing through the end of the Plan Year:

- (A) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be less than sixty percent (60%); and
- (B) The first day of the tenth (10th) month of the current Plan Year is a section 436 measurement date.

(ii) Plan Termination and Other Special Rules.

(1) Plan Termination. The limitations on prohibited payments in Section 13.4a(i), Section 13.4b(i), and Section 13.4c do not apply to prohibited payments that are made to carry out a termination of the Plan in accordance with applicable law. Any other limitations under this section of the Plan do not cease to apply as a result of termination of the Plan.

(2) Special Rules Relating to Unpredictable Contingent Event Benefits and Plan Amendments Increasing Benefit Liability. During any

period in which none of the presumptions under Section 13.4e(i) apply to the Plan and the Plan's enrolled actuary has not yet issued a certification of the Plan's adjusted funding target attainment percentage for the Plan Year, the limitations under Section 13.4a(ii) and Section 13.4b(ii) shall be based on the inclusive presumed adjusted funding target attainment percentage for the Plan, calculated in accordance with the rules of Treasury Regulation Section 1.436-1(g)(2)(iii).

(iii) Interpretation of Provisions. The limitations imposed by this section of the Plan shall be interpreted and administered in accordance with Code Section 436 of the Internal Revenue Code and Treasury Regulation Section 1.436-1.

f. Definitions. The definitions in the following Treasury Regulation Sections apply for purposes of Sections 13.4a through 13.4e: 1.436-1(j)(1) defining adjusted funding target attainment percentage; 1.436-1(j)(2) defining annuity starting date; 1.436-1(j)(6) defining prohibited payment; 1.436-1(j)(8) defining section 436 measurement date; and 1.436-1(j)(9) defining an unpredictable contingent event and an unpredictable contingent event benefit.

ARTICLE 14

RESTRICTIONS ON CERTAIN DISTRIBUTIONS TO HIGHLY COMPENSATED EMPLOYEES

a. In the event of termination of this Plan, the benefit of any Highly Compensated Employee and of any former Highly Compensated Employee is limited to a benefit that is nondiscriminatory under Code Section 401(a)(4).

b. In order to comply with this Section, the annual payments to a Participant described in subsection c below will be restricted to an amount equal in each year to--

- (1) The accrued benefit and other benefits to which the Participant is entitled under the Plan (other than a Social Security supplement), and
- (2) The amount of the payments that the Participant is entitled to receive under a Social Security supplement.

The restrictions in this subsection b do not apply, however, if any one of the following requirements is satisfied--

- (i) After payment to a Participant described in subsection c hereof of all benefits payable to the Participant under the Plan, the value of the Plan assets equals or exceeds one hundred ten percent (110%) of the value of current liabilities, as defined in Code Section 412(1)(7)),
- (ii) The value of the benefits payable to the Participant under the Plan for a Participant described in subsection c hereof is less than one percent (1%) of the value of current liabilities before distribution, or
- (iii) The value of the benefits payable to the Participant under the Plan for a Participant described in subsection c hereof does not exceed the amount described in Code Section 411(a)(11)(A).

c. The Participants whose benefits are restricted on distribution under this Article include all Highly Compensated Employees and highly compensated former employees; provided, however, that in any one (1) year, the total number of

Participants whose benefits are subject to restrictions under this Article is limited to the twenty-five (25) Highly Compensated Employees and former Highly Compensated Employees with the greatest compensation in the current or any prior Plan Year.

- d. For purposes of this Article, the term “benefit” includes, among other benefits, any periodic income and any death benefits not provided by insurance on the Participant’s life.
- e. If it is determined that the provisions of this Article are no longer necessary to qualify this Plan under the Code, this Section shall automatically become inoperative and of no effect.
- f. Notwithstanding the foregoing provisions of this Article, with respect to Plan Years beginning prior to January 1, 1994, the provisions of subsections b, c and d shall not be applicable to the benefits of any Participant under the Plan; provided, however, that until January 1, 1994, the Plan shall be subject to the restrictions prescribed by Section 1.401-4(c) of the Treasury Regulations then in effect.

IN WITNESS WHEREOF, the University, acting through its duly authorized officers, has caused this Agreement to be executed on this ___ day of December, 2012.

CASE WESTERN RESERVE UNIVERSITY

By: _____

Title: _____

By: _____

Title: _____

APPENDIX A

ACTUARIAL EQUIVALENT

A. Lump Sum Factors

1. For Plan Years Beginning Prior to July 1, 2000:

--- Interest Rate: The PBGC immediate annuity interest rate in effect as of the first day of the Plan Year.

--- Mortality: UP 84 set back one year.

2. For Plan Years Beginning on and After July 1, 2000 and Prior to July 1, 2008:

--- Interest Rate (or “applicable interest rate”): The annual rate of interest on 30-year Treasury securities as in effect for the second full calendar month occurring prior to the first day of the Plan Year in which the Annuity Starting Date occurs.

--- Mortality (or “applicable mortality table”): With respect to distributions from the Plan with Annuity Starting Dates prior to December 31, 2002, the mortality table prescribed by the Secretary of the Treasury. Such table shall be based on the prevailing commissioner’s standard table (described in Code Section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is begin determined (without regard to any other subparagraph of Code Section 807(d)(5)).

With respect to distributions from the Plan with Annuity Starting Dates on or after December 31, 2002 and prior to July 1, 2008, the mortality table used for purposes of satisfying the requirements of Section 417(e) of the Code and for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C) or (D) of the Code is the mortality table prescribed in Revenue Ruling 2001-62.

3. For Plan Years Beginning on and After July 1, 2008:

--- Interest Rate (or “applicable interest rate”): The modified segment rate determined according to Code Sections 417(e)(3)(C) and (D) and published guidance thereunder with a stability period of a Plan Year and a lookback month which is the second full month (i.e., May) immediately preceding the first day of the Plan Year during which the Annuity Starting Date for the distribution occurs.

--- Mortality (or “applicable mortality table”): The mortality table used for purposes of satisfying the requirements of Section 417(e) of the Code and for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C) or (D) of the Code shall be the mortality table in effect under Code Section 417(e)(3)(B) and the published guidance thereunder. Notwithstanding the foregoing sentence, with respect to distributions from the Plan with Annuity Starting Dates on or after July 1, 2008 and prior to July 1, 2009, solely for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C) or (D) of the Code, the applicable mortality table shall be the mortality table prescribed in Revenue Ruling 2001-62.

B. Early and Late Retirement Factors:

--- Interest Rate: 4.5%

--- Mortality: GA 1951 Mortality Table, projected 14 years by scale C, set back five years

C. Five-Year and Ten-Year Certain and Continuous Factors:

--- Interest Rate: 6.00%

--- Mortality: UP 84 set back one year

D. 50%, 66-2/3%, 75%, and 100% Joint and Survivor Factors:

--- Interest Rate: 6.00%

--- Mortality: UP 84 set back one year for Participants and two years for Beneficiaries

E. Account Balance Conversion Factors:

1. For Plan Years Beginning Prior to July 1, 2000:

--- Interest Rate: The PBGC immediate annuity interest rate in effect as of the first day of the Plan Year.

--- Mortality: UP 84 set back one year.

2. For Plan Years Beginning on and After July 1, 2000 and Prior to July 1, 2008:

--- Interest Rate: The annual rate of interest on 30-year Treasury securities as in effect for the second full calendar month occurring prior to the first day

of the Plan Year in which the Annuity Starting Date occurs.

- Mortality: With respect to distributions from the Plan with Annuity Starting Dates prior to December 31, 2002, the mortality table prescribed by the Secretary of the Treasury. Such table shall be based on the prevailing commissioner's standard table (described in Code Section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is begin determined (without regard to any other subparagraph of Code Section 807(d)(5)).

With respect to distributions from the Plan with Annuity Starting Dates on or after December 31, 2002 and prior to July 1, 2008, the mortality table used for purposes of satisfying the requirements of Section 417(e) of the Code and for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C) or (D) of the Code is the mortality table prescribed in Revenue Ruling 2001-62.

3. For Plan Years Beginning on and After July 1, 2008:

- Interest Rate: The modified segment rate determined according to Code Sections 417(e)(3)(C) and (D) and published guidance thereunder with a stability period of a Plan Year and a lookback month which is the second full calendar month (i.e., May) immediately preceding the first day of the Plan Year during which the Annuity Starting Date for the distribution occurs.

- Mortality: The mortality table used for purposes of satisfying the requirements of Section 417(e) of the Code and for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C) or (D) of the Code shall be the mortality table in effect under Code Section 417(e)(3)(B) and the published guidance thereunder. Notwithstanding the foregoing sentence, with respect to distributions from the Plan with Annuity Starting Dates on or after July 1, 2008 and prior to July 1, 2009, solely for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C) or (D) of the Code the applicable mortality table shall be the mortality table prescribed in Revenue Ruling 2001-62.

APPENDIX B

PRIOR PENSION ACCRUAL FACTORS

A. Pre-1986 Basic Pension Amounts

The Pre-1986 Basic Pension Amount of a Participant's Prior Plan Accrued Benefit was calculated under the Prior Plan and earlier plans (including, as applicable, and not limited to: the Case Western Reserve University Employees' Retirement Plan B (Amended and Restated Effective as of July 1, 1989); The Case Institute of Technology Employees' Retirement Plan B; and The Western Reserve University Teacher's Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF)) (collectively, the "prior plans"), using the following factors for Participants who terminated from employment prior to July 1, 2001:

1. Five Dollars (\$5) per month for each year (or a fraction thereof) of his credited service under the prior plans for a Participant who terminated from employment with the University prior to April 1, 1980; or
2. Six Dollars (\$6) per month for each year (or a fraction thereof) of credited service under the prior plans for a Participant who terminated from employment with the University on or after April 1, 1980 and prior to May 1, 1981; or
3. Seven Dollars (\$7) per month for each year (or a fraction thereof) of credited service under the prior plans for a Participant who terminated from employment with the University on or after May 1, 1981 and prior to July 1, 1982; or
4. Eight Dollars (\$8) per month for each year (or a fraction thereof) of his credited service under the prior plans for a Participant who terminated from employment with the University on or after July 1, 1982 and prior to July 1, 1983; or
5. Nine Dollars (\$9) per month for each year (or a fraction thereof) of his credited service under the prior plans for a Participant who terminated from employment with the University on or after July 1, 1983 and prior to July 1, 1984; or
6. Ten Dollars (\$10) per month for each year (or a fraction thereof) of his credited service under the prior plans for a Participant who terminated from employment with the University on or after July 1, 1984 and prior to July 1, 1985; or
7. Eleven Dollars (\$11) per month for each year (or a fraction thereof) of his credited service under the prior plans for a Participant who terminated from employment with the University on or after July 1, 1985 and prior to July 1, 1986; or
8. Twelve Dollars (\$12) per month for each year (or a fraction thereof) of his Prior Plan Credited Service prior to July 1, 1986, for a Participant who terminated from

employment with the University on or after July 1, 1986 and prior to July 1, 1987;
or

9. Thirteen Dollars (\$13) per month for each year (or a fraction thereof) of his prior Plan Credited Service prior to July 1, 1986, for a Participant who terminated from employment with the University on or after July 1, 1987 and prior to July 1, 1988;
or
10. Fourteen Dollars (\$14) per month for each year (or a fraction thereof) of his Prior Plan Credited Service prior to July 1, 1986, for a Participant who terminated from employment with the University on or after July 1, 1988 and prior to July 1, 1999; or
11. Twenty Dollars (\$20) per month for each year (or a fraction thereof) of his Prior Plan Credited Service prior to July 1, 1986, for a Participant who terminated employment on or after July 1, 1999 and prior to July 1, 2001.

B. Pension Accrual Factor

1. For Participants who terminated employment from the University or an Affiliate after June 30, 1992 and prior to July 1, 1999: \$168.
2. For Participants who terminated employment from the University or an Affiliate after June 30, 1999 and prior to July 1, 2001: \$240.

APPENDIX C

MINIMUM BENEFITS FROM PRIOR PLANS

<u>Name</u>	<u>SSN</u>	<u>Minimum Monthly Pension Benefit</u>	<u>Offset from Monthly Pension Payment</u>
Cooper, Joe Louis	On File with Plan Administrator	167.20	7.92
Miles, Mariah	On File with Plan Administrator	147.27	4.81