

**CASE WESTERN RESERVE UNIVERSITY**  
**EMPLOYEES' RETIREMENT PLAN (PLAN C)**  
**(Amended and Restated Effective as of July 1, 2011)**

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**CASE WESTERN RESERVE UNIVERSITY**  
**EMPLOYEES' RETIREMENT PLAN (PLAN C)**

(Amended and Restated Effective as of July 1, 2011)

**THIS AGREEMENT** is made by Case Western Reserve University (the "University").

**WITNESSETH THAT:**

**WHEREAS**, the University has previously adopted a Code Section 403(b) plan entitled "Case Western Reserve University Employees' Retirement Plan C (Plan C)" (the "Plan") which is the plan into which salary reduction contributions of the Case Western Reserve University Employees' Retirement Plan B (Amended and Restated Effective as of July 1, 1992) ("Plan B") eligible employees are deposited; and

**WHEREAS**, the University previously amended and restated the Plan, effective as of July 1, 1999, to reflect legislative and regulatory changes referenced as GUST, including the General Agreement on Tariffs and Trade ("GATT") Uruguay Round Agreements Act of 1994, the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Small Business Job Protection Act of 1996 ("SBJPA"), the Taxpayer Relief Act of 1997 ("TRA '97"), the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA"), and the Community Renewal Tax Relief Act of 2000 ("CRA"); and

**WHEREAS**, the University previously amended the Plan to adopt certain provisions to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") ("Amendment One") and to adopt certain provisions to comply with the minimum required distribution rules under Code Section 401(a)(9) ("Amendment Two"); and

**WHEREAS**, the University previously amended and restated the Plan, effective July 1, 2008, pursuant to the rights it has reserved to do so, in order to incorporate the above-

described Amendments One and Two thereto, and to comply with the applicable requirements set forth under the final Code Section 403(b) regulations released on July 26, 2007, and the final Code Section 415 regulations released on April 4, 2007; and

**WHEREAS**, the University previously amended the Plan to comply with certain applicable provisions of the Pension Protection Act of 2006 (“PPA”) and related guidance (the “PPA Amendment”); and to comply with PPA, the Heroes Earnings Assistance and Relief Tax Act of 2008 (“HEART”), and the Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”); and related guidance (the “PPA, HEART and WRERA Amendment”); and

**WHEREAS**, the University desires to amend and restate the Plan, generally effective as of July 1, 2011, in order to incorporate the above-described PPA Amendment and PPA, HEART and WRERA Amendment, thereto, and to add a Roth salary reduction contribution feature to the Plan; and

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

**NOW, THEREFORE**, the University hereby amends and restates the Plan as follows, generally effective July 1, 2011 except as otherwise expressly provided therein; provided, however, that the rights or benefits of any former eligible employee who terminates employment before July 1, 2011 (and who is not re-employed), shall be determined under and shall be governed by the terms of the Plan in effect prior to July 1, 2011.

## **SECTION 1**

### **BACKGROUND, FUNDING AND DEFINITIONS**

#### **1.1 Introduction**

Effective July 1, 1999, this Plan was established as a successor to the interests of the University employees who meet the participation requirements described in Section 2.1 hereof and who had a salary reduction account maintained under the Case Western Reserve University Faculty and Key Administrative Employees' Retirement Plan (Plan A) (403(b) Funding Method) ("Plan A") which was transferred to this Plan effective as of such date. The Plan is the plan into which salary reduction contributions of the Case Western Reserve University Employees' Retirement Plan B eligible employees are deposited.

Effective July 1, 1999, the University amended and restated this Plan to incorporate additional applicable legislative changes and administrative and regulatory pronouncements for the General Agreement on Tariffs and Trade ("GATT") Uruguay Round Agreements Act of 1994, the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Small Business Job Protection Act of 1996 ("SBJPA"), the Taxpayer Relief Act of 1997 ("TRA '97"), the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA") and the Community Renewal Tax Relief Act of 2000 ("CRA") (collectively, the "1999 Plan Document").

In 2002, the University amended the Plan to adopt certain provisions to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") under Amendment One to the Plan ("Amendment One"). In 2003, the University amended the Plan to adopt certain provisions to comply with the minimum required distribution rules under Code Section 401(a)(9) under Amendment Two to the Plan ("Amendment Two").

Effective July 1, 2008, the University amended and restated the 1999 Plan Document, as amended by the above-described Amendment One and Two thereto, to comply with the applicable requirements set forth under the final Code Section 403(b) regulations released on July 26, 2007 and the final Code Section 415 regulations released on April 4, 2007.

In 2009 and subsequently, in 2010, the University amended the Plan to comply with applicable provisions of the Pension Protection Act of 2006 (“PPA”), to conform with certain requirements under the Heroes Earnings Assistance and Relief Tax of 2008 (“HEART Act”) impacting participants serving in the uniformed services, and permitting a suspension of required minimum distributions for the 2009 calendar year, as permitted under the Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”), by adopting the PPA Amendment and the PPA, HEART and WRERA Amendment.

Therefore, effective July 1, 2011, the University amends and restates the 2008 Plan Document, as amended by the above-described PPA Amendment and the PPA, HEART and WRERA Amendment, thereto, to add a Roth salary reduction contribution feature to the Plan.

## 1.2 Funding of Plan

This Plan is presently funded in two ways. One method of funding the Plan (a Funding Vehicle) is by contribution to certain mutual funds and the Teachers’ Insurance and Annuity Association of America - College Retirement Equities Fund (hereinafter referred to as “TIAA-CREF”) annuity contracts, as are set forth in the Recordkeeping Service Agreement between the University and TIAA-CREF, as amended from time to time. All contributions made under this Plan to TIAA-CREF shall be held, administered and distributed in accordance with the terms and provisions of TIAA-CREF, the terms of which are incorporated herein to the extent not inconsistent with the terms of the Plan, the Code and ERISA.



The other method of funding (a Funding Vehicle) is by contributions under custodial account agreements for purchase of shares in one or more regulated investment companies under Section 403(b)(7) of the Code (currently offered by The Vanguard Group, Inc.) as are set forth in either the Custodial Account Agreement or the Group Custodial Account Agreement between the University and The Vanguard Group, Inc., each as amended from time to time.

Contributions to a funding agency providing such Funding Vehicle shall be held, administered, and distributed in accordance with the terms and provisions established by the funding agency, provided such terms and provisions are not inconsistent with the Plan, the Code and ERISA. Each such Funding Vehicle shall be given a Fund name for purposes of the Plan and its availability communicated to Participants. The University, from time to time by action of its officers, shall have the right to determine the investment choices available.

The University, however, reserves the right, from time to time, to adopt by action of the Trustees of the University, other Funding Vehicles which may be sponsored by banks, insurance companies, mutual funds, stockbrokers, and other institutional entities (each hereinafter referred to together with TIAA-CREF and The Vanguard Group, Inc. as “Funding Agency”).

### 1.3 Definitions

The following terms used herein shall have the indicated meaning, 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.

- a. “Accrued Benefit” is the current value of the Participant’s Funding Accounts.
- b. “Actual Retirement Date” is the first day of the month coincident with or next following the date on which an Employee actually experiences a Severance from Employment with the University.
- c. “Administrator” shall mean the University.
- d. “Anniversary Date” is each July 1 after the Effective Date.
- e. “Code” is the Internal Revenue Code of 1986, as it may be amended and in effect from time to time.
- f. “Compensation” is the annualized cash compensation to be paid or that is payable as salary in respect of an Employee’s service to 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), 403(b), or 132(f)(4) of the Code.

Compensation generally does not include compensation to former Employees. Notwithstanding the foregoing, compensation paid to a former Employee for a payroll period that begins before a Severance from Employment is considered Compensation if it is paid within two and one-half (2½) months after his Severance from Employment, unless such amounts are severance or unfunded nonqualified deferred compensation.

“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, the Annual Compensation of any Employee which is in excess of \$200,000 or such amount as adjusted by the Secretary of the Treasury for cost-of-living increases (pursuant to Code Section 401(a)(17)(B)) in a Plan Year shall be disregarded and shall not be taken into account in determining contributions for such Plan Year. 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. In the event that compensation is being computed for a period of fewer than twelve (12) months, the Annual Compensation limit described in this paragraph shall be prorated and reduced by multiplying by a fraction, the numerator of which is the number of months in the shorter time period, and denominator of which is twelve (12).

Notwithstanding any provision of the Plan to the contrary, effective for years beginning after December 31, 2008, military differential wage pay, as defined in Code Section 3401(h)(2), shall be treated as Compensation solely for the purpose of the Participant continuing to be eligible to make or receive contributions or benefits, and if applicable, receive service credit under the Plan, except as may be limited otherwise by Section 7.8 of the Plan.

- g. “Contributing Participant” is any individual who (i) is employed by the University, (ii) is eligible to participate under this Plan, and (iii) has

elected to have Salary Reduction Contributions made by the University on his behalf under the Plan.

- h. “Disabled” means that the Employee is eligible for long-term disability benefits under the Long-Term Disability Plan made available to Employees by the University.
- i. “Effective Date” is July 1, 1999.
- j. “Employee” is a person employed by the University and any Affiliated Employer (other than an independent contractor), and any “leased employees” within the meaning of Code Sections 414(n)(2) and 414(o)(2). 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, such services being 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 (1) 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 excludable from the employee's gross income under Sections 125, 402(e)(3), 402(h)(1)(B), 403(b), or 132(f)(4) of the Code, (2) immediate participation, and (3) full and immediate vesting; and (ii) leased employees do not constitute more than twenty percent (20%) of the recipient's nonhighly compensated workforce.

Notwithstanding the foregoing, if the University does not characterize a person as an Employee and the University is later required to recharacterize a person's status with the University as an Employee, such person shall be treated as an Employee for Plan eligibility purposes as of the date of the recharacterization unless an earlier date is necessary to preserve the tax-qualified status of the Plan.

- k. "ERISA" is the Employee Retirement Income Security Act of 1974, as amended.
- l. "Funding Account" is the account held under a Funding Vehicle adopted by the University from time to time.
- m. "Funding Vehicle" is a method of funding established under Section 1.2 that satisfies the requirements of Section 401(f) of the Code issued for funding accrued benefits under this Plan and specifically approved by the University for use under this Plan. The Funding Vehicles offered under the Plan are set forth under the Recordkeeping Service Agreement between the University and TIAA-CREF (as amended from time to time),

as well as the Custodial Account Agreement and the Group Custodial Account Agreement between the University and The Vanguard Group, Inc. (each as amended from time to time), and the relevant provisions of such agreements and the underlying contracts governing such Funding Vehicles are hereby incorporated by reference as part of the Plan.

- n. “Highly Compensated Employee” means any Employee described in Code Section 414(q) and the regulations thereunder who performed services for the University during the “determination year,” received Compensation from the University during the “look-back year” in excess of \$80,000 (as adjusted by the Secretary pursuant to Section 415(d) of the Code), and was in the top-paid group of Employees for such look-back year. An Employee is in the top-paid group of Employees for any 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 year. The “determination year” shall be the Plan Year for which testing is being performed, and the “look-back year” shall be the immediately preceding twelve (12) month period.

For purposes of this Section, “Compensation” shall be determined in accordance with Section 415(c)(3) of the Code and shall be determined 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 purposes of this Section, the determination of Compensation will be made without regard to Code Sections 125, 132(f)(4), 402(e)(3), and

402(h)(1)(B), and in the case of University contributions made pursuant to a Participant's salary reduction agreement, without regard to Section 403(b) of the Code. Further, amounts under Code Section 125 include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he has other health coverage. Such an amount will be treated as an amount under Code Section 125 only if the University does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan. 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. Notwithstanding any provision to the contrary herein, the determination of a Highly Compensated Employee shall be made in accordance with Code Section 414(q) and Treasury Regulations thereunder. Any Employee who is not a Highly Compensated Employee is referred to herein as a "Nonhighly Compensated Employee."

- o. "Hour of Service" is:
  - (i) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the University or an Affiliated

Employer. These hours shall be credited to the Employee for the computation period in which the duties are performed;

- (ii) Each hour for which an Employee is paid, or entitled to payment, by the University or an Affiliated Employer 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 or approved leave of absence. However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the Employee for medical or medically related expenses, is excluded. An Employee is directly or indirectly paid, or entitled to payment by the University or Affiliated Employer, regardless of whether payment is made by or due from the University or Affiliated Employer directly or made indirectly through a trust fund, insurer or other entity to which the University or Affiliated Employer contributes or pays premiums. 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 are incorporated herein by this reference;

- (iii) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the University or an Affiliated Employer. 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 or agreement of payment is made. The same Hours of Service shall not be credited both under this paragraph (iii) and under paragraph (i) or paragraph (ii), as applicable; and
  - (iv) 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
- p. “Inactive Participant” is a Participant whose employment with the University has terminated but who has an account balance which has not been paid to him in full.
- q. “Normal Retirement Date” is age sixty-five (65).
- r. “Participant” is any person who fulfills the eligibility requirements for participation as provided in Section 2.
- s. “Plan Year” is any twelve (12) month period commencing on any Anniversary Date.

- t. “Retired Participant” is a Participant who has retired in accordance with the provisions of the Plan.
- u. “Retirement Committee” or “Committee” is the committee established in accordance with the provisions of Section 5.
- v. “Salary Reduction Agreement” is a written agreement between the University and a Participant in which the Participant agrees to take a reduction in Compensation otherwise payable to him for a Plan Year (subject to the limitations described in Section 3.1 of the Plan) and in which the University agrees to apply such amount on behalf of the contributing Participant to the funding method elected by the Participant pursuant to Section 4 of the Plan, in either the form of Pre-tax Salary Reduction Contributions or Roth Salary Reduction Contributions, or a combination of both.
- w. “Salary Reduction Contribution” is a contribution made by the University on behalf of a Contributing Participant pursuant to the Contributing Participant’s Salary Reduction Agreement. A Participant must specify in the Salary Reduction Agreement whether the Salary Reduction Contribution will be a Pre-tax Salary Reduction Contribution or a Roth Salary Reduction Contribution, or a combination of both. A “Pre-tax Salary Reduction Contribution” is the amount elected by a Participant to be reduced from the Participant’s Compensation on a pre-tax basis. A “Roth Salary Reduction Contribution” is the amount elected by a Participant to be reduced from the Participant’s Compensation on an after-

tax basis as a Roth contribution. The designation of a Salary Reduction Contribution as a Roth Salary Reduction Contribution is irrevocable. The University shall treat a Roth Salary Reduction Contribution as includible in the Participant's gross income at the time the Participant otherwise would have received the Roth Salary Reduction Contribution in cash had the Participant not made the election to reduce Compensation in the form of a Roth Salary Reduction Contribution. Unless specifically stated otherwise in the Plan, Roth Salary Reduction Contributions will be treated as Salary Reduction Contributions for all purposes under the Plan.

- x. "Section 403(b) Contract" is an annuity contract described under and established pursuant to the requirements of Treasury Regulation Section 1.403(b)-3 to which the University contributes on behalf of a Participant under the Plan. All such Section 403(b) Contracts purchased for a Participant by the University or an Affiliated Employer shall be treated under this Plan as purchased under a single contract.
- y. "Severance from Employment" means that the Participant ceases to be an employee of the University and any tax-exempt Code Section 501(c)(3) Affiliated Employer (as defined in Section 7.6 of the Plan).
- z. "University" is Case Western Reserve University.
- aa. "University Matching Contributions" shall mean contributions made by the University to the Plan on behalf of eligible Participants pursuant to Section 3.2 of the Plan.

## SECTION 2

### ELIGIBILITY FOR PARTICIPATION

#### 2.1 Employees Eligible to Become Participants

- a. Any Employee who had a salary reduction account transferred from Plan A to this Plan effective as of July 1, 1999, automatically shall become a Participant as of July 1, 1999.
- b. Any other Employee who is not eligible to make salary reduction contributions under Plan A, other than an Employee who normally works fewer than twenty (20) hours per week, is eligible for participation in the Plan provided that the required Salary Reduction Agreement has been duly completed and returned to the Retirement Committee (or its designee). For purposes of this Section 2.1b., an employee normally works fewer than twenty (20) hours per week if and only if—
  - (A) For the twelve (12) month period beginning on the date the Employee is first credited with an Hour of Service, the University reasonably expects the Employee to work fewer than 1,000 Hours of Service in such period; and
  - (B) For each subsequent twelve (12) month period ending after the close of the twelve (12) month period beginning on the date the Employee is first credited with an Hour of Service, the Employee worked fewer than 1,000 hours of service in the preceding twelve (12) month period.
- c. Notwithstanding the foregoing provisions of this Section 2.1, temporary Employees who are described in the last sentence of Section 2.1b or

Leased Employees of the University shall not be eligible to become Participants in the Plan.

2.2 Commencement of Participation

- a. Any Employee who was not a Participant in Plan A on June 30, 2011, will become a Participant on the first day of the month coincident with or next following the date he meets all of the eligibility requirements of Section 2.1.
- b. A Participant shall cease to be eligible for contribution allocations under the Plan or to make contributions to the Plan upon the termination of his employment with the University for any reason other than an approved leave of absence under Section 3.4.

2.3 Application for Participation; Eligibility to Make Salary Reduction Contributions

- a. The Retirement Committee or its designee shall provide notice of eligibility to each Employee of the University who becomes eligible for participation in the Plan. Such notice shall be given at or prior to the Employee's date of eligibility, together with the form of application. The application is to be completed and returned within thirty (30) days prior to the date of eligibility, in which case participation shall commence as of the date of eligibility; otherwise, participation shall not commence until the first day of the month following receipt of the application by the Retirement Committee.
- b. The application shall require such information as is needed by the Retirement Committee or its designee to properly administer the Plan,

including authorization to make deductions from the individual's Compensation by salary reduction for contribution under the Plan, whether and which portion (if any) of such Salary Reduction Contributions shall be Roth Salary Reduction Contributions or Pre-tax Salary Reduction Contributions, respectively, and the agreement by the individual to be bound by the terms of the Plan. A Salary Reduction Agreement shall remain in effect until it expires by its terms or is revoked by the Contributing Participant or, if earlier, upon the Contributing Participant's Severance from Employment with the University.

- c. The reduction in the Contributing Participant's Compensation, made pursuant to a Salary Reduction Agreement, shall apply only to amounts which are earned by the Contributing Participant after the Salary Reduction Agreement becomes effective.
- d. A Contributing Participant may enter into a new Salary Reduction Agreement effective on the first business day of any subsequent Plan Year for the purpose of changing the amount of the reduction in the Contributing Participant's Compensation and/or changing the form of the Salary Reduction Contribution for such Plan Year. Such new Salary Reduction Agreement shall be effective with respect to amounts which are earned by the Contributing Participant on or after such date. If a Contributing Participant does not indicate whether the Salary Reduction Contributions will be Pre-tax Salary Reduction Contributions or Roth Salary Reduction Contributions in a Salary Reduction Agreement, such

Salary Reduction Contributions will be treated as Pre-tax Salary Reduction Contributions.

- e. A Salary Reduction Agreement shall be irrevocable with respect to amounts earned while it is in effect, but may be revoked at any time with respect to amounts not yet earned.
- f. A Contributing Participant may change the amount and/or form of Salary Reduction Contributions prospectively one time during any calendar quarter, in accordance with the rules and procedures for Salary Reduction Contributions established by the Retirement Committee, by filing with the Retirement Committee (or its designee), before the effective date of the change, written notice of his intent to change Salary Reduction Contributions.

#### 2.4 Election of Funding Method

- a. All Participants shall elect the funding of their benefits under the Plan in TIAA-CREF or such other investments or categories of investments in accordance with the rules and procedures for Participant investment direction established by the Retirement Committee. Participants shall make such election in their applications for participation in the Plan. This election may be changed by a Participant or Inactive Participant during any month, to be effective as of the first day of the following month, by an election in a manner acceptable to the Retirement Committee or Funding Agency, as applicable. A Participant or Inactive Participant shall not make more than four changes during each calendar year.

- b. If a Participant elects TIAA-CREF funding, the contributions on his behalf shall be made as provided in Section 3, the allocation of contributions shall be made as provided in Section 4, and the benefits, options, and conditions shall be those provided by TIAA-CREF, including the election to have his contributions under Section 3.1 treated as a reduction of salary under Section 403(b) of the Code. If a Participant elects another Funding Vehicle, the contributions on his behalf shall be made as provided in Section 3, the allocation of contributions shall be made as provided in Section 4, and the benefits, options, and conditions shall be those provided by the Funding Agency, including the election to have his contributions under Section 3.1 treated as a reduction of salary under Section 403(b) of the Code.

2.5 Committee's Determination of Eligibility for Participation

Any question as to the eligibility of any Employee to become a Participant 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.

2.6 Transfer Between Funding Methods

A Participant may elect during any calendar month to transfer all of the assets in a TIAA-CREF Salary Reduction Agreement (SRA) account or in the Plan's approved CREF accounts to a 403(b)(7) Funding Account or to transfer all of the assets in a 403(b)(7) Funding Account to a TIAA-CREF SRA account, to TIAA retirement annuities, or among approved CREF accounts. The transfer will be executed only if the Funding Vehicle to which the



Participant requests that funds be transferred is included as an alternate Funding Vehicle in the most recent listing of Funding Vehicles that has been provided by the University to TIAA-CREF and acknowledged in writing by TIAA-CREF, and, if any of the funds are attributable to Roth Salary Reduction Contributions and earnings thereon, that the recipient Funding Vehicle will maintain a separate account for the Roth Salary Reduction Contributions and earnings thereon. Transfer shall be made upon receipt by the Retirement Committee and TIAA-CREF or the Funding Agency to which the transfer is to be made of such documents that may be required to effect the transfer. A Participant shall not transfer between any two Funding Vehicles more than once each calendar year.

## SECTION 3

### RETIREMENT CONTRIBUTIONS

#### 3.1 Salary Reduction Contributions

- a. A Participant's Salary Reduction Contribution shall be an elective amount agreed to by the University and the Participant and specified in a Salary Reduction Agreement as either a Pre-Tax Salary Reduction Contribution or a Roth Salary Reduction Contribution, or a combination of both. No Participant shall be permitted to have Salary Reduction Contributions made under this Plan, or any other Code Section 401(a) or 403(b) plan maintained by the University or an Affiliated Employer during any calendar year, in excess of the dollar limitation contained in Code Section 402(g) in effect for such taxable year, except to the extent permitted under Code Section 414(v) or such Salary Reduction Contributions are made by reason of an Employee's qualified military service under Code Section 414(u).
- b. The University shall make a Salary Reduction Contribution on behalf of each Participant who has a Salary Reduction Agreement in effect. Salary Reduction Contributions shall be made to the funding method elected by the Participant in accordance with the provisions of Section 2.4 of the Plan.
- c. An "Excess Salary Reduction" is any Salary Reduction Contribution during a calendar year in excess of the dollar limitation in effect under Code Section 402(g) for such year. On or before the April 15th following the end of each calendar year, the University will distribute to each

Participant his Excess Salary Reduction Contribution, if any, adjusted for any income or loss allocable to such Excess Salary Reduction Contribution. Such Excess Salary Reduction Contribution will be distributed first from the Pre-Tax Salary Reduction Contribution and next from the Roth Salary Reduction Contribution, as necessary. At the discretion of the University, income and losses attributable to Excess Salary Reduction Contributions may be calculated using any reasonable method, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for Plan Year, and is used for allocating income to Participants' Salary Reduction Accounts. Alternatively, income and losses attributable to Excess Salary Reduction Contributions can be calculated as the sum of the income or loss for the year allocable to the Participant's Salary Reduction Contributions multiplied by a fraction, the numerator of which is the Participant's Excess Salary Reduction Contribution for such year and the denominator of which is the total Salary Reduction Account balance of the Contributing Participant, without regard to any income or losses attributable to such Salary Reduction Contributions for the calendar year. Gap period income or losses (i.e., income or losses between the end of the year of deferral and the time of distribution) allocable to Excess Salary Reduction Contributions shall not be distributed.

- d. A Salary Reduction Contribution account will be established and maintained under the Plan with respect to each Participant to which Salary

Reduction Contributions, earnings, losses and distributions made to or in respect of a Participant will be credited or charged, as appropriate.

- e. A Participant shall at all times have a fully vested and nonforfeitable interest in amounts credited to and/or held in his Salary Reduction Account.
- f. All Participants who are eligible to make Salary Reduction Contributions under this Plan and who have attained age fifty (50) before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Code Section 414(v). Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code Sections 402(g) and 415. Catch-up contributions may be comprised of either Pre-tax Salary Reduction Contributions or Roth Salary Reduction Contributions, or both.

### 3.2 University's Matching Contributions

The University will make University Matching Contributions on behalf of Participants who make Salary Reduction Contributions to the Plan. University Matching Contributions for each Plan Year will be fifty percent (50%) of Participant Salary Reduction Contributions of up to the first four percent (4%) of Compensation contributed by such Participant.

Such contributions shall be made concurrent with the Salary Reduction Contributions made on behalf of a Participant to the Plan. A separate account for University Matching Contributions and earnings thereof shall be established and maintained for each

Participant. A Participant shall at all times have a fully vested and nonforfeitable interest in University Matching Contributions credited to and/or held in his account under the Plan.

### 3.3 Commencement and Cessation of Contributions

Salary Reduction Contributions and University Matching Contributions will commence as of the Participant's commencement of participation under Section 2.2 and will cease upon the first of any of the following:

- a. his death;
- b. his retirement (except if the retirement is by reason of the Participant becoming disabled and the Participant is a beneficiary of any insured program which continues the contributions to the Plan on his behalf because of such disability);
- c. his other Severance from Employment; or
- d. the date the Participant ceases to satisfy the provisions of Section 2.1b.

### 3.4 Contributions During Approved Leave of Absence

Under an approved paid leave of absence (but not for Participants on an unapproved or an unpaid leave of absence), a Participant may continue his contributions under Section 3.1. If a Participant continues his Salary Reduction Contributions, the University will continue University Matching Contributions on a concurrent basis as provided under Section 3.2.

### 3.5 Limitation on Annual Additions

- a. Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any Limitation Year shall not exceed the amount permitted under Code Section 415(c). Code Section 415(c) provides that (except to the extent permitted under Code

Section 414(v)) Annual Additions with respect to a Participant's Account cannot exceed the lesser of: (i) \$40,000, as adjusted for increases in the cost-of-living under Code Section 415(d), or (ii) one hundred percent (100%) of the Participant's "Includible Compensation" (as defined herein) for the Limitation Year. For any short Limitation Year, the dollar limitation in (i) shall be reduced by a fraction, the numerator of which is the number of full months in the short Limitation Year and the denominator of which is twelve (12). The compensation limitation in (ii) shall not apply to any contribution for medical benefits (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition under Section 415(l)(1) or 419A(d)(2) of the Code. For purposes of the Plan, "Includible Compensation" means all cash compensation received by the Participant for services to the University, including salary, wages, fees, commissions, bonuses, and overtime pay that is includible in the Employee's gross income for federal income tax purposes during the Limitation Year. In addition, Includible Compensation includes amounts that would be cash compensation for services to the University includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f)(4), 402(e)(2), 402(h)(1)(B), 402(k) or 457(b) of the Code (including an election under Section 3.1 made to reduce compensation in order to have Salary Reduction Contributions made under the Plan).

Includible Compensation means a Participant's compensation from the University and any Affiliate Employer. Includible Compensation generally does not include compensation to former Employees. Notwithstanding the foregoing, compensation paid to a former Employee for a payroll period that begins before a Severance from Employment is Includible Compensation if it is paid within 2-1/2 months after his Severance from Employment, unless such amounts are severance or unfunded nonqualified deferred compensation.

In addition to other applicable limitations stated in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning after December 31, 2007, Includible Compensation of each Employee taken into account to determine accruals under the Plan shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B).

For purposes of this Section, the limitations of Code Sections 415(c) and 415(f), the applicable regulations thereunder, and other guidance of general applicability issued thereunder are incorporated herein by reference.

In applying Code Section 415(c), Annual Additions for the Limitation Year with respect to the Participant under the Plan must be aggregated with amounts credited to his accounts under all other Code Section 403(b) plans maintained by the University or an Affiliated Employer pursuant to Code Section 415(f) and Treasury Regulations

Section 1.415(f)-1. The limitations of this Section 3.5 shall be determined and applied taking into account the aggregation rules in Treasury Regulations Section 1.415(f)-1(f). To the extent that the Annual Addition exceeds the Code Section 415(c) limitations for any Limitation Year, if an excess Annual Addition is made to a Section 403(b) Contract that otherwise satisfies the requirements of Code Section 403(b) and the regulations thereunder, then the portion of the Section 403(b) Contract that includes the excess Annual Addition fails to be a Section 403(b) Contract, but the remaining portion of the Section 403(b) Contract will continue to be a Section 403(b) Contract. Notwithstanding the foregoing, the status of the remaining portion of the contract as a Section 403(b) Contract is not retained unless, for the year of the excess and each year thereafter, the Funding Agency maintains a separate account for each such portion.

If, in a particular Limitation Year, the University contributes an amount to the Participant's Funding Account with respect to a prior Limitation Year and such contribution is required by reason of the Participant's qualified military service (as defined under Code Section 414(u)(5)), then such contribution is not considered an Annual Addition with respect to the Participant for that particular Limitation Year in which the contribution is made to the Plan, but, in accordance with Code Section 414(u)(1)(B), is considered an Annual Addition for the Limitation Year to which the contribution relates.



“Includible Compensation” for a Participant in a Defined Contribution Plan who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled (if such Annual Compensation is greater than if determined without consideration of this paragraph); such imputed compensation for the disabled Participant may be taken into account only if the Participant is not a Highly Compensated Employee and contributions made on behalf of such Participant are nonforfeitable when made.

The term “Limitation Year” shall mean a calendar year.

The term “Annual Additions” to a Participant’s account under the Plan for any Limitation Year shall mean the sum of:

- (i) University contributions made with respect to a Participant for the Limitation Year; and
- (ii) Amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2)), which is part of a pension or annuity plan maintained by the University; and
- (iii) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee, as defined under Code Section

419A(d)(3), under a welfare benefit fund, as defined under Code Section 419(e), maintained by the University.

The term “Annual Additions” to a Participant’s account under the Plan for any Limitation Year shall not include:

- (i) Catch-up contributions under Code Section 414(v);
  - (ii) Restorative payments made by the University to restore losses to the Plan resulting from a fiduciary’s breach of fiduciary duty under ERISA as described in Treasury Regulations Section 1.415(c)-1(b)(2)(ii)(c);
  - (iii) Excess deferrals that are distributed in accordance with Treasury Regulations Section 1.402(g)-1(e)(2) or (3);
  - (iv) Rollover contributions; and
  - (v) Repayment of loans.
- b. For Limitation Years beginning on or after July 1, 2007, corrections for excess Annual Additions shall be made in a manner consistent with the Employee Plans Compliance Resolution System issued by the Internal Revenue Service, as in effect from time to time.
- c. In addition to other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, the Annual Additions under the Plan (and all other defined contribution plans (within the meaning of Treasury Regulations Section 1.415(c)-1(a)(2)) required to be aggregated with this Plan under the provisions of Section 415 of the Code) shall not increase to an amount in excess of the amount permitted (when considered in

conjunction with all other aggregated plans of the University) under Section 415 of the Code.

3.6 Limitations on Annual Additions with Respect to Other Defined Contribution Plans

In the event that any Participant in this Plan is a participant under any other defined contribution plan (within the meaning of Treasury Regulations Section 1.415(c)-1(a)(2)) maintained by the University (whether or not terminated), the total amount of Annual Additions to such Participant's account from all such defined contribution plans shall not exceed the limitations set forth in Section 3.5. If it is determined that as a result of the limitations set forth in this Section 3.6 the Annual Additions to a Participant's Funding Account in this Plan must be reduced, such reduction shall be accomplished in accordance with the provisions of Section 3.5.

3.7 Limitations on Contributions

a. **Limit on Average Contribution Percentage:** The Average Contribution Percentage for Highly Compensated Employees must not be greater than the greater of (i) 1.25 times the Average Contribution Percentage for all other Employees for the preceding Plan Year; or (ii) the lesser of 2.0 times the Average Contribution Percentage for all other Employees for the preceding Plan Year or such percentage for all other Employees for such preceding Plan Year plus two percentage points. The following rules regarding the Average Contribution Percentage will apply:

(i) The Average Contribution Percentage for the Plan Year for any Highly Compensated Employee who is eligible to have contributions allocated to his Account under two or more plans or

arrangements described in Code Section 401(m) that are maintained by the University or an Affiliated Employer will be determined as if such contribution percentage amounts were made under a single arrangement. If a Highly Compensated Employee participates in two or more such plans or arrangements that have different Plan Years, all such plans or arrangements ending with or within the single plan year of the plan or arrangement being tested will be treated as a single plan or arrangement for purposes of determining the Average Contribution Percentage of the plan or arrangement being tested, without regard to the plan year of each plan or arrangement under which such contributions were made. Notwithstanding the foregoing, certain Plans shall be treated as separate if mandatorily disaggregated under regulations under Code Section 401(m). In any year for which the prior year average contribution percentage testing method is effective, adjustments to the Average Contribution Percentage for Nonhighly Compensated Employees for the prior year shall be made in accordance with Notice 98-1 and any superseding guidance.

- (ii) In the event that this Plan satisfies the requirements of Code Sections 401(m), 401(a)(4), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code Sections only if aggregated with this Plan, then this Section will be applied by determining the

contribution percentage of Participants as if all such plans were a single plan. Plans may be aggregated in order to satisfy Code Section 401(m) only if they have the same Plan Year and average contribution percentage testing method. Otherwise, plans must be disaggregated if they use different current year or prior year testing methods.

- (iii) For purposes of being taken into consideration in determining individual contribution ratios, University Matching Contribution must be (A) allocated as of a date within the year, and (B) made on account of or on the basis of Salary Deferral Contributions or Employee voluntary contributions for that year. For purposes of determining the contribution percentage test, Participant contributions are considered to have been made in the Plan Year in which they were contributed to the Funding Agency. University Matching Contributions under the Plan will be considered made for a Plan Year if made no later than the end of the twelve (12) month period beginning on the day after the close of the Plan Year.
- (iv) The University will maintain records sufficient to demonstrate satisfaction of the Average Contribution Percentage test.
- (v) If the Plan provides for the prior year testing method, and if more than ten percent (10%) of the Nonhighly Compensated Employees are involved in a plan coverage change as defined in Treasury Regulations Section 1.401(m)-2(c)(4), the Nonhighly

Compensated Employees' Average Contribution Percentage for the prior year will be the weighted average of the Average Contribution Percentages for the prior year for the subgroups of Nonhighly Compensated Employees, determined according to rules provided by Treasury Regulations Section 1.401(m)-2(c)(4).

- b. Distribution of Excess Aggregate Contributions: An Excess Aggregate Contribution is the excess, in any Plan Year, of the aggregate contribution percentage amounts taken into account in determining the numerator of the Average Contribution Percentage actually made on behalf of Highly Compensated Employees over the maximum contribution percentage amounts permitted by the Average Contribution Percentage test, determined by hypothetically reducing contributions made on behalf of Highly Compensated Employees in order of their individual contribution percentages beginning with the highest of such percentages. The Excess Aggregate Contributions on a dollar basis, shall be allocated to the Highly Compensated Employee(s) who had the highest dollar amount of University contributions (for the year in which the excess arose) actually taken into account in computing the Actual Contribution Percentage test, by reducing the amount of such contributions until either (i) the amount of the reduction equals the total Excess Aggregate Contributions, or (ii) the remaining contributions of the first Highly Compensated Employee equals the contributions of the Highly Compensated Employee(s) with the next highest dollar amount of such contributions and continuing in descending

order until all Excess Aggregate Contributions have been allocated. In the event that Excess Aggregate Contributions are made for any Plan Year, the Retirement Committee will distribute the Excess Aggregate Contributions in accordance with this subsection. On or before the fifteenth (15th) day of the third month following the end of each Plan Year, each Highly Compensated Employee will have his portion of the Excess Aggregate Contribution, adjusted for any income or loss allocable to such portion, distributed to him. If Excess Aggregate Contributions are not distributed by the fifteenth (15th) day of the third month following the end of the Plan Year in which such Excess Aggregate Contributions arose, a ten percent (10%) excise tax will be imposed on the Employer with respect to such Excess Aggregate Contributions. In any event, Excess Aggregate Contributions will be distributed not more than twelve (12) months after the end of the Plan Year in which such Excess Aggregate Contributions arose. The amount to be distributed with respect to each Highly Compensated Employee shall be determined by the Plan Administrator in a reasonable and consistent manner. Gap period income or losses (i.e., income or losses between the end of the Plan Year of contribution and the time of distribution) allocable to Excess Aggregate Contributions shall not be distributed.

c. Definitions:

- (i) The “Average Contribution Percentage” for a specified group of Participants for a Plan Year is the average of the ratios (calculated

separately for each Participant in such group) of the University Matching Contributions made according to Section 3 on behalf of the Participant for the Plan Year to the Participant's 414(s) Compensation for such Plan Year. Each such separate ratio shall be rounded to the nearest one-hundredth of one percent.

- (ii) "414(s) Compensation" means wages (within the meaning of Code Section 3401(a)) and all other amounts received by a Participant from the University for which the University is required to furnish the Participant with a written statement under Code Sections 6041(d) and 6051(a)(3).

### 3.8 Allocation of Contributions

Subject to the requirements of Section 3, contributions for any Plan Year shall be allocated to each Participant (or, where applicable, to a Beneficiary in respect of a Participant) in the following manner:

- a. Salary Reduction Contributions. Salary Reduction Contributions made pursuant to Section 3.1 shall be allocated to the Accounts of the Participant whose Compensation engendered such contributions. Notwithstanding the foregoing, a Participant's Roth Salary Reduction Contributions shall be allocated to an Account designated solely for such Participant's Roth Salary Reduction Contributions and gains and losses thereon. No contributions other than a Participant's Roth Salary Reduction Contributions and properly attributable earning(s) thereon will be credited to a Participant's Account for Roth Salary Reduction



Contributions. The Plan will maintain a record of the amount of Roth Salary Reduction Contributions in each participant's Roth Salary Reduction Contributions account.

- b. University Matching Contributions. University Matching Contributions made on behalf of each eligible Participant for the Plan Year will be allocated to such Participant's Account based on such Participant's Salary Reduction Contributions for the Plan Year and the contribution formula provided in Section 3.2.

### 3.9 Return of Contributions

A contribution by the University to the Plan will be returned to the University, at the University's discretion, if such contribution is based on a good faith mistake of fact, within one (1) year of its payment to the Plan. The returned amount will not include any earnings attributable to the contribution and will be reduced by net losses attributable to the contribution. The Funding Agency will return such contribution to the University immediately upon receipt of the written request for a return of such contribution by the University.

### 3.10 Eligible Rollover Contributions to the Plan

- a. Any Employee who meets all of the eligibility requirements of Section 2.1 and has commenced participation under Section 2.2 may elect to have all or a portion of an eligible rollover distribution from an "eligible retirement plan" (as defined in Section 3.10b) paid to the Plan, provided that the Retirement Committee (or its designee) agrees to accept such eligible rollover distribution on behalf of the Plan. Such rollover contributions shall be made in the form of cash only, and must be made either directly

from the eligible retirement plan or by the Participant within sixty (60) days of the receipt of the distribution. The Retirement Committee or its designee may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code.

- b. For purposes of this Section, an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under an eligible retirement plan except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the distributee, or (iii) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Section 401(a)(9) of the Code. For purposes of this Section, an "eligible retirement plan" means an annuity plan described in Section 403(b) of the Code or a retirement plan qualified under Section 401(a) of the Code; provided, however, that the Plan will not accept rollover contributions of after-tax Employee contributions or a Roth IRA described in Section 408A of the Code. The Plan will accept

amounts from a Roth elective deferral account under an applicable retirement plan described in Section 402A(e)(1) of the Code, but only to the extent the rollover is a direct rollover from such applicable retirement plan and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code. Further, any such eligible rollover distribution from a Roth elective deferral account must be segregated to the Participant's Roth Salary Reduction Contribution account under this Plan.

- c. A separate account shall be established and maintained under the Plan for a Participant for eligible rollover distributions paid to the Plan. Any amounts credited to such account shall be nonforfeitable at all times and distributed pursuant to Sections 8, 9 and 10 of the Plan. Notwithstanding the foregoing, any eligible rollover distributions paid to the Plan from a designated Roth account under an applicable retirement plan described in Section 402A(e)(1) of the Code will be segregated to the Participant's Roth Salary Reduction Contribution account and will not be considered as part of the Participant's rollover account.

### 3.11 Plan-to-Plan Transfers

The Plan shall not accept contributions that are transferred directly from any other plan.

### 3.12 Tax Withholding

Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals,

which constitute wages under Section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Section 3401 of the Code and the regulations thereunder). A payee shall provide such information as the Administrator may need to satisfy income tax withholding obligations and any other information that may be required by guidance issued under the Code.

### 3.13 Contract Exchange

A Participant or Beneficiary may exchange a contract or account maintained under a Funding Vehicle pursuant to the Plan for another account maintained under a Funding Vehicle (“contract exchange”) if the following conditions are met: (i) the Funding Vehicle permits such exchange; (ii) immediately after the exchange, the Participant or Beneficiary has a total account balance under the Plan which is at least equal to the total account balance the Participant or the Beneficiary had prior to the exchange; (iii) the contract or account maintained under the Funding Vehicle received in the transfer contains restrictions on distributions which are not less stringent than those imposed upon the account being exchanged; and (iv) the University enters into an agreement with the Funding Agency providing the contract or account received, under which the University and the Funding Agency will from time to time in the future provide each other with information necessary for the resulting Section 403(b) Contract, or any other contract to which contributions have been made by the University, to satisfy Code Section 403(b) and the regulations thereunder.

## SECTION 4

### INVESTMENT OF CONTRIBUTIONS

#### 4.1 Investment Allocations Under TIAA-CREF

Each Participant under TIAA-CREF may elect in the manner permitted by TIAA-CREF to allocate the sum of the Salary Reduction Contributions and the University Matching Contributions to be made to the Plan on his behalf under Sections 3.1 and 3.2, from none to one hundred percent (100%), among one or more of the available funds in any whole number percentage, subject to the limitations of Section 4.4.

#### 4.2 Allocations Under Other Funding Vehicles

Each Participant utilizing a Funding Vehicle other than TIAA-CREF may elect that the sum of the Salary Reduction Contributions and the University Matching Contributions made to the Plan on his behalf under Sections 3.1 and 3.2, from none to one hundred percent (100%), among one or more of the available funds in any whole number percentage, subject to the limitations of Section 4.4.

#### 4.3 Effect of Election

Any election by a Participant under Section 4 shall remain in effect until a new election is made.

#### 4.4 Investment Choices

The University shall have the right to determine the investment choices available from the Funding Vehicles and shall, from time to time, communicate to Participants those investment choices which are authorized.

4.5 ERISA Section 404(c) Plan

This Plan is intended to be a “Section 404(c) Plan” under ERISA and Labor Regulations Section 2550.404c-1.

## SECTION 5

### ADMINISTRATION OF PLAN AND RETIREMENT COMMITTEE

#### 5.1 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 any Funding Agency shall be placed in the Retirement Committee. The Retirement Committee shall be a “named fiduciary” within the meaning attached to such designation under ERISA. The Retirement Committee shall have the sole and absolute discretionary authority to interpret or construe the terms of the Plan, whether express or implied, and resolve any ambiguities, including, but not limited to, terms governing the eligibility of Employees and the administration of the Plan, and to fashion any remedy which the Retirement Committee, in its sole judgment, deems appropriate. The validity of any such finding of fact, interpretation, construction, or decision shall not be given *de novo* review if challenged in court, by arbitration or in any other forum, and shall be upheld unless clearly arbitrary or capricious.

#### 5.2 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 said 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, accounting and actuarial services as they may require in carrying out the provisions of the Plan. All expenses incurred by the Retirement Committee in connection with the administration of the Funding Vehicle shall be paid by the University.

- 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 ERISA.
- e. Subject to the limitations of the Plan and any Funding Agency, 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 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 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, nor for any loss unless resulting from his own negligence or willful misconduct.

- h. Claim Review Procedure: All claims and applications for benefits under the Plan shall be directed to the attention of the Retirement Committee and utilize such administrative forms as the Retirement Committee shall prescribe. 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, no later than ninety (90) days after receipt of the claim by the Plan, unless special circumstances require an extension of time for processing the claim, the Retirement Committee shall inform the claimant by certified mail of its determination and the specific reasons for the denial in layman's terms with (i) specific references to pertinent Plan provisions upon which the decision was based, (ii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation as to why such material or information is necessary; and (iii) an explanation of the Plan's review procedures and the applicable time limits, including a statement outlining the claimant's right to bring a civil action under section 502(a) of ERISA following a denial. In no event may an extension of time for processing the claim 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. If the Retirement Committee fails to respond to the claim in a timely manner, the claimant may treat the claim as having been denied by the Retirement Committee.

The Retirement Committee shall afford the individual whose claim for benefits has been denied a reasonable opportunity for a full and fair review by the Retirement Committee of the decision denying the claim by allowing said individual (i) sixty (60) days following receipt of written notice of denial within which to submit a written request for review (or if the written notice was not sent, within sixty (60) days after such written notice was due); (ii) to submit written comments, documents, records and other information pertinent to his claim; (iii) reasonable access to, and copies of, all documents, records and other information relevant to his claim for benefits, free of charge and upon request.

If, upon receipt of this further information, the Retirement Committee determines that the claimant is not entitled to the benefit claimed, the Retirement Committee shall afford the claimant or his representative a reasonable opportunity to appear personally before the Retirement Committee, to submit issues and comments in writing, to submit any documents, records and other relevant information relating to the claim, and to review pertinent documents, records and other information relevant to the individual's claim, and to receive, upon request and free of charge, copies of all documents, records, and other information relevant to the individual's claim.

The Retirement Committee shall render a final decision taking into consideration all comments, documents, records or other information submitted by the individual (without regard to whether such information

was submitted or considered in the initial benefit determination), and shall transmit it to the claimant by certified mail within thirty (30) days of any such appearance, or submission of written issues or comments, documents or records for the Retirement Committee's review, unless special circumstances require extension, in which case the decision may, upon written notice to the claimant, be rendered within one hundred twenty (120) days of receipt of the request for review (unless the claimant agrees to a greater extension of that deadline). The decision on the review shall be rendered in writing and shall include specific reasons with specific reference to the Plan provisions on which it is based and shall inform the claimant that he or she may have access to all documents and other information relevant to the Participant's claim for benefits.

The Retirement Committee shall adopt procedures pursuant to which claims shall be reviewed and may adopt different procedures for different claims without being bound by past actions. Any procedures adopted, however, shall be designed to afford a claimant a full and fair review of his claim. To the extent permitted by law, the decisions of the Retirement Committee shall be final and binding upon all parties. Any claims which the claimant does not in good faith pursue through the review stage of the procedure shall be treated as having been finally and irrevocably waived. No legal action for benefits under the Plan shall be brought unless and until the claimant has exhausted his remedies under this Section 5.2h. of the Plan. If, after exhausting the claims and appeal

procedures, a claimant institutes any legal action against the Plan and/or the University, the claimant may present only the evidence and theories which the claimant presented during the claims and appeal procedures. Judicial review of the claimant's denied claim shall be limited to a determination of whether the denial was an abuse of discretion based on the evidence and theories which were presented to and considered by the Retirement Committee during the claims and/or appeal procedure.

## SECTION 6

### AMENDMENT AND TERMINATION

#### 6.1 Amendment

The University expressly reserves the right, at any time and from time to time, without the consent of Participants or any other party, 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 Funding Vehicle established in conjunction therewith under the provisions of Section 403(b) of the Code or any similar provision of the Code from time to time in effect. The University further reserves the right 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, co-annuitant or Beneficiary in his Funding Accounts to the extent that such interest has become fully vested in such person, or eliminate an optional form of distribution, nor shall any amendment be made which shall permit any part of the assets of the Plan to be used for or diverted to purposes other than for the exclusive benefit of Participants or their Beneficiaries.

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 Committee.

#### 6.2 Termination

The University intends to continue this Plan indefinitely. However, the Plan may be terminated by the University at any time by resolution of its Board of Trustees. In the event of a termination of the Plan or complete discontinuation of contributions under the Plan, the University will notify all Participants of the termination or discontinuance of contributions.

If the Plan is terminated, then, in the absence of a subsequent amendment to this Section, no contributions shall thereafter be made to any Funding Agency and the assets remaining in any Funding Agency available to provide benefits shall be allocated in accordance

with applicable law for the purpose of paying benefits provided for in the Plan. If the University terminates the Plan, the University and Affiliated Employer (if any) may not make contributions to an alternate Section 403(b) Contract that is not part of the Plan during the period beginning on the date of Plan termination and ending twelve (12) months after the distribution of all assets from the Plan, except as permitted by Section 403(b) of the Code and the regulations thereunder.

In the event of the termination or partial termination of the Plan, the rights of all covered persons accrued to the date of such termination or partial termination to the extent funded shall be fully vested and nonforfeitable. After the satisfaction of all liabilities of the Plan to Participants, Retired Participants, co-annuitants and Beneficiaries, the University shall receive any remaining amount attributable to University contributions resulting from any variations between actual requirements and actuarially expected requirements.

### 6.3 University Ceases to Be an Eligible Employer

If the University ceases to be a tax-exempt Code Section 501(c)(3) entity, the University shall no longer contribute to the Plan for any subsequent period.

## SECTION 7

### MISCELLANEOUS

#### 7.1 No Liability Imposed on University

To the maximum extent permitted by law, each and every person having a right or claim under the Plan shall look solely to the Funding Agency, and in no event shall the Retirement Committee or the University, its officers or trustees be liable, jointly or severally, to any person whomsoever on account of any claim arising by reason of the provisions of the Plan or of any instrument or instruments implementing the provisions or purposes thereof.

#### 7.2 University Not Obligated to Make Contributions

Other than as provided under the Code and ERISA, the University shall not be liable to any person for failure on its part to make contributions as provided in Sections 3.2 and 3.4, nor shall any action lie to compel the University to make such contributions.

#### 7.3 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 such 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.

#### 7.4 Gender and Number

As used herein, the masculine pronoun shall include the feminine gender, and the singular shall include the plural, and the plural the singular, unless the context clearly indicates a different meaning.



#### 7.5 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 in the Plan would, if the Plan were terminated immediately after such merger, consolidation or transfer, receive a benefit having a value equal to or greater than the benefit he would have been entitled to receive if this Plan had terminated immediately prior to the merger, consolidation or transfer.

#### 7.6 Affiliated Employer

For purposes of Sections 401, 408(k), 410, 411, 415, 416 and other applicable Sections of the Code, all employees of (a) all corporations which are members of a controlled group of corporations (as defined in Section 414(b) of the Code), (b) all trades or businesses (whether or not incorporated) which are under common control (as defined in Section 414(c) of the Code), (c) affiliated service groups (as defined in Section 414(m) of the Code), and (d) 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. In addition to the rules under Sections 414(b), (c), (m) and (o) of the Code, the University and any other corporation shall be deemed to be under common control and considered an Affiliated Employer for purposes of the Plan if at least eighty percent (80%) of the directors or trustees of one organization are either representatives of, or directly or indirectly controlled by, the other organization, as described in Treasury Regulations Section 1.414(c)-5.

#### 7.7 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.

7.8 Special Rules Relating to Uniformed Services Employment and Reemployment

Rights. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided under the Plan in accordance with Section 414(u) of the Code.

- a. Additionally, in the case of a Participant who dies on or after January 1, 2007, while performing Qualified Military Service, the Participant shall be treated as having died while actively employed solely for the purpose of providing the survivors of the Participant with any additional death benefits that are provided under the Plan on account of a Participant who terminates employment on account of death. However, such deemed reemployment shall not provide the Participant's survivors with any additional contributions or with additional benefit or service accruals relating to the period of Qualified Military Service according to Code Section 414(u). The deemed resumption of employment of the deceased Participant shall be applied only to determine eligibility of a Beneficiary for any pre-retirement death benefits provided by the Plan, and only to the extent required by subsequent published guidance, as incorporated herein.
- b. Effective for remuneration paid after December 31, 2008, as provided under Section 1.3f of the Plan, a Participant who is absent from service due to Qualified Military Service and receiving military differential pay as defined in Code Section 3401(h)(2), shall be treated as a Participant under

the Plan and the military differential pay shall be treated as Compensation under the Plan for purposes of making or receiving contributions or benefits, and if applicable, service credit under the Plan. The Plan shall not be treated as failing to meet the tax-qualification requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit that is based on the military differential pay. However, the exception provided under Code Section 414(u)(1)(C) shall apply to the contributions or credits related to military differential pay (as defined under Code Section 3401(h)(2)) only if all Employees of the University who perform such Qualified Military Service are entitled to receive military differential pay on reasonably equivalent terms and, to the extent any such Employees are Participants, are eligible to make contributions to the Plan based on the military differential pay on reasonably equivalent terms. For purposes of determining whether Employees are eligible with respect to military differential pay on reasonably equivalent terms, the eligibility thresholds and coverage exceptions provided under Code Section 410(b)(3), (4) and (5) shall apply.

- c. Effective for remuneration paid after December 31, 2008, an individual who is treated as a Participant according to Section 7.8b, above, due to military differential pay, shall be treated as having incurred a Severance from Employment for purposes of eligibility for distributions of the Participant's account during any period the individual is performing Qualified Military Service. However, if such an individual obtains a

distribution according to the foregoing provision, such individual or Participant's Salary Reduction Contributions to this Plan shall be suspended for six (6) months following the date of the distribution.

- d. For purposes of the foregoing provisions, "Qualified Military Service" means any service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code, as incorporated by Code Section 414(u)) by any individual if such individual is entitled to reemployment rights by law with respect to such military service.

#### 7.9 Claims of Other Persons

The provisions of the Plan will not be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the University, any Affiliated Employer, its officers, Employees, or trustees, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

#### 7.10 Finality of Determination

All determinations with regard to eligibility and contributions to be made under the Plan are made on the basis of the records of the University and Affiliated Employers (as appropriate), and all determinations made by the Administrator are final and conclusive upon Participants, Employees, former Employees, and all other persons claiming any interest in benefits under the Plan.

#### 7.11 Incorporation of Agreements

The Plan, together with the relevant contracts and agreements with any Funding Agency, is intended to satisfy the requirements of Section 403(b) of the Code and the regulations thereunder. The terms and conditions of the Funding Vehicles are hereby incorporated by

reference into the Plan, excluding those terms that are inconsistent with the Plan, ERISA or Section 403(b) of the Code.

7.12 Severability

In the event that any provision of the Plan is or is held to be invalid, such fact shall not affect the validity of any other provision.

7.13 Electronic Communications

Notwithstanding any provision in this Plan to the contrary, investment elections, changes or transfers, and any other decision or election by a Participant (or Beneficiary of a Participant) under this Plan may be accomplished by electronic or telephonic means which are not otherwise prohibited by law and which are in accordance with procedures and/or systems approved or arranged by the Retirement Committee or its delegates. Within the sole discretion of the Retirement Committee, any communications with Participants or Beneficiaries may be accomplished by electronic means which are not otherwise prohibited by law.

## SECTION 8

### TIAA-CREF ADMINISTRATIVE POLICIES

#### 8.1 Repurchase

TIAA and CREF retirement annuities do not provide for cash surrender and cannot be transferred or assigned. However, in the event a Participant terminates employment and requests that TIAA-CREF repurchase the Participant's retirement annuities, the University will approve the repurchase for payment in a single sum if at the time of application for repurchase:

- a. The total accumulation in all TIAA retirement annuities owned by the Participant is not over \$2,000; and
- b. The Participant does not have a TIAA transfer payout annuity (TPA) in effect.

Upon repurchase, the entire accumulation account attributable to Participant and University contributions will be payable by TIAA-CREF in a single sum to the Participant, and amounts paid to the Participant on repurchase will be in full satisfaction of the Participant's and the Participant's Spouse's rights to retirement or survivor benefits attributable to such amounts.

#### 8.2 The Retirement Transition Benefit

The Retirement Transition Benefit permits a Participant to receive a one-time lump-sum payment of up to ten percent (10%) of his accumulation account in TIAA and/or the CREF accounts, at the time annuity income begins; provided that the single sum payment from each TIAA contract and/or CREF account does not exceed ten percent (10%) of the respective accumulation account(s) then being converted to retirement income.

### 8.3 Lump-Sum Distribution

Notwithstanding Section 2.6, a Participant may at any time before beginning retirement benefits transfer CREF funds for the purpose of selecting a single sum distribution at retirement:

- a. among the Plan's approved CREF accounts; or
- b. to an approved 403(b)(7) Funding Vehicle.

Participants can also transfer funds accumulated in a 403(b)(7) Funding Vehicle to CREF, or to another 403(b)(7) Funding Vehicle. Transfers shall be in amounts of at least \$1,000 unless the amount in the Account is less than \$1,000--in which case the entire amount shall be transferred. Any such transfer must be made in compliance with the requirements of Section 3.12 of this Plan, to the extent applicable.

## SECTION 9

### DISTRIBUTION LIMITATIONS

#### 9.1 General Provisions

The distribution rules contained in this Section 9 shall take precedence over any contrary Plan provision or any provision in any agreement with any Funding Agency. Subject to the terms of this Section 9, following Severance from Employment, a Participant may elect to receive his retirement benefits under any of the following forms of benefit:

- a. Single life annuities as provided under the Funding Vehicle contract;
- b. Joint and survivor annuities as provided under the Funding Vehicle contract, including a Qualified Joint and Survivor Annuity, Qualified Optional Survivor Annuity and Qualified Pre-Retirement Survivor Annuity;
- c. Cash withdrawals in the form of a single sum payment or installment payments (monthly, quarterly, semiannual or annual) to the extent the Funding Vehicle permits;
- d. Fixed period annuities to the extent the Funding Vehicle permits;
- e. Retirement Transition Benefit; or
- f. Such other annuity and withdrawal options as provided or otherwise made available under the Funding Vehicle.

However, except as provided under Sections 6.2 or 10, benefits may not be paid to a Participant before the Participant has experienced a Severance from Employment. Notwithstanding the foregoing, in the event that a distribution of a Participant's benefit from the Participant's Roth Salary Reduction Contribution account would not be a "qualified distribution" as such term is defined under Section 402A(d)(2) of the Code because the five (5) taxable-year period described thereunder has not yet been satisfied, the Participant (or, if applicable, the Participant's



beneficiary) may elect to delay a distribution of the portion of the benefit contained within the Roth Salary Reduction Contribution account until after the end of such five (5) taxable-year period. The five (5) taxable-year period is measured beginning with the earlier of: (i) the first taxable year in which a designated Roth Salary Reduction Contribution to the Plan was made on behalf of the Participant, or (ii) if, the Participant made a rollover contribution to the Participant's Roth Salary Reduction Contribution account under this Plan, the first taxable year for which the Participant made a designated Roth contribution to the account transferred or contributed to the Participant's Roth Salary Reduction Contribution Account under this Plan.

#### 9.2 Qualified Joint and Survivor Annuity

Unless an optional form of benefit (including but not limited to a Qualified Optional Survivor Annuity) is selected pursuant to a Qualified Election within the one hundred eighty (180) day period ending on a Participant's Annuity Starting Date, a married Participant's vested Accrued Benefit will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's vested Accrued Benefit will be paid in the form of an immediate single life annuity.

#### 9.3 Qualified Pre-Retirement Survivor Annuity

Unless an optional form of benefit has been selected within the Election Period pursuant to a Qualified Election, in the case of a Participant who dies before his Annuity Starting Date and who was married on the date of the Participant's death, then the Participant's vested Account balances shall be applied toward the purchase of an annuity for the life of the Participant's Surviving Spouse. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death.

#### 9.4 Definitions

For purposes of Sections 9 and 10, the following terms shall have the indicated meaning unless a different meaning is clearly required by the context:

- a. “Annuity Starting Date” means the first day of the first period for which an amount is received as an annuity, or in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to such benefits.
- b. “Beneficiary” means the person who becomes entitled to receive any portions of a Participant’s Accrued Benefit because of the death of a Participant.
- c. “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 the Participant attains age thirty-five (35), the Election Period with respect to Account balances as of the date of separation will begin on the date of separation.
- d. “Earliest Retirement Age” shall mean the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- e. “Qualified Election” shall mean a waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity by a married Participant or single life annuity by an unmarried Participant. Any election shall be made on the form provided by and in accordance with procedures established by the Retirement Committee. Such election shall

designate a specific Beneficiary and an alternate form of benefit. The waiver must be in writing and must be consented to by the Participant's Spouse to be effective. Such spousal consent shall acknowledge the effect of such election and shall be witnessed by the Retirement Committee's representative or a notary public. Notwithstanding this consent requirement, if the Participant establishes to the satisfaction of the Retirement Committee 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, and such consent will be irrevocable with respect to such 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 a specific form of benefit, if applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. Additionally, a revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

- f. "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 not less than fifty percent (50%) and not more than one

hundred percent (100%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's vested Account balances.

- g. "Qualified Pre-Retirement Survivor Annuity" means an annuity for the life of the Surviving Spouse of a deceased Participant, the actuarial equivalent of which is not less than fifty percent (50%) of the amount of benefit which can be purchased with the Participant's vested Account balances at the date of death.
- h. "Qualified Optional 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 seventy-five percent (75%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's vested Account balances.
- i. "Spouse (Surviving Spouse)" shall mean 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 Section 414(p) of the Code. Notwithstanding the foregoing sentence, a person shall not be considered a Spouse for purposes of Sections 9.2 through 9.5 of the Plan 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

(as hereinafter defined), 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. Annuity Starting Date shall mean the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability), or in the case of a benefit not payable in the form of an annuity, the first day in which all events have occurred which entitle the Participant to such benefits.

#### 9.5 Notice Requirements

- a. In the case of a Qualified Joint and Survivor Annuity, the Retirement Committee shall provide to each Participant, no fewer than thirty (30) days nor more than one hundred eighty (180) days prior to the Participant's 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 under this Section; (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 Participant's right, if any, to defer receipt of a distribution and the consequences of failing to defer such receipt in accordance with the

applicable Treasury Regulations under Section 417(a) of the Code. Notwithstanding the foregoing provisions of this Section 9.5a., 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 above, provided: (i) the Participant has been provided with information that 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.

- b. In the case of a Qualified Pre-Retirement Survivor Annuity, the Retirement Committee shall provide to each Participant a written explanation of the Qualified Pre-Retirement Survivor Annuity comparable to the explanation of the Qualified Joint and Survivor Annuity as specified in Section 9.5a. The explanation of the Qualified Pre-Retirement Survivor Annuity shall be provided within the period ending on the later of (i) the period 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 Pre-Retirement 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). A reasonable period ending after the event 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 (1) 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. For purposes of this Section, a Plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit.

9.6 Time, Manner and Amount of Required Minimum Distributions

a. The requirements of this Section 9.6a will take precedence over any inconsistent provisions of the Plan. Further, all required minimum distributions described under Section 9 of the Plan, the determination of life expectancies, the identification of Beneficiaries and the calculation of any minimum required distribution or distribution incidental to death shall be made in accordance with the temporary and final regulations published on April 17, 2002 (T.D. 8987) under Code Section 401(a)(9), which are hereby incorporated into this Plan. Such temporary and final regulations shall override any inconsistent distribution provisions otherwise provided by the Plan. Notwithstanding the other provisions of this Section 9.6, other than the immediately preceding sentence, 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.

(i) Time of Distribution—Required Beginning Date. 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. Notwithstanding the foregoing or any provision in the Plan to the contrary, a Participant or Beneficiary who would have been required to receive required



minimum distributions for the 2009 Distribution Calendar Year but for the enactment of Code Section 401(a)(9)(H) according to the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) (“2009 RMDs”), and who would have satisfied that requirement by receiving distributions that are (A) equal to the 2009 RMDs or (B) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s Designated Beneficiary, or for a period of at least ten (10) years (“Extended 2009 RMDs”), will receive those distributions for 2009 unless the Participant or Beneficiary chooses to not receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, solely for purposes of applying the direct rollover provisions of the Plan and Code Section 401(a)(31), 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions as provided in Section 9.12, as amended. For calendar years after 2009, a Participant’s or Beneficiary’s Required Beginning Date will be determined without regard to any waiver of 2009 RMDs or of Extended 2009 RMDs.

- (ii) Time of Distribution—Death Before Distributions Commence. If the Participant dies before distributions of his interest under the Plan commence, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (A) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, distributions to the Surviving Spouse will commence according to the Life Expectancy Rule or, if later, by December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2), unless the Participant had made, or the Surviving Spouse has made, an individual election to apply the "Five-Year Rule." An election to apply the Five-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 commence under the Life Expectancy Rule, or by September 30 of the calendar year that contains the fifth anniversary of the Participant's death (or, if applicable, the Surviving Spouse's death).
- (B) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, distributions will commence according to the Life Expectancy Rule, unless the Participant had made, or the Designated Beneficiary has made, an election to apply the Five-Year Rule. An election

to apply the Five-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 commence under the Life Expectancy Rule, or by September 30 of the calendar year that contains the fifth anniversary of the Participant's death (or, if applicable, of the Surviving Spouse's death).

- (C) 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-Year Rule.
- (D) 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 commence, this subsection b(ii) (but not subsection b(ii)(A)) shall apply to the Surviving Spouse's beneficiaries as if the Surviving Spouse were the Participant.

For purposes of Code Section 401(a)(9)(B), as provided by this subparagraph b(ii) and subsection d of this Section 9.6. (unless subparagraph b(ii)(D) applies), required minimum distributions are considered to commence on the Participant's Required Beginning Date without regard to payments made before that date solely for

purposes of determining compliance with Code Section 401(a)(9)(A)(ii). If subparagraph b(ii)(D) applies (when treating the Surviving Spouse as the Participant), required minimum distributions are considered to commence on the date distributions would have been required to commence to the Surviving Spouse under subparagraph b(ii)(A). If distributions under an annuity contract purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's Surviving Spouse before the date distributions are required to commence to the Surviving Spouse under subparagraph b(ii)(A) when treating the Surviving Spouse the same as the Participant), the date distributions are considered to commence is the date distributions actually commence.

- (iii) Form of Distribution. Unless the Participant's interest is distributed in the form of an irrevocable annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year required minimum distributions will be made in accordance with subsections c and d of this Section 9.6. If the Participant's interest is distributed in the form of an irrevocable annuity purchased from an insurance company, distributions thereunder will be made in accordance with

the requirements of Code Section 401(a)(9) and the Treasury Regulations thereunder.

c. Required Minimum Distributions During Participant's Lifetime.

(i) During the Participant's lifetime, the required minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(A) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(B) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's Surviving Spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and Surviving Spouse's attained ages as of the Participant's and Surviving Spouse's birthdays in the Distribution Calendar Year.

(ii) Required minimum distributions will be determined under this subsection c beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

d. Required Minimum Distributions After Participant's Death.

(i) Death On or After Date Required Minimum Distributions Commence.

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

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

(2) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the Surviving Spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the Surviving Spouse's age as of the Surviving Spouse's birthday in that year. For Distribution Calendar

Years after the year of the Surviving Spouse's death, the remaining Life Expectancy of the Surviving Spouse is calculated using the age of the Surviving Spouse as of the Surviving Spouse's birthday in the calendar year of the Surviving Spouse's death, reduced by one for each subsequent calendar year.

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

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

(ii) Death Before Date Required Minimum Distributions Commence.

- (A) Except as provided herein, if the Participant dies before the date required minimum distributions commence and there is a Designated Beneficiary, distribution of the Participant's Account Balance will be made in accordance with subparagraphs b(ii)(A) and (B).
- (B) If the Participant dies before the date required minimum distributions commence and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (C) If the Participant dies before the date required minimum distributions commence, the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, and the Surviving Spouse dies before distributions are required to commence to the Surviving Spouse under subparagraph b(ii)(A), this subparagraph d(ii) will apply as if the Surviving Spouse were the Participant.



e. Definitions. The following definitions shall apply for purposes of this Section 9.6.

(i) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 9.4b of the Plan and is the Designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4, Q&A-1.

(ii) Distribution Calendar Year. 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 which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to commence pursuant to subparagraph b(ii). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

- (iii) Five-Year Rule. The term “Five-Year Rule” refers to the requirement that a Participant’s entire interest be distributed to the Designated Beneficiary or Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant’s death. Notwithstanding the foregoing, in the event the Five-Year Rule is used to determine required minimum distributions for a Participant’s interest where the Participant died prior to his Required Beginning Date, the five-year period described in the preceding sentence will be determined by disregarding the 2009 calendar year.
- (iv) Life Expectancy. For purposes of applying this Section 9.6, Life Expectancy shall mean as computed by use of the Single Life Table in Treasury Regulations Section 1.401(a)(9)-9.
- (v) Life Expectancy Rule. The term “Life Expectancy Rule” refers to the requirement that any portion of a Participant’s interest payable to a Designated Beneficiary begin to be distributed by December 31 of the calendar year following the calendar year of the Participant’s death, and paid over the life (or Life Expectancy) of the Designated Beneficiary.
- (vi) Participant's Account Balance. The Participant’s Account Balance, as that term is used in this Section 9.6 for purposes of determining required minimum distributions, means the Participant’s total account balance under the Plan as of the last valuation date in the

calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year

9.7 Required Beginning Date

Distribution to a Participant must commence by April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70-1/2), or the calendar year in which the Participant retires. For purposes of Section 3.3b., a distribution under this Section shall not be considered a retirement.

9.8 Inalienability of Plan Assets and Benefits

Except as otherwise specifically provided in Section 9.12, distributions and withdrawals hereunder shall be paid only to the Participant entitled thereto or, in the event of his death, his Beneficiary. A Participant's interest under the Plan shall not be subject to alienation, sale, transfer, assignment, pledge, attachment, garnishment, execution or encumbrance of any kind, and any attempt to accomplish the same shall be void. This limitation shall apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to any domestic relations order, unless such order is determined by the Retirement

Committee, in accordance with Section 9.11, 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.

#### 9.9 Commutation of Benefits

If the value of an Accrued Benefit payable to any person shall be less than \$1,000, the Retirement Committee shall direct that the Accrued Benefit be paid in a single sum cash payment. For purposes of the preceding sentence, a Participant's Accrued Benefit will exclude amounts attributable to the Participant's Roth Salary Reduction Contribution account. Further, for purposes of determining whether the value of an Accrued Benefit payable to any person is less than \$1,000, a Participant's Roth Salary Reduction Contribution account (including rollover contributions comprised of Roth contributions and catch-up contributions comprised of Roth contributions, and all earnings allocable to such Roth contributions) shall be treated as if the Participant's Roth Salary Reduction Contribution account existed under a separate plan. Therefore, if the value of the Accrued Benefit payable to any person shall be less than \$1,000, or the Participant's Roth Salary Reduction Contribution account, determined as described above, is \$1,000 or less, the Retirement Committee shall direct that the Accrued Benefit and Roth Salary Reduction Contribution account, respectively, be paid in separate single sum cash payments. Notwithstanding the foregoing, if such distribution would not comply with any restrictions upon such distributions by a Funding Agency, the preceding shall not apply.

#### 9.10 Payment of Benefits to Others

If the Retirement Committee shall find that any person to whom a benefit is payable is unable to care for his affairs because of illness or accident, any payment due (unless a prior claim therefor shall have been made by a duly appointed guardian, committee or other legal

representative) may be paid to the Spouse, a child, a parent, or a brother or sister, or to any person deemed by the Committee to have incurred expense for such person and otherwise entitled to such payment. Any such payment shall be a complete discharge of any liability under the Plan therefor.

9.11 Payments Pursuant to Qualified Domestic Relations Order

- a. The anti-alienation and anti-assignment provisions of Section 9.9 above will not apply with respect to payments in accordance with the requirements of a qualified domestic relations order. A qualified domestic relations order creates, or recognizes the existence of, an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits otherwise payable to a Participant under the Plan. A domestic relations order means any judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child or other dependent of a Participant, and is made pursuant to a state domestic relations law (including a community property law). To qualify, the domestic relations order must:
  - (i) State clearly the name and last known mailing address of the Participant and the name and mailing address of each alternate payee covered by the order;
  - (ii) State clearly the amount or percentage of the Participant's benefits to be paid by the Plan to each alternate payee, or the manner in which the amount or percentage is to be determined;

- (iii) State clearly the number of payments or period to which the order applies;
- (iv) Identify each Plan to which the order applies;
- (v) Not require the Plan to provide any type of benefit, form of benefits, or any option not otherwise provided under the Plan;
- (vi) Not require the Plan to provide increased benefits (determined on the basis of actuarial value); and
- (vii) Not require the payment of benefits to an alternate payee that are required to be paid to another payee under another order previously determined to be a qualified domestic relations order. In the case of any distribution before a Participant has separated from service, a qualified domestic relations order will not fail to meet the requirements of paragraph a. of this Section solely because such order requires that payment of benefits be made to an alternate payee (A) on or after the date the Participant attains the earliest retirement age, (B) as if the Participant had retired on the date on which such payment is to begin under such order, and (C) in any form in which benefits may be paid under the Plan to the Participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his subsequent spouse).

For purposes of this Section 9.12, “Alternate Payee” means any Spouse, former Spouse, child, or other dependent of a Participant who is recognized by a qualified domestic relations order as having a right to

receive all, or a portion of, the benefits payable under a Plan with respect to such Participant; and “Earliest Retirement Age” means the earlier of (X) the date the Participant is entitled to a distribution under the Plan, or (Y) the later of the date the Participant attains age fifty (50) or the earliest date on which the Participant could begin receiving benefits under the Plan if the Participant experienced a Severance from Employment.

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

- (i) Be in writing;
- (ii) 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
- (iii) 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 segregate in a separate Account 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, then the Retirement Committee will pay under the terms of the Plan the segregated amounts 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 ERISA, then the Plan's obligation to the Participant and each alternate payee will be discharged to the extent of any payment made. A domestic relations order shall not fail to be treated as a qualified domestic relations order solely because the order is issued or revised after another domestic relations order or qualified domestic relations order is issued, or because of the time it is issued (such as after payments of benefits to a Participant have begun, after a Participant's death or after the related divorce).

#### 9.12 Direct Rollovers

- a. Notwithstanding any provision of the Plan to the contrary that otherwise would limit a Distributee's election under this Section, a Distributee of an Eligible Rollover Distribution (excluding an Eligible Rollover Distribution from the Distributee's Roth Salary Reduction Contributions account) of at least \$200 may elect, at the time and in the manner prescribed by the Retirement Committee, to have such Eligible Rollover Distribution paid directly to one Eligible Retirement Plan specified by the Distributee in a Direct Rollover. Similarly, a Distributee may elect, at the time and in the



manner prescribed by the Retirement Committee, an Eligible Rollover Distribution of at least \$200 from the Distributee's Roth Salary Reductions Contribution account paid directly to one Eligible Retirement Plan specified by the Distributee in a Direct Rollover. A Distributee who has been given a timely notice and explanation of his rights under this Section, and who fails to make an affirmative election to have his Eligible Rollover Distribution paid to an Eligible Retirement Plan shall be presumed to have elected to have his benefit paid directly to him. The election by a Distributee with respect to one of a series of periodic payments shall be deemed to apply to all subsequent payments in that series. Such election by the Distributee, however, shall be revocable at any time. In the event this provision is not at any time in the future 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. For purposes of the direct rollover provisions in this Section, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax Participant 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. For purposes of this Section, the following words and phrases have the meanings ascribed to them below.

(i) An “Eligible Rollover Distribution” is a distribution of all or any portion of the Accounts of the Distributee, except that an Eligible Rollover Distribution does not include (A) 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; (B) any distribution to the extent such distribution is required under Code Section 401(a)(9); and (C) any amount that is distributed on account of hardship. For purposes of the preceding sentence, a portion of the 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, or are Roth contributions. However, the portion of an eligible rollover distribution attributable to after-tax employee contributions may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code

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. The portion of an eligible rollover distribution attributable to Roth Salary Reduction Contributions may be paid only to a Roth IRA described in Section 408A of the Code, or to another designated Roth account under an applicable retirement plan described in Section 402A(e)(1) of the Code. Effective for the 2009 Distribution Calendar Year (as defined in Section 9.6e(ii) of the Plan), a 2009 RMD or an Extended 2009 RMD (as defined by Section 9.6b(i)) shall be deemed to be an Eligible Rollover Distribution if the 2009 RMD or Extended 2009 RMD is no longer a required minimum distribution for the 2009 Distribution Calendar Year due to the waiver of required minimum distributions for the 2009 Distribution Calendar Year pursuant to the Worker, Retiree, and Employer Recovery Act of 2008, solely for purposes of being eligible for a tax-free rollover into an Eligible Retirement Plan.

- (ii) An “Eligible Retirement Plan” is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a qualified trust described in Code Section 401(a), or an annuity plan described in Code Section 403(a) that accepts the Distributee’s Eligible Rollover Distribution.

An “Eligible Retirement Plan” shall also mean (A) an annuity contract described in Code Section 403(b), or (B) 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. With respect to amounts held in a Roth Salary Reduction Contribution account under this Plan, an Eligible Retirement Plan only shall mean a Roth IRA described in Section 408A of the Code, or another designated Roth account under an applicable retirement plan described in Section 402A(e)(1) of the Code. 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). An eligible retirement plan shall include a Roth IRA, if the Participant satisfies the requirements of Code Section 408A(d)(3) and (e).

- (iii) A “Distributee” includes an Eligible Employee or former Eligible Employee of the University. In addition, the Eligible Employee’s or former Eligible Employee’s Surviving Spouse and the Eligible Employee’s or former Eligible 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.

(iv) A “Direct Rollover” is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

c. Notwithstanding the foregoing provisions of this Section 9.12, or any other provision of the Plan to the contrary, as permitted by Code Section 402(c)(11) (added by Section 829 of the Pension Protection Act of 2006), and in conformance with IRS Notice 2007-7 (or as modified by subsequent guidance), a Direct Rollover of an Eligible Rollover Distribution shall include a direct trustee-to-trustee transfer of any portion of a distribution from this Plan made to an individual retirement plan described in Code Section 408(a) or (b) (collectively, an “IRA”) that is established for the purpose of receiving a Direct Rollover made on behalf of a Designated Beneficiary who is not the Participant’s Spouse (“Non-Spouse Designated Beneficiary”).

A Direct Rollover on behalf of a Non-Spouse Designated Beneficiary must satisfy all the requirements to be an Eligible Rollover Distribution other than the requirement that the distribution be made to the Participant or the Participant’s Spouse. If a Non-Spouse Designated Beneficiary elects a Direct Rollover, and the amount satisfies the requirements to be an Eligible Rollover Distribution, the amount directly rolled over is not includible in gross income in the year of the distribution.

A Direct Rollover of an Eligible Rollover Distribution on behalf of a Non-Spouse Designated Beneficiary is not subject to the Direct Rollover requirements of Code Section 401(a)(31), the notice requirements of Code Section 402(f), or the mandatory withholding requirements of Code Section 3405(c). However, if a Non-Spouse Designated Beneficiary does not elect a Direct Rollover into an IRA, but receives directly an amount distributed from the Plan, the distribution is not eligible for subsequent tax-free rollover, even if it is rolled over within sixty (60) days of the distribution.

In addition, the IRA of a Non-Spouse Designated Beneficiary shall be treated as an inherited IRA within the meaning of Code Section 408(d)(3)(C), in conformance with Code Section 402(c)(11). For purposes of Code Section 402(c)(11), the IRA must be established in a manner that identifies it as an IRA with respect to a deceased individual and identifies the deceased individual and the Designated Beneficiary, for example, “Tom Smith as Beneficiary of John Smith, Deceased.” A trust may be the Designated Beneficiary, in which case the IRA must be established in a manner that identifies the trust as the Designated Beneficiary of the deceased individual, for example “The John Smith Trust as Beneficiary of John Smith, Deceased.”

The method of applying the required minimum distribution rules of Code Section 401(a)(9), as provided under Section 9.6 of the Plan, to the timing and amount of a Direct Rollover made on behalf of a Non-Spouse

Designated Beneficiary shall be in conformance with IRS Notice 2007-7, and other such subsequent published guidance, which is hereby incorporated by reference.

Because a Direct Rollover into an IRA by a Non-Spouse Designated Beneficiary must be treated as an inherited IRA, the amount rolled over is subject to the required minimum distribution rules under Code Section 401(a)(9) that apply to inherited IRAs of Non-Spouse Designated Beneficiaries. According to Notice 2007-7, Q&A-19, the rules for determining required minimum distributions under Section 9.6 with respect to a Non-Spouse Designated Beneficiary apply to determining the amount that may be directly rolled over into the IRA, and for determining minimum distributions from the IRA following the direct rollover. Thus, if a Participant dies before the Participant's required beginning date provided in Section 9.7, the timing of the required minimum distributions and determining the amount eligible to be rolled over into the IRA with respect to a Non-Spouse Designated Beneficiary are determined under either the Five Year Rule or the Life Expectancy Rule.

Notwithstanding the foregoing, if the Five Year Rule would otherwise apply to the Non-Spouse Designated Beneficiary under Section 9.6 of the Plan, Notice 2007-7, Q&A-17(c)(2) provides that a Non-Spouse Designated Beneficiary may treat the Plan as applying the Life Expectancy Rule, provided that the rollover into the IRA is made prior to the end of the year following the year of the Participant's death. Thus,

despite Section 9.6 to the contrary, the Non-Spouse Designated Beneficiary is permitted to treat the Plan as applying the Life Expectancy Rule both for determining the amount eligible for rollover and for determining the required minimum distributions under the IRA, but only if the rollover is made prior to the end of the year following the year of the Participant's death.

9.13 Procedure When Distributee Cannot Be Located

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the University's, Affiliated Employer's or the Administrator's records, (b) notification sent to the Social Security Administration (under their program to identify payees under retirement plans), and (c) the payee has not responded within six (6) months. If the Retirement Committee is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Funding Vehicle shall continue to hold the benefits due such person.



## SECTION 10

### GENERAL PROVISIONS REGARDING BENEFITS

#### 10.1 Normal and Late Retirement

Subject to the provisions of Section 9, a Participant who retires at his Normal Retirement Date shall, upon filing the application prescribed by the Retirement Committee, be entitled to receive a distribution of his Accrued Benefit in accordance with the terms of the distributions provisions of the Funding Vehicle in effect with respect to the Participant's Account under the Plan. A Participant who continues to be employed by the University after his Normal Retirement Date shall retain all rights and privileges to participate in the Plan until his actual Severance from Employment.

#### 10.2 Death

Subject to the provisions of Section 9, if a Participant dies before his Annuity Starting Date, the Participant's Beneficiary shall be entitled to receive the undistributed portion of the Participant's Accrued Benefit. Subject to the provisions of Section 9, upon the death of a Participant after his Annuity Starting Date, the death benefit, if any, shall be governed by the provisions of the Funding Vehicle in effect with respect to the Participant's Account under the Plan.

#### 10.3 Disability Retirement

Subject to the provisions of Section 9, a Participant who becomes Disabled may retire prior to Normal Retirement Date and, upon filing the application prescribed by the Retirement Committee, be entitled to receive his Accrued Benefit in accordance with the terms of the distribution provisions of the funding method in effect with respect to the Participant's Account under the Plan; or, if such disabled Participant is a beneficiary of any insured program which continues the contributions to the Plan on his behalf because of the disability, he may

continue as a Participant (although no longer in the service of the University) until such time as he shall elect to receive his benefit. All determinations of disability shall be made by the Retirement Committee in accordance with rules and procedures established by the Retirement Committee for such purpose.

#### 10.4 Other Separation Before Normal Retirement Date

Subject to the provisions of Section 9, each Participant who experiences a Severance from Employment prior to his Normal Retirement Date for any reason other than Disability retirement or death shall, upon filing the application prescribed by the Retirement Committee or its designee, be entitled to receive a distribution of his Accrued Benefit in accordance with the terms of the distribution provisions of the funding method in effect with respect to the Participant's Account under the Plan.

#### 10.5 Phased Retirement Distribution

Any Participant who is enrolled in and subject to the terms and conditions of the University's phased retirement program and attains the age of fifty-nine and one-half (59½) shall be permitted to begin distribution from his accounts in the manner permitted by the Funding Agency; provided, however, if the Participant is married, there shall be no distribution unless the Participant's Spouse consents to the waiver of the Qualified Joint and Survivor Annuity or the Pre-Retirement Survivor Annuity, or both. The terms and conditions of the University's phased retirement program shall be in the sole discretion of the University. For purposes of Section 3.3b., a distribution under this Section shall not be considered retirement.

#### 10.6 In-Service Distributions to Participants Called to Active Duty

Any Participant who is a Qualified Reservist may withdraw the portion of his accounts attributable to his own Salary Reduction Contributions regardless of age or employment

status to the extent that such distribution is a “Qualified Reservist Distribution.” For purposes of this Section 10.6, a “Qualified Reservist Distribution” is:

- a. A distribution of amounts attributable to employer contributions made pursuant to a Participant’s Salary Reduction Contributions under this Plan;
- b. By a Participant who is a Qualified Reservist who was (by reason of being a member of a reserve component (as defined in Section 101 of Title 37 of the United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and
- c. Such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

For purposes of this Section 10.6, a “Qualified Reservist” is an individual ordered or called to active duty after September 11, 2001.

The following special rules apply to a Qualified Reservist Distribution:

- d. Exception from the 10% Excise Tax for Early Withdrawals. The portion of any such distribution from the Plan that is a Qualified Reservist Distribution shall be exempt from the 10% excise tax under Code Section 72(t) for early withdrawals.
- e. Qualified Reservist Distributions May Be Contributed to an IRA. The Participant who receives a Qualified Reservist Distribution may, at any time during the two-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such Qualified Reservist Distribution. The dollar

limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence, however, no deduction shall be allowed for any such contribution pursuant to this subsection. In no event shall the Participant be permitted to re-contribute a Qualified Reservist Distribution to this Plan.

10.7 Incorporation by Reference

To the extent required for the administration of this Plan, the terms of the Funding Vehicle in effect with respect to the Participant's Account under the Plan, as currently in effect or as hereafter modified or amended, are hereby fully incorporated herein by reference, to the extent that such terms are not inconsistent with the Plan, the Code and ERISA.

**IN WITNESS WHEREOF**, the University, acting through its duly authorized officers, has caused this Agreement to be executed on this 4<sup>th</sup> day of June, 2011.

**CASE WESTERN RESERVE UNIVERSITY**

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_