

PRESBYTERIAN COLLEGE
DEFINED CONTRIBUTION RETIREMENT PLAN

**PRESBYTERIAN COLLEGE DEFINED
CONTRIBUTION RETIREMENT PLAN**

THIS INDENTURE made on the 18th day of November, 2009, by Presbyterian College (the “Institution”);

WITNESSETH:

WHEREAS, the Institution maintains the Presbyterian College Defined Contribution Retirement Plan (the “Plan”), which plan is intended to be a plan described under Section 403(b) of the Internal Revenue Code of 1986 (the “Code”); and

WHEREAS, the Institution desires to amend the Plan to comply with final regulations issued under Section 403(b) of the Code; and

WHEREAS, the Plan has been and shall continue to be a “non-electing church plan” under Section 410(d) of the Internal Revenue Code of 1986, as amended, and Section 4(b)(2) of the Employee Retirement Income Security Act of 1974, as amended;

NOW, THEREFORE, effective January 1, 2009, except as otherwise provided herein, the Institution does hereby amend and restate the Plan as follows:

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ARTICLE I DEFINITIONS

- 1.1 **Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.
- 1.2 **Affiliate** means (a) any corporation which is a member of the same controlled group of corporations (within the meaning of Code Section 414(b)) as is the Institution, (b) any other trade or business (whether or not incorporated) under common control (within the meaning of Code Section 414(c)) with the Institution, (c) any other corporation, partnership, or other organization which is a member of an affiliated service group (within the meaning of Code Section 414(m)) with the Institution, and (d) any other entity required to be aggregated with the Institution pursuant to regulations under Code Section 414(o). For purposes of determining when entities are treated as the same employer under Code Sections 414(b), (c), (m), and (o), the rules set forth under Treasury Regulations Section 1.414(c)-5 shall apply.
- 1.3 **Annual Additions** means for any Participant for any Limitation Year, the sum of certain Institution contributions and forfeitures to the Plan, contributions to any individual medical account (as defined in Section 415(l)(2) or 419A(d) of the Code) which is part of the Plan, and other amounts as determined in Code Section 415(c)(2) in effect for that limitation year.
- 1.4 **Beneficiary(ies)** means the individual, institution, trustee, or estate designated by the Participant in accordance with the Funding Vehicle to receive part or all of the Participant's benefits at his or her death. If a Participant fails to specify a Beneficiary and is married at the time of his or her death, the Participant's spouse shall automatically receive one-half (1/2) of the Participant's vested Accumulation Account(s) and the Participant's estate shall receive the remaining one-half (1/2) of the Participant's Accumulation Account(s). If the Participant fails to specify a Beneficiary and he or she is not married at the time of his death, the Participant's Accumulation Account(s) shall be paid to his estate.
- 1.5 **Board** means the Institution's Board of Trustees.
- 1.6 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.7 **Date of Employment or Reemployment** means the effective date of appointment for a faculty member. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of services as an employee during the employee's most recent period of service with the Institution.

- 1.8 ***Disabled or Disability*** means the disability of the Participant within the meaning of Code Section 72(m)(7).
- 1.9 ***Eligible Employee*** means any individual who is employed by the Institution as a Full-Time Employee; provided, however, that the term “Eligible Employee” shall not include (a) students enrolled in, and regularly attending classes at, the Institution, (b) individuals classified as leased employees (as defined in Code Section 414(n)), or (c) independent contractors. The Plan Administrator shall have the sole discretionary authority to determine whether an individual is an Eligible Employee and all determinations shall be final and binding.
- 1.10 ***Eligible Employer*** means any educational organization that meets the eligibility requirements of Code Section 403(b).
- 1.11 ***Full-Time Employee*** means an employee who normally works at least 30 hours per week.
- 1.12 ***Fund Sponsor*** means an insurance, variable annuity, or investment company that provides Funding Vehicles available to Participants under this Plan.
- 1.13 ***Funding Vehicles*** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.
- 1.14 ***Hour of Service*** means:
- (a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.
 - (b) Each hour for which an employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, or maternity or paternity leave (whether paid or unpaid). 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 Institution regardless of whether payment is made by or due from the Institution directly or made indirectly through a trust fund, insurer or other entity to which the Institution contributes or pays premiums. No more than 501 Hours of Service shall be credited under this paragraph. Hours of Service 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 reference.

- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Institution, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in Subsection (b) above.
- (d) Each hour for which an Eligible Employee is on an authorized unpaid leave (such as service with the Armed Forces, jury duty, educational leave). These hours shall be credited to the Eligible Employee for the computation period or periods in which such authorized leaves take place; provided, however, that no more than 501 hours shall be credited under this Subsection (d).
- (e) Notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in accordance with the service crediting requirements of Code Section 414(u), the Uniformed Services Employment and Reemployment Rights Act of 1994, and the Family and Medical Leave Act of 1993.
- (f) Hours of Service shall be credited for employment with Affiliates of the Institution.

1.15 **Institution** means Presbyterian College.

1.16 **Institution Disability Contributions** means the contributions made by the Institution under Section 4.2 of this Plan.

1.17 **Institution Plan Contributions** means the contributions made by the Institution under Section 4.1 of this Plan.

1.18 **Limitation Year** means a calendar year.

1.19 **Normal Retirement Age** means age 65.

1.20 **Participant** means any Eligible Employee of the Institution participating in this Plan.

1.21 **Plan** means this Presbyterian College Defined Contribution Retirement Plan as in effect from time to time.

1.22 **Plan Administrator** means the Executive Vice President of the Institution who is appointed to administer the Plan on behalf of the Institution in accordance with Sections 8.1 and 8.2.

1.23 **Plan Compensation** means the amount reported as wages on the Eligible Employee's Form W-2, including amounts not currently includible in gross income because of the application of Code Section 125 or 403(b).

Plan Compensation shall also include any differential wage payment (as defined in Code Section 3401(h)(2)) made by the Institution to a Participant with respect to any period

during which the Participant is performing service in the uniformed services (as defined in Code Section 3401(h)(2)(A)) while on active duty for more than thirty (30) days, which represents all or a portion of the wages the Participant would have received from the Institution if the individual were performing services for the Institution.

Anything herein to the contrary notwithstanding, the amount of a Participant's Plan Compensation for any Plan Year shall not exceed \$245,000 (for 2009), or an adjusted amount as determined pursuant to Code Sections 401(a)(17) and 415(d).

Further, for purposes of determining the amount of Plan Contributions, Plan Compensation shall only include amounts received from the Institution for the portion of the Plan Year during which the employee was a Participant.

- 1.24 **Plan Contributions** means Institution Disability Contributions and Institution Plan Contributions.
- 1.25 **Plan Entry Date** means the first day of each month.
- 1.26 **Plan Year** means January 1 through December 31.
- 1.27 **Qualified Election** means a waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. No waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall be effective unless: (a) the Participant's spouse consents in writing to the election; (b) the election designates a specific Beneficiary(ies), including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (unless the spouse expressly permits designations by the Participant without any further spousal consent); (c) the spouse's consent acknowledges the effect of the election; and (d) the spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment that may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative that there is no spouse or that the spouse cannot be located, a waiver shall be deemed a Qualified Election.

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

- 1.28 ***Qualified Joint and Survivor Annuity*** means an immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse that is not less than fifty percent (50%) (and not more than one hundred percent (100%)) of the amount payable during the joint lives of the Participant and the spouse that can be purchased with the Participant's vested Accumulation Accounts. The percentage of the survivor annuity under the Plan shall be fifty percent (50%).
- 1.29 ***Qualified Optional Survivor Annuity*** means an immediate annuity for the life of the Participant with a survivor annuity for the life of his spouse which is seventy-five percent (75%) of the amount of the annuity payable during the joint lives of the Participant and his spouse and which is the actuarial equivalent of a single life annuity.
- 1.30 ***Qualified Preretirement 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 Participant's Accumulation Account(s) at the date of death.
- 1.31 ***Retirement Date*** means the date the Participant retires on or after attaining Normal Retirement Age.
- 1.32 ***Section 415 Compensation*** means the Participant's compensation received from the Institution or an Affiliate that is an "eligible employer" (as defined in Treasury Regulations Section 1.403(b)-2(b)(8)) for services performed for the Institution or Affiliate that is currently includible in the Participant's gross income for the most recent period (ending not later than the close of the taxable year) which may be counted as one year of service (determined in accordance with Code Section 403(b)(4)), plus any elective deferral (as defined in Code Section 402(g)(3)) and any amount which is contributed or deferred by the Institution or an Affiliate that is an "eligible employer" (as defined in Treasury Regulations Section 1.403(b)-2(b)(8)) at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code Section 125, 132(f)(4), 402(e)(2), 401(h)(1)(B), 402(k), or 457(b).

Section 415 Compensation shall also include any differential wage payment (as defined in Code Section 3401(h)(2)) made by the Institution to a Participant with respect to any period during which the Participant is performing service in the uniformed services (as defined in Code Section 3401(h)(2)(A)) while on active duty for more than thirty (30) days, which represents all or a portion of the wages the Participant would have received from the Plan Sponsor if the individual were performing services for the Institution.

Anything herein to the contrary notwithstanding, the amount of a Participant's Section 415 Compensation for any Plan Year shall not exceed \$245,000 (for 2009), or an adjusted amount as determined pursuant to Code Section 401(a)(17) and 415(d).

If for any taxable year of the Participant this section applies to two or more annuity contracts purchased by the Institution or an Affiliate, such contracts shall be treated as one contract.

Notwithstanding the foregoing, with respect to a Participant who is Disabled, such Participant's Section 415 Compensation shall mean the Section 415 Compensation the Participant would have received for the year if the Participant was paid at the rate of compensation paid immediately before becoming Disabled.

- 1.33 ***Severance from Employment*** means the cessation of employment (as defined in Treas. Reg. Section 1.403(b)-2(b)(19)) with the Institution or an Affiliate for any reason, including death, Disability, resignation, or dismissal with or without cause. In the event an employee is transferred from the Institution or Affiliate to another Affiliate, the employee shall not be deemed to have incurred a Severance from Employment until he is no longer employed by the Institution or any Affiliate; provided, however, that, in accordance with Treasury Regulations Section 1.403(b)-6(h), a Participant shall have incurred a Severance from Employment if the Participant becomes an employee of an Affiliate that is not an "eligible employer" (as defined in Treasury Regulations Section 1.403(b)-2(b)(8)).
- 1.34 ***Year of Service*** means a twelve-month period during which an employee completes 1,000 or more Hours of Service. The computation period for purposes of determining whether an employee has completed a Year of Service shall be each 12-month period ending on the anniversary of the Eligible Employee's Date of Employment or Reemployment. For purposes of eligibility for participation, service with an Eligible Employer during the period immediately preceding an Eligible Employee's Date of Employment or Reemployment with the Institution shall be counted.

ARTICLE II ESTABLISHMENT OF PLAN

The Board of the Institution established this Plan as of 1975.

This plan document sets forth the current provisions of this Code Section 403(b) plan, which is being amended and restated effective as of January 1, 2009, to ensure continued compliance with applicable provisions of the Code, including the provisions of the final regulations issued with respect to Code Section 403(b). Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants.

ARTICLE III ELIGIBILITY FOR PARTICIPATION

- 3.1 ***Eligibility.*** An Eligible Employee shall be eligible to begin participation in this Plan on the Plan Entry Date coinciding with or next following his or her completion of one Year of Service.

- 3.2 **Notification.** The Plan Administrator shall notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.
- 3.3 **Enrollment in Plan.** To participate in the Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Plan Administrator. An Eligible Employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms shall be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date..
- 3.4 **Reemployment.** A former employee who is reemployed by the Institution as an Eligible Employee shall be eligible to participate upon meeting the requirements of Section 3.1 of the Plan. A former employee who satisfied the requirements of Section 3.1 of the Plan before termination of employment shall be eligible to begin participation on the Plan Entry Date coinciding with or next following his or her Date of Reemployment provided he or she is an Eligible Employee on such date.
- 3.5 **Termination of Participation.** A Participant shall continue to be eligible for the Plan until one of the following conditions occur:
- (a) the Participant ceases to be an Eligible Employee; or
 - (b) the Plan is terminated.

If a Participant begins to receive retirement benefits from the Accumulation Account(s) arising from Plan Contributions under this Plan before termination of employment, he or she shall cease to be eligible and no further Plan Contributions shall be made on his or her behalf.

ARTICLE IV PLAN CONTRIBUTIONS

- 4.1 **Institution Plan Contributions.** The Institution shall make Institution Plan Contributions to the Plan on behalf of Eligible Employees who have satisfied the requirements of Article III of the Plan, in accordance with the schedule below:
- (a) For Institution Plan Contributions made prior to July 1, 2009:

Institution Plan Contributions as a Percentage of Base Compensation

Years of Service

Plan Contribution

1 year but less than 2 years	4% of Base Compensation
2 years but less than 4 years	6% of Base Compensation
4 years or more	8.5% of Base Compensation

(b) For Institution Plan Contributions made beginning on and after July 1, 2009:

Institution Plan Contributions as a Percentage of Base Compensation

<u>Years of Service</u>	<u>Base Contribution</u>
1 year but less than 2 years	3.60% of Base Compensation
2 years but less than 4 years	5.40% of Base Compensation
4 years or more	7.65% of Base Compensation

Base Compensation means the Eligible Employee’s base compensation (a) in the case of hourly employees, based on actual regular hours worked and the Eligible Employee’s regular hourly rate of pay in effect for the payroll period, and (b) in the case of salaried employees, based on the Eligible Employee’s annual salary rate in effect for the payroll period. Institution Plan Contributions are determined on the basis of Base Compensation for the payroll period for which the Institution Plan Contributions are made.

For purposes of determining the amount of Institution Plan Contributions, Base Compensation for any Plan Year shall not include any Base Compensation in excess of the limit determined pursuant to Code Section 401(a)(17) and [shall only include amounts received from the Institution for the portion of the Plan Year during which the employee was a Participant.]

- 4.2 ***Institution Disability Contributions.*** Institution Disability Contributions shall be made on behalf of each Participant who is Disabled. Institution Disability Contributions shall be equal to 100% of Institution Plan Contributions immediately before the Participant became Disabled, to the extent permitted by Code Section 415 or 403(b) for the first sixty (60) calendar days of Disability. The Institution’s long-term disability plan shall continue Institution Disability Contributions to the extent permitted by Code Section 415 or 403(b) for calendar day 61 and beyond of Disability.
- 4.3 ***When Contributions Are Made.*** Plan Contributions shall be made as of the last day of each month and shall be forwarded to the Fund Sponsor within a time frame that is reasonable for the proper administration of the Plan.
- 4.4 ***Allocation of Contributions.*** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) at any time.

- 4.5 **Leave of Absence.** During a paid leave of absence, Plan Contributions shall continue to be made for a Participant in accordance with Section 4.1 on the basis of Plan Compensation then being paid by the Institution. No Plan Contributions shall be made during an unpaid leave of absence.
- 4.6 **Uniformed Services.** Notwithstanding any provision of this Plan or the Funding Vehicles to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u) and the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.
- 4.7 **Maximum Plan Contributions: Code Section 415:** Notwithstanding any provision of this Plan or the Funding Vehicles to the contrary, the total Annual Additions made for any Participant for any Limitation Year shall not exceed (a) \$49,000 (for 2009), as adjusted for increases in the cost of living under Section 415(d) of the Code; or (b) 100% of the Participant's Section 415 Compensation for the Limitation Year. The compensation limit referred to in Clause (b) of the immediately preceding sentence shall not apply to any contributions for medical benefits after separation from service (within the meaning of Code Section 401(h) or Code Section 419(f)(2)) which is otherwise treated as an Annual Addition.

If the Annual Additions made for a Participant exceed the limitations set forth in this Section 4.8, such excess Annual Additions shall be corrected in accordance with the Employee Plans Compliance Resolution System, Revenue Procedure 2008-50, or any superseding guidance, including, but not limited to, the preamble to the final Treasury Regulations issued under Code Section 415.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for Code Section 415, then the Annual Additions under the other plan shall be reduced first. If any further reductions are necessary, Annual Additions shall then be reduced under this Plan.

ARTICLE V FUNDING AND DIRECTED INVESTMENTS

- 5.1 **Funding Vehicles.** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors and their Funding Vehicles are:

- (a) Teachers Insurance and Annuity Association (TIAA):

TIAA Retirement Annuity (RA):

Traditional Annuity
Real Estate Account

(b) College Retirement Equities Fund (CREF)

CREF Retirement Unit-Annuity (RA):

Stock Account
Money Market Account
Bond Market Account
Social Choice Account
Global Equities Account
Growth Account
Equity Index Account
Inflation-Linked Bond Account

The Institution's current selection of Fund Sponsors and Funding Vehicles shall not limit future additions or deletions of Fund Sponsors and Funding Vehicles. Any additional accounts offered by a Fund Sponsor shall automatically be made available to Participants in accordance with the procedures established by the Institution and the Fund Sponsor.

- 5.2 ***Directed Investments - General.*** Each Participant may direct the investment of his or her Accumulation Accounts by making investment directions in such form and at such time as the Institution shall designate. Investment directions shall specify the investment funds in which the Participant's Accumulation Account is to be invested. Investment directions may be made at least quarterly, and more frequently if the Institution so determines, in whole percentages. Investment directions shall be submitted to such person or persons as the Institution designates to implement Participant's directions. A Participant's investment directions shall be implemented as soon as is administratively feasible, consistent with applicable law and the Fund Sponsor's fiduciary responsibilities. An investment direction shall continue to apply until a subsequent direction is properly submitted. Notwithstanding the foregoing, the Institution may select and/or restrict the investment funds in which Participants may invest their Accumulation Account(s).
- 5.3 ***Assumption of Risk by Participant.*** Each Participant has the option of directing the investments in his Accumulation Account and assumes the risk in connection with any decrease in value of his separate Accumulation Account in which the Participant directs investments, and such Accumulation Account shall be the sole source of payments to be made to each Participant under the Plan.
- 5.4 ***Limitations.*** The Fund Sponsor may decline to implement a Participant's investment directions if such directions would:
- (a) Result in a prohibited transaction as described in Code Section 4975;
 - (b) Generate taxable income to the Plan or jeopardize its tax-qualified status;
 - (c) Not be in accordance with the documents and instruments governing the Plan;

- (d) Cause a fiduciary to maintain the indicia of ownership in an asset outside jurisdiction of the United States district courts;
- (e) Result in a loss greater than the balance in the Participant's Accumulation Account; or
- (f) Result in certain transactions between the Plan and the Institution.

5.5 ***Election of Investment Fund.***

- (a) The Institution shall designate investment funds from time to time for investment by Participants of their Accumulation Accounts.
- (b) Plan assets may be invested in a short-term investment fund or in any other manner deemed appropriate by the Fund Sponsor, pending investment in the appropriate investment fund.

5.6 ***Application to Beneficiaries and Alternate Payees.*** All Beneficiaries of deceased Participants and all former Participants who have Accumulation Account(s) in the Plan may direct the investment of their Accumulation Account(s) in accordance with the provisions of this Article V. After an Alternate Payee's interest in a Participant's Accumulation Account has been finally determined pursuant to Section 10.6, the Alternate Payee may direct the investment of the Alternate Payee's Accumulation Account in accordance with the provisions of this Section, to the same extent that the Participant could have directed the investment of the Accumulation Account. References to "Participant" in this Article V shall include Beneficiaries and Alternate Payees, to the extent required under applicable law.

5.7 ***Allocation of Income.*** All net income that is earned on investments in a Funding Vehicle shall be reinvested by the Fund Sponsor in that Funding Vehicle.

5.8 ***Fund Transfers.*** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles.

**ARTICLE VI
VESTING**

Plan Contributions. All Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

**ARTICLE VII
BENEFITS**

7.1 ***Retirement Benefits***

- (a) Notwithstanding any other provision in this Plan, distributions may be paid only when a Participant attains a Retirement Date, has a Severance from Employment, or dies.
- (b) Upon the occurrence of an event described in Subsection (a) of this Section 7.1, the Participant (or his or her Beneficiary, as applicable) shall be entitled to the full current value of the Participant's Accumulation Account(s). The Participant (or his or her Beneficiary, as applicable) may elect to receive the payment of his or her benefits under the Plan in any of the forms of benefit available under the Plan and the relevant Funding Vehicles (and the terms relating to benefit distributions under the Funding Vehicle contracts are incorporated herein by reference). The forms of benefit available under the Plan include:
 - (i) Single life annuities as provided under the Funding Vehicle contract;
 - (ii) Joint and survivor annuities as provided under the Funding Vehicle contract;
 - (iii) Cash withdrawals (to the extent the Funding Vehicle permits) and subject to the limitations in the "Cash Withdrawals" section of this Article;
 - (iv) Fixed period annuities, to the extent the Funding Vehicle permits;
 - (v) Retirement Transition Benefit;
 - (vi) Repurchase, subject to the limitations in Section 7.10; and
 - (vii) Such other annuity and withdrawal options as provided under the Funding Vehicle contract.

Notwithstanding anything in the Plan or the Funding Vehicles to the contrary, the forms of benefit provided under the Plan shall include a Qualified Joint and Survivor Annuity and on and after January 1, 2008, shall include a Qualified Optional Survivor Annuity.

- (c) Notwithstanding anything in the Plan or the Funding Vehicles to the contrary, the distribution of a Participant's (or Beneficiary's, as applicable) benefits shall be made in accordance with the Minimum Distribution Requirements of Section 7.8 of the Plan.

7.2 **Cash Withdrawals.** A Participant may receive a cash withdrawal as permitted by the Funding Vehicle (and the terms of the Funding Vehicle contracts are incorporated herein by reference); provided, however, that cash withdrawals may not be received while the Participant is employed by the Institution.

- 7.3 **Retirement Transition Benefit.** Unless the Minimum Distribution Annuity or the Limited Periodic Withdrawal Option is elected, a Participant may elect to receive a one time lump-sum payment of up to ten percent (10%) of his or her Accumulation Account(s) in the TIAA and/or the CREF account(s) at the time annuity income begins, provided the one sum payment from each TIAA contract and/or CREF account(s) does not exceed ten percent (10%) of the respective Accumulation Account(s) being converted to retirement income.
- 7.4 **Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary(ies) under the options offered by the Funding Sponsors. Distribution of survivor benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).
- 7.5 **Claims for Benefits.** Claims for benefits are initiated by writing directly to the Fund Sponsor. Benefits shall be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms shall be provided to the Participant, the surviving spouse, or the Beneficiary(ies) by the Fund Sponsor.
- 7.6 **Benefits Not Payable Without Consent.** Notwithstanding any provision of the Plan or the Funding Vehicles to the contrary,
- (a) if the current value of a Participant's Accumulation Account(s) exceeds \$1,000,
 - (i) it shall not, without the Participant's consent, be distributed prior to the date the Participant attains Normal Retirement Age or dies; or
 - (ii) if the Participant is deceased and was married, it shall not, without the consent of the Participant's surviving spouse, be distributed prior to the date the Participant would have attained Normal Retirement Age; and
 - (b) the payment to be made to a Participant shall be made as to satisfy the incidental death benefit requirement under Code Section 401(a)(9)(G).
- 7.7 **Minimum Distribution Requirements.** The requirements of this Section 7.7 shall apply to any distribution of a Participant's vested Accumulation Account(s) and shall take precedence over any inconsistent provisions of this Plan except as otherwise provided in the "Joint and Survivor Annuity Requirements" provisions of this Article VII. Distributions in all cases shall be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the minimum distribution incidental benefit requirements of Code Section 401(a)(9).
- (a) Required Beginning Date. The Participant's Accumulation Account(s) shall be distributed, or begin to be distributed, no later than the Participant's Required Beginning Date.

(b) Required Minimum Distributions Upon Death of Participant Before Required Beginning Date.

- (i) If the Participant dies before distribution of his or her vested Accumulation Account(s) begins, distribution of the Participant's entire vested Accumulation Account(s) shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death, except where an election is made to receive distributions in accordance with (1) or (2) below:
- (1) If any portion of the Participant's vested Accumulation Account(s) is payable to a designated beneficiary(ies), distributions may be made over a period certain not greater than the life expectancy of the designated beneficiary(ies) commencing by December 31 of the calendar year immediately following the calendar year in which the Participant died;
- (2) If the Participant's surviving spouse is the sole designated beneficiary, the date distributions are required to begin in accordance with (1) above must not be earlier than the later of:
- (A) December 31 of the calendar year immediately following the calendar year in which the Participant died, or
- (B) December 31 of the calendar year in which the Participant would have attained age 70½.
- (ii) An election under Paragraph (i) of this Subsection (b) must be made no later than the earlier of (1) the end of the calendar year in which distribution would be required to commence in order to satisfy Subparagraph (1) of Paragraph (i) or (2) or the end of the calendar year which contains the fifth anniversary of the Participant's death. As of such date, the election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent calendar years .
- (iii) If the Participant has no designated beneficiary(ies), or if the designated beneficiary(ies) does not elect a method of distribution, distribution of the Participant's entire vested Accumulation Account(s) must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (iv) For purposes of Paragraphs (i) and (iii) of this Subsection (b), distributions are considered to begin on the Participant's required beginning date. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required

beginning date (or to the Participant's surviving spouse) before the date distributions are required to begin to the surviving spouse pursuant to Subparagraph (2) of Paragraph (i) of this Subsection (b) of the Plan), the date distributions are considered to begin is the date distributions actually commence.

- (v) Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions shall be made in accordance with Subsections (c) and (d) of this Section 7.7. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations.
- (vi) Distributions may be made only over the periods detailed in Subsection (f) of this Section 7.7.

(c) Required Minimum Distributions During Participant's Lifetime.

- (i) During the Participant's lifetime, the minimum amount that shall be distributed for each Distribution Calendar Year is the lesser of:
 - (1) 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
 - (2) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's 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 spouse's birthday in the distribution calendar year.
- (ii) Required minimum distributions shall be determined under this Section 7.7(c) beginning with the first distribution calendar year and up to and including the distributions calendar year that includes the Participant's date of death.

(d) Required Minimum Distributions After Participant's Death.

- (i) If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that shall 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 spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (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 designated beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (ii) If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the Participant's death, the minimum amount that shall 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 year.

(e) Amount of Distribution if Participant Designates a Beneficiary.

If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that shall 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 remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 7.7(g) of the Plan.

(f) Limitation on Distribution Period.

Distributions may be made only over one of the following periods (or a combination thereof):

- (i) the life of the Participant;
- (ii) the life of the Participant and a designated beneficiary(ies);
- (iii) a period certain not extending beyond the life expectancy of the Participant; or
- (iv) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated beneficiary(ies).

(g) Definitions.

For purposes of this Section 7.7, the following definitions shall apply:

- (i) “designated beneficiary” means the individual who is designated as the Beneficiary under Section 1.4 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Treas. Reg. Section 1.401(a)(9)-4;
- (ii) “distribution calendar year” means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant’s required beginning date. For distributions beginning after the Participant’s death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 7.8(b) of the Plan. The required minimum distribution for the Participant’s first distribution calendar year shall 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, shall be made on or before December 31 of that distribution calendar year;
- (iii) “life expectancy” means life expectancy as computed by use of the Single Life Table in Treasury Regulations Section 1.401(a)(9)-9;
- (iv) “Participant’s account balance” means the account balance 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. 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; and

- (v) “required beginning date” means, for a Participant who is not a five percent (5%) owner (as defined in Code Section 416), the April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70½ or (2) the calendar year that the Participant retires; and means, for a Participant who is a five percent (5%) owner, the April 1 of the calendar year following the year in which the Participant attains age 70½. A Participant who (A) is not a five percent (5%) owner; (B) attained age 70½ before January 1, 1997; (C) is an active Employee; and (D) is receiving distributions under the Plan, may continue to receive Plan distributions or may elect to defer the receipt of Plan distributions until the Participant retires from service with the Institution, provided any such election complies with Code Section 401(a)(11) and 417 or the alternative rules for compliance under Internal Revenue Service Notice 97-75, Q&A-8.

(h) Compliance with Rules Regarding Required Minimum Distributions.

Notwithstanding any Plan provision to the contrary, all distributions shall be made in accordance with Treasury Regulations Section 1.403(b)-6(e) using the required beginning date as defined under Subsection (g) of this Section 7.7 of the Plan.

7.8 ***Commencement of Benefits.*** Unless the Participant elects otherwise, distribution of benefits shall begin no later than the 60th day after the latest of the close of the Plan Year in which:

- (a) the Participant attains age 65 (or Normal Retirement Age, if earlier);
- (b) occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan; or,
- (c) the Participant terminates service with the Institution.

Notwithstanding the foregoing, the failure of a Participant and spouse to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

A Participant who elects to defer receipt of benefits may not do so to the extent that he or she is creating a death benefit that is more than incidental.

7.9 ***Joint and Survivor Annuity Requirements.*** The provisions of this section shall apply to any Participant who is credited with one Hour of Service at the Institution on or after August 23, 1984. However, any Participant in this Plan not receiving benefits as of August 23, 1984, may elect to have benefits paid in a manner described herein.

Pre-retirement Spousal Entitlement. Unless a Qualified Election is made, if a married Participant dies before the date benefits commence, the Participant's vested Accumulation Account(s) shall be applied toward the purchase of a Qualified Pre-retirement Survivor Annuity. The surviving spouse may elect to have such annuity distributed within a reasonable period after the Participant's death.

Notification of Pre-retirement Spousal Entitlement. In the case of a Qualified Pre-retirement Survivor Annuity, the Plan Administrator shall provide each Participant, within the applicable period for such Participant, a written explanation of the Qualified Pre-retirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements for notification of a Qualified Joint and Survivor Annuity.

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

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

Post-retirement Spousal Entitlement. Unless a Qualified Election is made within the 180-day period ending on the date benefits commence, a married Participant's vested Accumulation Account(s) shall be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's vested Accumulation Account(s) shall be paid in the form of a single life annuity.

Notification of Post-retirement Spousal Entitlement. In the case of a Qualified Joint and Survivor Annuity, the Plan Administrator shall no less than 30 days and no more than 180 days before the date benefits commence provide each Participant a written explanation of: (a) the terms and conditions of the Qualified Joint and Survivor Annuity and the Qualified Optional Survivor Annuity; (b) the Participant's right to make and the

effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (c) the rights of a Participant's spouse to consent to any election to waive the Qualified Joint and Survivor Annuity; and (d) the Participant's right to revoke an election to waive the Qualified Joint and Survivor Annuity, and the effect of such revocation.

If the Participant, after receiving the explanation, elects a form of benefit and the spouse consents to the benefit (if necessary), the Plan shall not fail to satisfy the requirements of this paragraph merely because the annuity starting date is less than 30 days after the written explanation is given to the Participant provided (1) the explanation is provided prior to the annuity starting date; (2) the distribution does not commence before the expiration of the seven-day period that begins the day after the explanation is provided to the Participant; and (3) before the expiration of the seven-day period, or the annuity starting date, if later, the Participant may revoke the distribution election.

7.10 **Repurchase.** A Participant's accumulations in TIAA-CREF Retirement Annuities may be received in a single sum through "repurchase" if certain conditions are met. If a Participant in this Plan has a Severance from Employment with the Institution and requests that TIAA-CREF repurchase his or her Retirement Annuities, the Institution shall approve such repurchase if, at the time of the request, all of the following conditions apply:

- (a) The total TIAA Traditional Annuity accumulation in all 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.

Amounts paid to the Participant on repurchase shall be in full satisfaction of the Participant's and his or her spouse's rights to retirement or survivor benefits from TIAA-CREF attributable to such amounts.

7.11 **Direct Rollovers.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 7.11, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. The Fund Sponsor shall be responsible for providing, within a reasonable period of time before making an initial eligible rollover distribution, an explanation to the Participant of his right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

If a Participant or Beneficiary is a distributee of any eligible rollover distribution, the value of a Participant's or Beneficiary's vested Accumulation Account is \$1,000 or less and the Participant or Beneficiary fails to make an election under this Section 7.11 either to have his eligible rollover distribution paid directly to an eligible retirement plan or to receive the eligible rollover distribution and roll it over himself, the Plan Administrator shall direct that such eligible rollover distribution be paid in a lump sum to such Participant or Beneficiary as soon as administratively feasible.

For this section, the following definitions apply:

- (a) “eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (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 years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); and (iii) any amount distributed on account of hardship. The portion of a distribution that is not includible in gross income (*i.e.*, an after-tax amount) may, to the extent permitted under Code Sections 401(a)(31) and 402(c), be directly rolled over to (1) an individual retirement account or annuity described in Code Sections 408(a) or (b), or (2) to a qualified trust or an annuity contract described in Code Section 403(b) that agrees to account separately for amounts so transferred and any earnings thereon, including separately accounting for the portion of such distribution that is includible in gross income and the portion of such distribution that is not so includible;
- (b) “eligible retirement plan” means:
 - (i) an individual retirement account described in Code Section 408(a),
 - (ii) an individual retirement annuity described in Code Section 408(b),
 - (iii) a qualified trust described in Code Section 401(a),
 - (iv) an annuity plan described in Code Section 403(a),
 - (v) a tax-sheltered annuity contract described in Code Section 403(b), or
 - (vi) an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state; and

which agrees to separately account for amounts transferred into such plan from this Plan, that in each case accepts the distributee’s eligible rollover distribution. This definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as described in Code Section 414(p).

Effective January 1, 2008, the definition of “eligible retirement plan” shall also include an individual retirement plan described in Paragraphs (i) and (ii) of this Subsection (b) established for the purpose of receiving the distribution on behalf

of an individual who is a designated beneficiary (as defined in Paragraph (i) of Subsection (g) of Section 7.7 of the Plan) and who is not the surviving spouse of the Participant.

Effective January 1, 2008, a distributee may, in accordance with Code Section 408A, elect to directly rollover to an individual retirement plan that is a Roth IRA any “eligible rollover distribution” that may be payable under the Plan to the distributee;

- (c) “distributee” means an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse; and
- (d) “direct rollover” means a payment by the Plan directly to the eligible retirement plan specified by the distributee.

ARTICLE VIII ADMINISTRATION

8.1 ***Plan Administrator.*** The Executive Vice President of the Institution (or such other position as may be appointed from time to time by the Institution) is the administrator of this Plan and is responsible for enrolling Participants, sending Plan Contributions for each Participant to the Fund Sponsors, and for performing other duties required for the operation of the Plan.

8.2 ***Authority of the Plan Administrator.***

- (a) Except as otherwise specifically provided herein, the Plan Administrator has all the powers and authority expressly conferred upon it herein and further shall have discretionary authority to determine all questions concerning eligibility, contributions and benefits under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration, interpretation, and application of the Plan. Accordingly, benefits under the Plan shall be paid only if the Plan Administrator decides in its discretion that an applicant is entitled to benefits. In exercising these powers and authority, the Plan Administrator shall exercise good faith, apply standards of uniform application, and refrain from arbitrary action. All determinations of the Plan Administrator shall be conclusive and binding on all parties, including but not limited to, employees, Participants, and Beneficiaries, subject to the Plan and applicable law.

- (b) The Plan Administrator may cause the Institution to employ such attorneys, agents, and accountants as it finds necessary or advisable to assist it in carrying out its duties.
- (c) The Plan Administrator shall have the sole discretionary authority to determine eligibility for participation and benefits and to compute and make Plan Contributions.
- (d) The Plan Administrator may delegate any of its powers, authority, or responsibilities to an individual or an administrative committee. Any such delegation shall be set forth in writing. Any action taken by the Plan Administrator that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations shall be final and binding upon the Plan Administrator, the Institution, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Plan Administrator or the Institution.

8.3 ***Action of the Institution.*** Any act authorized, permitted, or required to be taken by the Institution under the Plan, which has not been delegated in accordance with the provisions of this Plan, may be taken by a majority of the members of the Board, either by vote at a meeting, or in writing without a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Institution under the Plan shall be in writing and signed by either (a) a majority of the members of the Board, or by any member or members as may be designated by an instrument in writing, signed by all members, as having authority to execute the documents on its behalf, or (b) a person who has been duly authorized to act for the Institution in accordance with the provisions of this Plan. Any action taken by the Institution that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations shall be final and binding upon the Institution, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Institution.

8.4 ***Indemnification.*** The Institution shall satisfy any liability actually and reasonably incurred by any members of the Board, by the Plan Administrator, or by any person to whom any power, authority or responsibility is delegated under this Plan (other than the Fund Sponsors). These liabilities include expenses, attorneys' fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement.

8.5 ***Investment Manager.*** To the extent that Participants allocate contributions to the TIAA Real Estate Account, TIAA shall be the investment manager (within the meaning of Section 3(38) of the Employee Retirement Income Security Act of 1974, as amended)

with respect to the account balance in the TIAA Real Estate Account. TIAA acknowledges that it is a fiduciary with respect to such assets.

- 8.6 **No Reversion.** Under no circumstances or conditions shall any Plan Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution; provided, however, that if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made.

ARTICLE IX AMENDMENT AND TERMINATION

9.1 ***Amendment and Termination.***

- (a) While it is expected that this Plan shall continue indefinitely, the Institution reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of its Board. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Institution shall notify all Participants of the termination or discontinuance. As of the date of complete or partial termination, all affected Accumulation Accounts shall become nonforfeitable to the extent that benefits are accrued.
- (b) In the event the Plan is terminated, all Participants' Accumulation Accounts shall be considered immediately distributable, including any Participant's Accumulation Account which is greater than \$1,000, and the Plan Administrator shall have the option to direct payment of all such accounts (in cash or in kind) without the necessity of obtaining the written consent of the Participant and the Participant's spouse prior to such distribution; provided, however, that Accumulation Accounts shall not be distributed upon Plan termination if the Institution or an Affiliate makes contributions to any Code Section 403(b) contract that is not part of the Plan during the period beginning on the date of Plan termination and ending 12 months after distributions of all assets from the Plan, except as permitted under Treasury Regulations Section 1.403(b)-10(a)(1).
- (c) Upon termination of the Plan, the Plan Administrator shall make reasonable efforts to locate all Participants and Beneficiaries to whom payment is due. If a Participant or Beneficiary to whom payment is due cannot be located, or if the Plan Administrator cannot otherwise obtain directions concerning the distribution of the Participant's or Beneficiary's benefit, the Plan Administrator may follow the procedures for distribution of benefits as set forth by the U.S. Department of Labor guidance that may be issued from time to time.

- 9.2 **Limitations.** Notwithstanding the provisions of Section 9.1, the following conditions and limitations apply:

- (a) No amendment shall be made which shall operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made.
- (b) No amendment shall deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

ARTICLE X MISCELLANEOUS

- 10.1 ***Plan Non-Contractual.*** Nothing in this Plan shall be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan shall be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Institution shall remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2 ***Claims of Other Persons.*** The provisions of the Plan shall not be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 ***Merger, Consolidation, or Transfers of Plan Assets.*** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant shall receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before the merger, consolidation, or transfer of assets or liabilities.
- 10.4 ***Finality of Determination.*** All determinations with respect to the status of employees and the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there shall be no duplication of Years of Service credited to an employee for any one period of employment.
- 10.5 ***Contracts - Incorporation by Reference.*** The terms of each Funding Vehicle issued to a Participant in accordance with the provisions of Article V are a part of the Plan as if fully set forth in the plan document and the provisions of each are incorporated by reference into the Plan. The terms of the Funding Vehicle control in any case where there is any inconsistency or ambiguity between the terms of the Plan and the terms of the Funding Vehicle, except as otherwise set forth herein.
- 10.6 ***Non-Alienation of Retirement Rights or Benefits.*** No benefit payable under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of

creditors or legal process to the fullest extent permitted by law. No person shall have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so shall be void and of no effect; provided, however, that this Plan shall comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under Code Section 414(p). Notwithstanding the foregoing, the benefits payable to a Participant may be offset (*i.e.*, reduced) in the Plan Administrator's sole discretion, to the extent permitted by Code Section 401(a)(13)(C).

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