

**RECOMMENDATION TO THE BOARD OF TRUSTEES
UNIVERSITY OF LOUISVILLE
CONCERNING 403(b) PLAN**

Board of Trustees – November 12, 2009

RECOMMENDATION:

The President recommends that the Board of Trustees adopt the attached revised 403(b) Retirement Plan Document, which reflects updates to the plan document.

BACKGROUND:

The following revisions to the plan document reflect updates to conform to current “best practices.” The revised document is included as an attachment.

The changes are:

- Removed the 1,000 hour rule to allow any employee the option to make elective deferrals. By eliminating this exclusion, all employees who receive IRS Form W-2 to report compensation are eligible to make elective deferrals, regardless of hours worked or the duration of employment.
- There were a few references to tax code and regulation provisions that needed to be updated. In particular, section 4.02(c), was removed, which defines "compensation" for determining the maximum "annual addition." This is an arcane tax rule that has changed several times since it was first described in detail in the document. It is included as a reference to the definition as the last sentence of section 4.02(a), which is perfectly allowable, and avoids the danger of the language becoming dated.
- Removed the "Roth" provision, as we are not able to provide this option at this time.
- Section 2.17(a) was updated to exclude “post-doctoral fellows and visiting scholars.”
- Section 2.17(b) was updated to exclude “house staff.”
- Add University Holdings, Inc. as covered entity

BOARD ACTION

PASSED _____
DID NOT PASS _____
OTHER _____

Kathleen M. Smith
ASSISTANT SECRETARY

UNIVERSITY OF LOUISVILLE

403(b) RETIREMENT PLAN

[Amended and Restated Effective January 1, 2009]

UNIVERSITY OF LOUISVILLE
403(b) RETIREMENT PLAN
[Amended and Restated Effective January 1, 2009]

TABLE OF CONTENTS

ARTICLE 1. PURPOSE AND APPLICABILITY OF PLAN	1
1.01 Purpose of Plan	1
1.02 Applicability of Plan	1
ARTICLE 2. DEFINITIONS	1
2.01 Account	1
2.02 Account Balance	1
2.03 Administrator	2
2.04 Affiliated Organization	2
2.05 Annuity Contract.....	2
2.06 Annuity Starting Date	2
2.07 Beneficiary	2
2.08 Board of Trustees	2
2.09 Code	2
2.10 Compensation	2
2.11 Contributions.....	3
2.12 Custodial Account.....	3
2.13 Disabled	3
2.14 Distribution Calendar Year.....	3
2.15 Effective Date, Restatement Effective Date.	3
2.16 Elective Deferral.	3
2.17 Eligible Employee.....	3
2.18 Eligible Employer	4
2.19 Eligibility Period.....	4
2.20 Employee.	4
2.21 Entry Date.....	4
2.22 Funding Vehicles.	4
2.23 Individual Agreement	4
2.24 Participant	4
2.25 Participant Account.....	5
2.26 Participation Form	5
2.27 Plan	5
2.28 Plan Year.....	5
2.29 Qualified Military Service	5
2.30 Related Employer.....	5
2.31 Required Beginning Date.....	5
2.32 Severance from Employment.....	5
2.33 University.....	5
2.34 University Contributions.....	5

2.35	Vendor.....	5
2.36	Valuation Date	5
ARTICLE 3. ELIGIBILITY FOR UNIVERSITY CONTRIBUTIONS		6
3.01	Date Employees Become Participants	6
3.02	Eligibility of Rehired Employees.....	6
3.03	Notice of Participation	6
3.04	Provisions of Plan Binding on Participants.	6
3.05	Change in Employment Status.....	6
ARTICLE 4. UNIVERSITY CONTRIBUTIONS		7
4.01	Amount of University Contributions	7
4.02	Limitations on Annual Additions.....	7
4.03	Payment of Contributions	8
4.04	Form of Contribution	8
4.05	Qualified Military Service	8
ARTICLE 5. ELECTIVE DEFERRALS		8
5.01	Eligibility for Elective Deferrals.....	8
5.02	Elective Deferral Election.....	8
5.03	Information Provided by the Employee.....	8
5.04	Change in Elective Deferral Election	9
5.05	Contributions Made Promptly.....	9
5.06	Leave of Absence.....	9
ARTICLE 6. LIMITATIONS ON ELECTIVE DEFERRAL AMOUNTS.....		9
6.01	Basic Annual Limitation	9
6.02	Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service ..	9
6.03	Age 50 Catch-up Elective Deferral Contributions.....	10
6.04	Coordination	10
6.05	Special Rule for a Participant Covered by Another Section 403(b) Plan.....	10
6.06	Correction of Excess Elective Deferrals.....	10
6.07	Protection of Persons Who Serve in a Uniformed Service.....	11
ARTICLE 7. INVESTMENT OF CONTRIBUTIONS.....		11
7.01	Manner of Investment.....	11
7.02	Investment of Contributions	11
7.03	Institutional Fee Billing – Investment Advisor Fees	11
7.04	Current and Former Vendors	11
ARTICLE 8. LOANS.....		12
8.01	Loans.....	12
8.02	Information Coordination Concerning Loans.....	12
8.03	Maximum Loan Amount.....	12
8.04	Loan Repayments For Participants in Military Service.....	13

ARTICLE 9. BENEFIT DISTRIBUTIONS	13
9.01 Benefit Distributions At Severance from Employment or Other Distribution Event...	13
9.02 Small Account Balances	13
9.03 Minimum Distributions.....	13
9.04 In-Service Distributions From Rollover Account.....	13
9.05 Rollover Distributions.....	13
ARTICLE 10. ROLLOVERS TO THE PLAN AND TRANSFERS	14
10.01 Eligible Rollovers	14
10.02 Plan-to-Plan Transfers to the Plan	14
10.03 Plan-to-Plan Transfers from the Plan.....	15
10.04 Contract and Custodial Account Exchanges.....	15
ARTICLE 11. AMENDMENTS TO THE PLAN	16
11.01 Rights Generally to Make Amendments.....	16
11.02 Right to Make Amendments Relating to Qualification of Plan.....	16
ARTICLE 12. RESERVATION OF RIGHTS BY THE UNIVERSITY AND LIMITATIONS ON RIGHTS OF PARTICIPANTS	16
12.01 Plan Voluntary on Part of University.....	16
12.02 Plan Not Contract of Employment.....	16
12.03 Indemnification.....	16
12.04 No Employer Liability	17
ARTICLE 13. MISCELLANEOUS	17
13.01 Non-Assignability	17
13.02 Domestic Relations Order.....	17
13.03 IRS Levy	17
13.04 Tax Withholding	17
13.05 Payments to Minors and Incompetents.....	17
13.06 Mistaken Contributions.....	18
13.07 Procedure When Distributee Cannot Be Located	18
13.08 Incorporation of Individual Agreements.....	18
13.09 Governing Law	18
13.10 Headings	18
13.11 Gender.....	18

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UNIVERSITY OF LOUISVILLE
403(b) RETIREMENT PLAN
[Amended and Restated Effective January 1, 2009]

WHEREAS, the University of Louisville, a public institution of higher education under KRS 164.810 et. seq. and an agency of the Commonwealth of Kentucky with its principal office and place of business in Louisville, Kentucky adopted, effective December 31, 1989, each of the “University of Louisville 403(b) Retirement Plan” and the “University of Louisville Tax Deferred Annuity Plan,” (together, the “Plans”) for the benefit of its eligible employees; and

WHEREAS, the University desires to consolidate the Plans, and to make revisions to the Plans as so consolidated to comply with final tax regulations promulgated by the Department of Treasury effective January 1, 2009, and to make certain other revisions as set forth herein; and

WHEREAS, the Board of Trustees of the University has authorized and approved the Plan as set forth herein;

NOW THEREFORE, the University hereby adopts the University of Louisville 403(b) Retirement Plan, as amended and restated herein, as follows:

ARTICLE 1.
PURPOSE AND APPLICABILITY OF PLAN

- 1.01 **Purpose of Plan.** The purpose of the Plan is to provide Benefits to Participants upon retirement, death and Severance from Employment, upon the terms and conditions, and subject to the limitations, set forth herein.
- 1.02 **Applicability of Plan.** The provisions of the Plan shall apply only to persons employed by the University and Affiliated Organizations on and after the Effective Date, and on or after the Restatement Effective Date, as applicable.

ARTICLE 2.
DEFINITIONS

The following words and phrases when used herein shall have the meanings set forth below, unless a different meaning is plainly required by the context:

- 2.01 **Account.** The word “Account” means the account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.
- 2.02 **Account Balance.** The term “Account Balance” means the value of the aggregate amount credited to a Participant’s Account under all Accounts, including without limitation, University Contributions under Article 4, Elective Deferrals under Article 5, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, and any distribution made to the Participant or the Participant’s Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant’s death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any Account established under Article 10 for rollover contributions and plan-to-plan transfers made for a Participant, the Account

established for a Beneficiary after a Participant's death, and any Account or Accounts established under a domestic relations order, as defined in Section 13.02.

- 2.03 **Administrator.** The word "Administrator" means the University of Louisville. Notwithstanding this appointment, the Administrator may delegate, by separate agreement, any administrative responsibilities hereunder to one or more persons, committees, Vendors, or other organizations.
- 2.04 **Affiliated Organization.** The term "Affiliated Organization" means the University of Louisville Athletic Association, the University of Louisville Foundation, Inc., the University Holdings, Inc., and any other entity so designated by the Board of Trustees.
- 2.05 **Annuity Contract.** The term "Annuity Contract" means a nontransferable contract as defined in section 403(b)(1) of the Code, established for a Participant by the Employer, or by a Participant individually, that is issued by an insurance company qualified to issue annuities in the Commonwealth of Kentucky and that includes payment in the form of an annuity.
- 2.06 **Annuity Starting Date.** The term "Annuity Starting Date" means the first day of the first period for which an amount is received as an annuity whether by reason of retirement or disability.
- 2.07 **Beneficiary.** The word "Beneficiary" means the designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.
- 2.08 **Board of Trustees.** The term "Board of Trustees" means the Board of Trustees of the University.
- 2.09 **Code.** The word "Code" means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- 2.10 **Compensation.**
- (a) The word "Compensation" means an Employee's base annual salary paid by the University for a Plan Year, including amounts deferred by such Employee pursuant to an election made under sections 125, 132(f)(4) or 402(g) of the Code, subject to the following adjustments: (i) Compensation includes supplemental pay as defined by University policy, and (ii) Compensation shall exclude overtime or overload pay, patient fees, bonuses, shift differentials, honorariums, additional pay ("x-pay") as defined by University policy, and other extraordinary remuneration such as employer contributions to this and any other employee pension benefit plan or employee welfare benefit plan.
- (b) Except as provided in subsection (c), Compensation shall not include amounts in excess of \$200,000 (pro-rated for the Plan Year beginning and ending December 31, 1997) or such larger amount as the Secretary of Treasury may determine in a manner consistent with increases effected under Section 415(d) of the Code.

- (c) For Employees who commence participation in the Plan prior to January 1, 1997, Compensation shall not include amounts in excess of \$150,000 (pro-rated for the Plan Year beginning and ending December 31, 1997), or such larger amount as the Secretary of Treasury may determine in a manner consistent with the increase effected under Section 401(a)(17)(B) of the Code.
- 2.11 **Contributions.** The word “Contributions” may refer collectively to University Contributions and Elective Deferrals, as the context requires.
- 2.12 **Custodial Account.** The term “Custodial Account” means the group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for a Participant by the Employer, or by a Participant individually, to hold assets of the Plan.
- 2.13 **Disabled.** The word “Disabled” means the definition of disability provided in the applicable Individual Agreement.
- 2.14 **Distribution Calendar Year.** The term “Distribution Calendar Year” means a calendar year for which a minimum distribution is required. In the case of distributions required before death where a Participant’s Required Beginning Date is April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2 (or retires, if later), the Participant’s first Distribution Calendar Year is the year he attains age 70-1/2 (or retires, if later).
- 2.15 **Effective Date, Restatement Effective Date.** The term “Effective Date” means the effective date of this Plan, which is December 31, 1989. The term “Restatement Effective Date” means January 1, 2009.
- 2.16 **Elective Deferral.** The term “Elective Deferral” means contributions made by the University to the Plan at the election of a Participant in lieu of cash compensation.
- 2.17 **Eligible Employee.**
- (a) University Contributions. The term “Eligible Employee” means, for purposes of establishing to receive University Contributions under Article 4, regular full-time and benefit-eligible part-time employees of the University or an Affiliated Organization, including, but not limited to, administrators, faculty, professional/administrative staff and classified staff; provided, the term Eligible Employee for this purpose shall not include (i) house staff, (ii) post-doctoral fellows and visiting scholars, (iii) student employees (i.e., students performing services described in section 3121(b)(10) of the Code), or (iv) any person included in a unit of employees covered by a collective bargaining agreement between employee representatives and the University unless such collective bargaining agreement expressly provides that such person is eligible for participation in the Plan. Such term shall also include any person employed by the University and authorized to participate in this Plan as a result of an early retirement/phased retirement program.
- (b) Elective Deferrals. The term “Eligible Employee” means, for purposes of establishing eligibility to make Elective Deferrals under Article 5, any person employed by the University or by an Affiliated Organization; provided, the term Eligible Employee for this purpose shall not include (i) student employees (including house staff) performing

services described in section 3121(b)(10) of the Code), or (ii) nonresident aliens with no U.S. source income.

2.18 **Eligible Employer.** The term “Eligible Employer” means a two year college, a four year college or university other than the University, a non-profit research organization, Kentucky state government, or another non-profit entity which the University determines performs services substantially similar to those entities listed herein. To be considered an Eligible Employer such entity must have been the Employee’s most recent employer prior to the Employee becoming employed by the University.

2.19 **Eligibility Period.**

(a) For purposes of determining eligibility for University Contributions under Article 4, the term “Eligibility Period” means the 12-consecutive month period during which an Employee performs services for the University or an Eligible Employer during each month, or, for those Employees employed on an academic year basis, the period constituting the academic year during which the Employee performs services for the University or an Eligible Employer during each month. In determining whether an Employee has performed an Eligibility Period with an Eligible Employer, the definition of Employee and this definition shall be applied by substituting the Eligible Employer for the University to determine if the requirements of an Eligible Employer have been met.

(b) The term “Eligibility Period” is inapplicable to Elective Deferrals.

2.20 **Employee.** The word “Employee” means each individual, whether appointed or elected, who is a common law employee of the University or an Affiliated Organization performing services as an employee. This definition is not applicable unless the Employee’s Compensation for performing services for the University or an Affiliated Organization is paid by the University or an Affiliated Organization. Further, a person occupying an elective or appointive public office is not an employee performing services for the University or an Affiliated Organization unless (i) such office is one to which an individual is elected or appointed, and (ii) only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local government.

2.21 **Entry Date.** The term “Entry Date” means the first day of the pay period coinciding with, or if later next following, completion of an Eligibility Period.

2.22 **Funding Vehicles.** The term “Funding Vehicles” means the Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the University for use under the Plan.

2.23 **Individual Agreement.** The term “Individual Agreement” means an agreement between a Vendor and the University or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

2.24 **Participant.** The word “Participant” means an individual for whom University Contributions or Elective Deferrals, or both, are being made, or for whom such Contributions have previously been made, and who has not received a distribution of his or her entire Benefit under the Plan.

- 2.25 **Participant Account.** The term “Participant Account” means the separate Account established and maintained on behalf of a Participant to reflect the Participant’s interest in the Participant’s Contract or Custodial Account.
- 2.26 **Participation Form.** The term “Participation Form” means the form prescribed by the University on which an Employee authorizes and designates the amount of Elective Deferrals.
- 2.27 **Plan.** The word “Plan” means the University of Louisville 403(b) Retirement Plan as set forth herein, and as it may be amended from time to time.
- 2.28 **Plan Year.** The term “Plan Year” means the calendar year.
- 2.29 **Qualified Military Service.** The term “Qualified Military Service” means any service in the uniformed services (as defined in Chapter 43 of Title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.
- 2.30 **Related Employer.** The term “Related Employer” means the University and any other entity which is under common control with the University under section 414(b) or (c) of the Code. For this purpose, the University shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.
- 2.31 **Required Beginning Date.** The term “Required Beginning Date” means the April 1 of the calendar year following the calendar year in which a Participant attains age 70-1/2, or in which the Participant’s actual retirement occurs if later.
- 2.32 **Severance from Employment.** The term “Severance from Employment” means Severance from Employment with the University and any Related Entity. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public school, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public school or in a capacity that is not employment with a public school (e.g., ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer).
- 2.33 **University.** The word “University” means the University of Louisville.
- 2.34 **University Contributions.** The term “University Contributions” means the contributions made by the University for each Participant pursuant to Article 4.
- 2.35 **Vendor.** The work “Vendor” means the provider of an Annuity Contract or Custodial Account, or any organization expressly authorized by such provider to act on its behalf under this Plan.
- 2.36 **Valuation Date.** The term “Valuation Date” means each business day of the Plan Year.

ARTICLE 3.
ELIGIBILITY FOR UNIVERSITY CONTRIBUTIONS

- 3.01 **Date Employees Become Participants.** Each Eligible Employee (as defined in Section 2.17(a)) shall automatically become a Participant for purposes of receiving University Contributions on the Entry Date coinciding with or, if later, next following completion of an Eligibility Period.
- 3.02 **Eligibility of Rehired Employees.** An Employee eligible to receive University Contributions who voluntarily resigns from employment in good standing and is subsequently reemployed shall be eligible to become a Participant as of the date of reemployment, provided such Employee satisfies the definition of Eligible Employee as set forth in Section 2.17(a) at the time of reemployment. Solely for the purposes of this Section 3.02, the term Severance from Employment shall include retirement. For the purposes of this Section 3.02, persons participating in an approved early retirement/phased retirement program will be eligible to become a Participant for purposes of this Article 3 upon reemployment.
- 3.03 **Notice of Participation.** Each Eligible Employee shall, upon commencement of participation under this Article 3, be furnished with a summary of the Plan's provisions, a form for designating a Beneficiary, and forms for electing the investment of the Participant's Accounts under the Plan.
- 3.04 **Provisions of Plan Binding on Participants.** Upon becoming a Participant, a Participant shall be bound then and thereafter by the terms and conditions of the Plan, including all amendments thereto.
- 3.05 **Change in Employment Status.**
- (a) In the event a Participant becomes ineligible to receive University Contributions because the Participant no longer meets the definition of an Eligible Employee under Section 2.17(a), but remains employed, such person shall again become eligible to receive University Contributions upon again meeting the definition of an Eligible Employee under Section 2.17(a). During the period such person does not meet the definition of an Eligible Employee under Section 2.17(a), but is still employed by the University, no further University Contributions shall be made on behalf of such Participant; provided that such person may continue to make Elective Deferrals if he or she satisfies the eligibility requirements of Section 2.17(b).
- (b) In the event a person employed by the University does not meet the definition of an Eligible Employee for purposes of University Contributions, but later meets such definition, such person shall become eligible to participate on the Entry Date coinciding with, or if later, next following upon completion of an Eligibility Period.
- (c) If a participating Eligible Employee takes an approved "leave of absence" (as determined under the personnel policies of the University) and continues to receive Compensation from the University during such period, such Participant shall continue to be a Participant and receive University Contributions.

ARTICLE 4.
UNIVERSITY CONTRIBUTIONS

4.01 Amount of University Contributions.

- (a) Basic Contributions. The University shall make a Contribution to each Participant's Account for each Plan Year in which the Participant qualifies as an Eligible Employee under Section 2.17(a) in an amount equal to 7.5% of such Participant's Compensation for such Plan Year (or, for a period of participation less than a Plan Year, 7.5% of the Participant's Compensation for the portion of the Plan Year during which the Participant was eligible to participate), such percentage to be determined before salary reductions for amounts deferred by such Employee pursuant to an election made under sections 125, 132(f)(4) or 402(g) of the Code.
- (b) Matching Contributions. If a Participant makes an Elective Deferral equal to 2.5% of Compensation for the same period with respect to which a Basic Contribution under subsection (a) above is made for such Participant, the University shall make a matching contribution in an amount equal to 100% of such Elective Deferral. Matching Contributions are not available to Employees who are eligible to make "Elective Deferrals" only (as defined in Section 2.17(b)).
- (c) Other Contributions. The University may make such other Contributions as it may deem appropriate pursuant to any binding agreement to the extent that such Contribution does not contravene the provisions of section 403(b) of the Code, regulations promulgated thereunder or such rulings or notices that the Secretary of Treasury may make.

4.02 Limitations on Annual Additions.

- (a) Notwithstanding any provision of the Plan to the contrary, the "annual addition" to any Participant's Accounts shall not exceed the lesser of (i) \$40,000 (or such larger amount as the Secretary of Treasury may determine in a manner consistent with the increases effected under Section 415(d) of the Code) or (ii) 100% of the Participant's Compensation. The term "annual addition" means the sum of the Participant's University Contributions and Elective Deferrals for the Plan Year, and any amounts allocated on behalf of the Participant to an "individual medical account" (as defined in Section 415(l)(2) of the Code) which is part of a pension or annuity plan maintained by the University and treated as annual additions to a defined contribution plan, and amounts derived from contributions paid or accrued attributable to post-retirement medical benefits allocated to the separate account of the Participant if he is a "key employee" (as defined in Section 419A(d)(3) of the Code) under a welfare benefit fund (as defined in Section 419(e) of the Code) maintained by the University. Solely for purposes of calculating a Participant's annual additions, the term "Compensation" means compensation as defined in Treas. Reg. section 1.415(c)-2(a).
- (b) If as the result of a reasonable error in estimating a Participant's Compensation or under other limited facts and circumstances which the Commissioner of Internal Revenue finds justify this method of allocation, the annual addition for a Participant would exceed the amount provided in subsection (a), the excess amount shall be withheld or taken from a Participant's Accounts in the following order:

- (1) Elective Deferrals in excess of 2.5% of Compensation included in the annual additions and the earnings thereon, if any, shall be reduced and returned to the Participant;
- (2) Elective Deferrals up to 2.5% of Compensation included in the annual additions and the earnings thereon, if any, shall be reduced and returned to the Participant;
- (3) University Matching Contributions;
- (4) University Basic Contributions.

Any amounts withheld or taken from a Participant's Accounts attributable to University Contributions may be returned to the University.

- 4.03 **Payment of Contributions.** All University Contributions shall be transferred to the Contract or Custodial Account selected by the Participant pursuant to Article 7 as soon as practicable following the pay period to which they are attributable.
- 4.04 **Form of Contribution.** All Contributions shall be made in cash.
- 4.05 **Qualified Military Service.** Notwithstanding any provision of this Plan to the contrary, University Contributions with respect to Qualified Military Service shall be provided in accordance with Section 414(u) of the Code.

ARTICLE 5. ELECTIVE DEFERRALS

- 5.01 **Eligibility for Elective Deferrals.** Each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf hereunder immediately upon becoming employed by the University or by an Affiliated Organization as an Eligible Employee (as defined in Section 2.17(b)).
- 5.02 **Elective Deferral Election.**
- (a) An Employee elects to make pre-tax salary reduction deferrals by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral on his or her behalf) and filing it with the Administrator. An Elective Deferral election shall be made on the agreement and in the form provided by the Administrator, which shall also include the designation of the Funding Vehicles and Accounts to which Elective Deferrals are to be made and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed.
 - (b) The Administrator may establish an annual minimum Elective Deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time.
- 5.03 **Information Provided by the Employee.** Each Employee making an Elective Deferral in the Plan shall provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

- 5.04 **Change in Elective Deferral Election.** Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals, the designation of Funding Vehicles, and a designation of Beneficiary. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.
- 5.05 **Contributions Made Promptly.** Elective Deferrals shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.
- 5.06 **Leave of Absence.** Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals shall continue to the extent that Compensation continues.

**ARTICLE 6.
LIMITATIONS ON ELECTIVE DEFERRAL AMOUNTS**

- 6.01 **Basic Annual Limitation.**
- (a) Except as provided in Sections 6.02 and 6.03, the maximum amount of the Elective Deferrals under the Plan for any calendar year shall not exceed the lesser of:
- (1) the applicable dollar amount, or
 - (2) the Participant's Compensation for the calendar year.
- (b) The applicable dollar amount is the amount established under section 402(g)(1)(B) of the Code, which is \$16,500 for 2009, and is adjusted for cost-of-living after 2009 to the extent provided under section 415(d) of the Code.
- 6.02 **Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service.**
- (a) Because the Employer is a qualified organization (within the meaning of Treas. Reg. § 1.403(b)-4(c)(3)(ii)), the applicable dollar amount under Section 6.01(a) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:
- (1) \$3,000;
 - (2) The excess of:
 - (A) \$15,000, over
 - (B) The total special 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or

- (3) The excess of:
 - (A) \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over
 - (B) The total Elective Deferrals made for the employee by the qualified organization for prior years.
- (b) For purposes of this Section 6.02, a “qualified employee” means an Employee who has completed at least 15 years of service taking into account only employment with the University.

6.03 Age 50 Catch-up Elective Deferral Contributions.

- (a) An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the calendar year.
- (b) The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$5,500 for 2009, and is adjusted for cost-of-living after 2009 to the extent provided under the Code.

6.04 Coordination. Amounts in excess of the limitation set forth in Section 6.01 shall be allocated first to the special 403(b) catch-up under Section 6.02 and next as an age 50 catch-up under Section 6.03. However, in no event can the amount of the Elective Deferrals for a calendar year be more than the Participant’s Compensation for the calendar year.

6.05 Special Rule for a Participant Covered by Another Section 403(b) Plan. For purposes of this Article, if a Participant is or has been a participant in one or more other plans under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article. For this purpose, the Administrator shall take into account any other such plan maintained by any Related Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Entity shall be taken into account for purposes of Section 6.02 only if the other plan is a § 403(b) plan.

6.06 Correction of Excess Elective Deferrals. If the Elective Deferrals on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of the employer under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferrals, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant in accordance with applicable IRS guidance.

- 6.07 **Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the University equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the University had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

ARTICLE 7. INVESTMENT OF CONTRIBUTIONS

- 7.01 **Manner of Investment.** All University Contributions and Elective Deferrals or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.
- 7.02 **Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under applicable Income Tax Regulations.
- 7.03 **Institutional Fee Billing – Investment Advisor Fees.** To the extent permitted by law and the provisions of the Funding Vehicle, the University has the power to authorize the payment of Investment Advisor Fees incurred by a Participant. Such payment shall be directed by the Participant or by the Participant's Investment Advisor and will be paid by the Fund Sponsor from the Participant's Account. Such payment shall be made directly to the Investment Advisor. Under no circumstances will the Plan be liable for such payment. For purposes of this Article, the term "Investment Advisor" shall mean a person who is registered as such with the United States Securities and Exchange Commission ("SEC") or with a state securities regulatory agency if the Investment Advisor is exempt from SEC registration requirements. For purposes of this Article, the term "Investment Advisor Fees" shall mean fees charged by a Participant's Investment Advisor for advisory services relating to the Participant's Account under this Plan.
- 7.04 **Current and Former Vendors.**
- (a) The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such

information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

- (b) In the case of a Vendor which is not eligible to receive Elective Deferrals under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals under the Plan and a Vendor holding assets under the Plan in accordance with Section 10.02 or 10.04), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

ARTICLE 8. LOANS

8.01 **Loans.** Loans shall be permitted under the Plan to the extent permitted by the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured.

8.02 **Information Coordination Concerning Loans.** Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 8.03, including the collection of information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the University. The Administrator shall also take such steps as may be appropriate to collect information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

8.03 **Maximum Loan Amount.**

- (a) No loan to a Participant under the Plan may exceed the lesser of:
 - (1) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period); or
 - (2) one half of the value of the Participant's vested Account Balance (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator).
- (b) For purposes of this Section 8.03, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this subsection

(b) shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this subsection (b).

- 8.04 **Loan Repayments For Participants in Military Service.** Notwithstanding any other provision of the Plan or any Annuity Contract or Custodial Account, loan repayments by eligible uniformed services personnel may be suspended as permitted under section 414(u)(4) of the Code and the terms of any loan shall be modified to conform to the requirements of the Uniformed Services Employment and Reemployment Rights Act.

ARTICLE 9. BENEFIT DISTRIBUTIONS

- 9.01 **Benefit Distributions At Severance from Employment or Other Distribution Event.** Except as otherwise specifically provided by the Plan, distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.
- 9.02 **Small Account Balances.** The terms of the Individual Agreement may permit distributions to be made in the form of a lump-sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed \$5,000 (determined without regard to any separate account that holds rollover contributions under Section 10.01), and provided that any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).
- 9.03 **Minimum Distributions.** Each Individual Agreement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of § 1.408-8 of the Income Tax Regulations, except as provided in Treas. Reg. § 1.403(b)-6(e).
- 9.04 **In-Service Distributions From Rollover Account.** If the Funding Vehicle in which a Participant has a separate account attributable to rollover contributions to the Plan, to the extent permitted by the applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.
- 9.05 **Rollover Distributions.**
- (a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a

distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).

- (b) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

ARTICLE 10. ROLLOVERS TO THE PLAN AND TRANSFERS

10.01 **Eligible Rollovers.** To the extent provided in the Individual Agreements, an Eligible Employee who is entitled to receive an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Vendor 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. Vendors shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

10.02 Plan-to-Plan Transfers to the Plan.

- (a) At the direction of the University, for a class of Employees who are participants or beneficiaries in another 403(b) plan, the Administrator may permit a transfer of assets to the Plan as provided in this Section 10.02. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the participant is an employee or former employee of the employer maintaining such plan. The Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any Vendor accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Treas. Reg. § 1.403(b)-10(b)(3) and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.
- (b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.
- (c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that (1)

the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan and (2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Article 6.

10.03 Plan-to-Plan Transfers from the Plan.

- (a) At the direction of the University, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another 403(b) plan in accordance with Treas. Reg. § 1.403(b)-10(b)(3). A transfer is permitted under this Section 10.03 only if the Participants or Beneficiaries are employees or former employees of the employer (or the business of the employer) under the receiving plan and the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.
- (b) The other 403(b) plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the other plan shall impose 403(b) restrictions on distributions to the Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).
- (c) Upon the transfer of assets under this Section 10.03, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 10.03 (for example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. § 1.403(b)-10(b)(3).

10.04 Contract and Custodial Account Exchanges.

- (a) A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Vendors under the Plan, subject to the terms of the Individual Agreements. However, an investment change that includes an investment with a Vendor that is not eligible to receive contributions under this Plan is not permitted (referred to as an "exchange").
- (b) If any Vendor ceases to be eligible to receive contributions under the Plan, the University will enter into an information sharing agreement to the extent the University's contract

with the Vendor does not provide for the exchange of information described by applicable Treasury Regulations.

**ARTICLE 11.
AMENDMENTS TO THE PLAN**

- 11.01 **Rights Generally to Make Amendments.** The University shall have the right at any time by instrument of writing duly executed to modify, alter, amend or terminate the Plan in whole or in part. Any Benefit which has actually accrued and become payable hereunder shall not be affected thereby except as provided in Section 11.02 below. Should the University, at any time, not be in existence as an entity, this Plan may be amended by action of a majority of the members of the Board of Trustees then surviving as such.
- 11.02 **Right to Make Amendments Relating to Qualification of Plan.** The University shall have the unlimited right to amend the Plan at any time, retroactively or otherwise, in such respects and to such extent as may be necessary to qualify it under existing laws and regulations so as to meet the requirements of the Code, and, to the extent necessary to accomplish such purpose, may be such amendment decrease or otherwise affect the rights of Participants or Beneficiaries to benefits which have actually accrued and become payable hereunder.

**ARTICLE 12.
RESERVATION OF RIGHTS BY THE UNIVERSITY AND LIMITATIONS ON
RIGHTS OF PARTICIPANTS**

- 12.01 **Plan Voluntary on Part of University.** While it is the intention of the University that the Plan shall be continued and Contributions made in each year, the Plan is entirely voluntary on the part of the University. The University does not guarantee or promise to pay or cause to be paid any benefit provided by the Plan and each Participant, Beneficiary or any other person who may claim the right to any payment or benefit under the Plan shall be entitled to look only to the Contract or Custodial Account for such payment or benefit and shall not have any right, claim or demand therefore against the University.
- 12.02 **Plan Not Contract of Employment.** This Plan shall not be deemed to constitute a contract between the University and Participants or to be a consideration or inducement for the employment of any Participant or Employee. Nothing contained in the Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the University nor to interfere with the right of the University to discharge any Participant or Employee at any time regardless of the effect which such discharge may have upon him as a Participant in the Plan.
- 12.03 **Indemnification.** If the University appoints an Employee or committee of Employees to represent the University as the Administrator of the Plan, the University shall, to the extent permitted by applicable law, indemnify any such Employee acting on its behalf in this capacity. Such individuals shall be indemnified from any and all liability that may arise by reason of his action or failure to act concerning this Plan, excepting any willful misconduct or criminal acts.

- 12.04 **No Employer Liability.** The University shall have no liability for the payment of benefits under the Plan provided that the applicable Annuity Contract and Custodial Account Vendors receive written direction for the payment of benefits in accordance with the Plan. Each Participant shall look solely to the Vendors of applicable Annuity Contracts and Custodial Accounts for receipt of payments or benefits under the Plan.

**ARTICLE 13.
MISCELLANEOUS**

- 13.01 **Non-Assignability.** Except as provided in Section 13.02 and 13.03, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
- 13.02 **Domestic Relations Order.** If a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.
- 13.03 **IRS Levy.** The Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.
- 13.04 **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 Employment Tax 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.
- 13.05 **Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

- 13.06 **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the party that made the contribution.
- 13.07 **Procedure When Distributee Cannot Be Located.**
- (a) 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: (i) the mailing by certified mail of a notice to the last known address shown on the records of the University or the Administrator, (ii) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (iii) the payee has not responded within 6 months.
- (b) If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the applicable Funding Vehicle shall continue to hold the benefits due such person.
- 13.08 **Incorporation of Individual Agreements.** The Plan, together with the Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or section 403(b) of the Code. In such event, the Individual Agreements shall be interpreted, to the extent possible, in a manner to conform to the Plan and applicable requirements, provided however that the Plan may not enlarge the rights of the University, the Administrator, or a Participant under the Individual Agreements.
- 13.09 **Governing Law.** The Plan will be construed, administered and enforced according to the Code and the laws of the Commonwealth of Kentucky.
- 13.10 **Headings.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.
- 13.11 **Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

IN WITNESS WHEREOF, the University has, as of the _____ day of _____, 2009, caused this Plan to be executed by its duly authorized officer.

Legal Review:

UNIVERSITY OF LOUISVILLE

Office of University Counsel
10343638.1

By _____
Vice President for Administration